

End-of-Life Decisions for Muslims in Albania: An Interdisciplinary Approach^{*}

Ervin Pupe
Denard Veshti

Abstract

This study investigates end-of-life decisions through Islamic and legal comparative approaches by focusing on the Albanian context. The methods applied in this paper are critical legal reasoning and legal comparison. The goal of this research is to review the impact of the Islam legal culture (Qur'an and *hadith*) on the Albanian law of end-of-life decisions. From a legal approach, this paper underlines the unconstitutionality of the Albanian Code of Medical Ethics. In addition, the review of the Islamic literature on medical jurisprudence demonstrates the attitude of Muslim community regarding end-of-life decisions in addition to scientifically examine the various rules governing end-of-life situations codified in the Islam legal sources by only considering the Qur'an and *hadith*. This investigation aims to understand the similarities and differences between these two different approaches by also underlying the importance of Islam approach on end-of-life situations on the Albanian legislation.

Key words: Advance Directives, Code of Medical Ethics, *Hadith*, Islamic Literature on Medical Jurisprudence, Legal Approach, Qur'an.

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I. Introduction

Human dignity is one of the most fundamental human rights, which shall be protected also in the patient-physician relationship. The Albanian constitution recognizes human dignity not only as one of the basic principles (Article 3 Albanian Constitution), but also as one of the foundations of the Albanian constitution (Preamble Albanian Constitution).

In addition to the constitutional protection, Albania has ratified several important supranational and international conventions that recognize patient autonomy. In the international level, between others, the patient's active role has been acknowledged in the *European Convention of Human Rights* (ECHR) and in the *European Convention on Human Rights and Biomedicine* (Oviedo Convention). The application of the ECHR for the right to refuse medical treatment has been acknowledged by the doctrine.¹ From October 1996, the ECHR is part of the Albanian legislation. In addition, since July 2011, the Oviedo Convention entered into force also in Albania. It should be underlined that Article 9 of the Oviedo Convention states that *the previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account*.

Focusing on the supranational level, the *Charter of Fundamental Rights of the European Union* protects human dignity. It shall be underlined that, since 1 December 2009, the *Charter of Fundamental Rights of the European Union*, has the same legal status as European Union (EU) treaties (Article 6 TEU). Although Albania is not part of the EU, Article 70 of the Stabilization and Association Agreement (SAA) between Albania and the EU states that Albania agrees to ensure that its existing laws and future legislation will gradually be made compatible with the EU *acquis*. According to the Albanian legal hierarchy, national laws shall be aligned not only with the constitution but also with ratified international treaties (Article 116(1) Albanian Constitution), as is considered the SAA.

In end-of-life situations, there are several types of medical circumstances. According to the 'Guide on the decision-making process regarding medical treatment in end-of-life situations',² published in May 2014 by the Committee on Bioethics of the Council of Europe, the main four types of end-of-life situations are: withholding or withdrawing treatment from a conscious patient; withholding or

1 Elizabeth Wicks, "The right to refuse medical treatment under the European Convention on Human Rights", *Medical Law Review* 9:1 (2001), pp. 17-40; David Harris, "The right to life under the European convention on human rights" *Maastricht Journal of European and Comparative Law* 1:2 (1994), pp. 122-138; Peter J. Duffy, "Article 3 of the European Convention on Human Rights". *International & Comparative Law Quarterly* 32:2 (1983), pp. 316-346.

2 Council of Europe, Guide on the decision-making process regarding medical treatment in end-of-life situations, 2014.

withdrawing treatment from an unconscious patient; physician-assisted suicide (PAS), and euthanasia (or “mercy killing”).

In general, in Europe, while withholding or withdrawing treatment from a conscious patient is considered legal (ECtHR, *Pretty v. the UK*, application no. 2346/02, par. 63), different approaches have been applied for withholding or withdrawing treatment from an unconscious patient, PAS, and euthanasia. For instance, several Western European countries have legalized forms of PAS or euthanasia through national laws (such as the Netherlands, Belgium, and Luxembourg, Germany, or Switzerland) or through the interpretation of Constitutional legal decisions (such as Italian Constitutional Court, R.O. 43/2018 or the German Constitutional Court, 2 BvR 2347/15). In addition, the majority of the members of the European Council³ as well as all the English-, German-, and Romance-speaking countries⁴ recognize the right to not be treated (the right to withhold or withdraw medical treatment) by unconscious patients.

In Albania, the interpretation of Articles 76, 79, and 99 Penal Code (PC) as well as Article 39 Code of Medical Ethics concludes that euthanasia and PAS are deemed criminal offences in addition to be considered as a violation of medical ethics. On the contrary, the interpretation of Article 6(2)(c) Law no. 10.107 of March 2009 results in the legality of withholding or withdrawing treatment from a conscious patient since consent in medicine is considered as one of the most important requirements of the patient-physician relationship.⁵ The legal and bioethical discussion regarding withholding or withdrawing of treatment from an unconscious patient is quite complicated and it is directly correlated with the absence of an *ad hoc* law ruling on advance directives (ADs).

This contribution offers a general overview of end-of-life decisions in Albania by focusing on ADs. The investigation of the Albanian medical jurisprudence, Albanian legal system did not give a positive result since there is neither *ad hoc*

3 Roberto Andorno, ‘The previously expressed wishes relating to health care Common principles and differing rules in national legal systems’ in Steering Committee on Bioethics 35th meeting, 2008.

4 Enkelejda Koka and Denard Veshi, ‘A new law of ‘living will’ in Italy: A critical analysis’, *Liverpool Law Review* 40:2 (2019), pp. 113-130.

5 Article 76 PC states that *intentional homicide shall be punishable to a term of ten to twenty years imprisonment*; Article 79(1)(b) PC states that *deliberate homicide committed: against physical or psychic handicap persons, very ill persons or pregnant women, when the victim’s attributes are evident or known is punished by imprisonment not less than 20 years or by life in prison*; Article 39 Code of Medical Ethics states that *accelerating the end of life or provoking death is contrary to medical ethics. If the patient is unconscious, with no hope of living, the doctor must act at his judgement in order to provide the best possible [treatment]. He, in consultation with other colleagues and closest relatives of the patient, decides on the therapeutic attitude that needs to be maintained.* [translation by the authors]. Article 6(2) (c) Law no. 10.107 of 30 March 2009 states that *every citizen is responsible for [has the right to]: c) providing assistance in financing health care services, through compulsory health insurance contributions and fixed direct payments*; Article 4 Albanian Charter of Patient Rights states *every patient has the right to access all information that enables him or her to actively participate in his or her health decisions. This information is a prerequisite for any treatment and procedure, including participation in research* [translation by the authors].

law nor case-law dealing with the right to not be treated. However, particular attention is given to the Code of Medical Ethics since this is the only legal document that includes some reference to the end-of-life decision process. In addition, the authors also consider the religious interpretation of the Albanian legislation dealing with ADs by focusing on the Muslim Community in Albania.

The novelty of this paper stands to offer to the reader information regarding the Islamic legislation regarding end-of-life process by showing that these types of medical circumstances were also discussed in the *Qur'an* (Qur'an) and in the *Hadith* (sayings and traditions of the Prophet Muhammad himself). In addition, the review of the Islamic legal framework demonstrates the clear position taken by the Prophet Mohamed regarding end-of-life decisions. Moreover, and more importantly, our desk research showed that the current Islamic literature on medical jurisprudence has not applied its results to the international, supranational (EU), and national Albanian legal documents. End-of-life issues is a competence to national parliaments.⁶ Within different countries where Muslims live, the paper considers the Albanian case because most of its population recognize themselves as Muslim.⁷

The manuscript has the following sections: Section II underlines the importance of ADs by briefly examining the legal interpretation of the current legislation. It also investigates the Albanian legal framework governing instructional medical directives by focusing on the Code of Medical Ethics. Its goal is to give a constitutional interpretation of Article 39 Albanian Code of Medical Ethics by also considering the experience of other Western European countries. Section III considers the Muslim approach to end-of-life situations. Although in Albania several religious entities live together, according to the World Population Review,⁸ in 2021, almost 58% of Albanian's are Muslim. This data is similar to the previous census of 2011.⁹ In the conclusion, the authors argue that the current absence of an *ad hoc* law ruling end-of-life decisions does not protect patient autonomy. In addition, the contribution shows the similarities and differences between the Islam literature and sources of law with the current academic debate and legal situation in Albania.

6 Denard Veshi, and Gerald Neitzke, "Advance directives in some Western European Countries: a legal and ethical comparison between Spain, France, England, and Germany", *European Journal of Health Law* 22:4 (2015), pp. 321-345.

7 Instat, „Albania, Census 2011“, http://www.instat.gov.al/media/177354/main_results__population_and_housing_census_2011.pdf accessed 30 November 2021; World Population Review, „Albania Population 2021 (Live)“, <https://worldpopulationreview.com/countries/albania-population> accessed 30 November 2021.

8 World Population Review, „Albania Population 2021 (Live)“.

9 Instat, „Albania, Census 2011“.

II. Advance Directives in Albania: A Legal Approach

This Section gives an overview of the legal situation regarding ADs in Albania by applying a critical legal thinking and legal comparison. The Section studies the two types of ADs by also underlying the absence of *ad hoc* rules governing end-of-life decisions. In addition, the Section gives the opportunity to the reader to understand some policy suggestion coming from the experience of other Western European countries. It should be mentioned that Albania is a secular country. Thus, the legal approach is applied to all citizens, independently from their religion affiliation.

In the case of withholding or withdrawing treatment from an unconscious patient, ADs is the main instrument for communication with the medical staff. An AD should be considered a medical declaration, which, based on the principle of extended autonomy, gives directives for future medical care in case of future unconsciousness. Within ADs, two different types can be considered: the “instructional medical directives” (also known as “living wills”) or the “surrogate will.” From a medico-legal perspective, these types of ADs should be complementary.¹⁰

In the case of instructional medical directives, citizens express their preferences regarding specific medical treatments that they want to permit or to reject in case of future unconsciousness. The second form of ADs, the surrogate will, gives enduring power for health care affairs to another competent citizen: the “surrogate”. Surrogates must understand patients’ wishes and values. Although Albania does not rule end-of-life decisions, the interpretation of the rules of the civil code leads to some important results. First, instructional medical directives should be considered as unilateral legal transactions that produce legal effects in the non-pecuniary individual sphere: their aim is to (consent to or) reject future medical treatment in case of an agent’s incapacity.¹¹ Second, “surrogate will” is considered invalid (absolute invalidation) for violation of normative rules (Article 92(1)(a) Albanian Civil Code; CC). In more concrete terms, a power of attorney is legally valid only for those exchanges with a monetary value (Article 10 CC) and codified in the law (Article 64(2) CC). In addition, a power of attorney can act while the agent is fully competent (Article 76(1)(c) CC). Thus, at the moment the agent is unconscious, the power of attorney ends.¹²

10 Denard Veshi, and Gerald Neitzke, “The role of legal proxies in end-of-life decisions in Italy: A comparison with other Western European countries”, *Journal of Law and Medicine* 24:4 (2017), pp. 959-969.

11 Denard Veshi, et al., “End-of-Life Decisions in Albania: The Call for an Ethical Revision”, *Liverpool Law Review*, 41:3 (2020), pp. 315-330.

12 Article 92(1)(a) CC states *The void legal transaction does not create any legal consequences. Such ones are those which: a) conflict with an ordering provision of law*[translation by the authors]. Article 10 CC states: *The adult who by reason of psychological illness or mental underdevelopment is completely or partially unable to look after his affairs, may be taken away or limited the legal competence by a decision of court* [translation by the authors]. Article 64(2) CC states: *The representation shall not be allowed when the law requires a legal transaction to be conducted by the person himself*[translation by the authors]. Article 76(1)(c) CC states *The proxy terminates when: c) the representative or the representee die, or when one of them loses the competence*[translation by the authors].

The Albanian legal system does not establish *ad hoc* rules regarding end-of-life decisions. As a result, the Albanian Code of Medical Ethics of November 2011 should be examined since the application of these rules are mandatory for all physicians that aim to exercise their profession in Albania (Article 3 Code of Medical Ethics). In other words, disciplinary sanctions may be applied in cases of its infringement (Article 68 Code of Medical Ethics and Article 1 Regulation of 08.04.2016 of the Albanian Federation of Physicians).

Article 39 Code of Medical Ethics states that *if the patient is unconscious, with no hope of living, the doctor must act at his discretion for the best possible* [medical treatments]. *He, in consultation with other colleagues and closest relatives of the patient, decides on the therapeutic attitude to be maintained* [translated by the authors]. This approach is unconstitutional, and it does not protect patient autonomy for several reasons. First, Article 39 Code of Medical Ethics might be considered unconstitutional since it violates the fundamental principle of equity, established in Article 18 of the Albanian constitution. In other words, Article 39 Code of Medical Ethics makes a distinction between conscious and unconscious patients by allowing the right to refuse medical treatments only to the first group. Second, Article 39 Code of Medical Ethics violates Article 116 Albanian Constitution. Article 9 of the Oviedo Convention, in force in Albania from July 2011, states that the *previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account*. Although “previously expressed wishes” are not legally binding, Article 39 of the Albanian Code of Medical Ethics does not include at all their importance. According to Article 116 Albanian Constitution, the national legislation, as well as Statutes of associations or in their internal legislation, shall be coherent with the international law ratified in Albania, as it is the case of the Oviedo Convention. Third, Article 39 Albanian Code of Medical Ethics violates Principle 15(1) Recommendation REC (2009)11, which states *advance directives which do not have binding effect should be treated as statements of wishes to be given due respect*. Although this is a *soft-law*, the doctrine¹³ and the jurisprudence¹⁴ have shown that judges can apply them.

It should be noted that Article 39 Albanian Code of Medical Ethics violates patient autonomy and patient’s right to self-determination. In other words, in the case of unconscious patient, the medical staff in consultation with patient relatives should follow the patient’s wishes rather than seek to serve the patient’s best interests. This

13 Denard Veshi, “Studio relativo alla Raccomandazione CM / Rec (2009) 11 in merito agli Stati di lingua latina (Italia, Francia, Portogallo e Spagna), tedesca (Austria, Germania e Svizzera) e inglese (Irlanda e Regno Unito di Gran Bretagna e Irlanda del Nord)”, *Rivista Italiana di Medicina Legale*, 37:3 (2015), pp. 1277-1294.

14 ECtHR has applied the Convention on Human Rights and Biomedicine of 1997 towards the UK that has not ratified it yet (ECtHR, *Glass v. the UK*, Application No. 61827/00).

approach gives a better implementation of Principle 3(1) in correlation with Principle 10(1) Recommendation REC(2009)11.¹⁵ In more concrete terms, in the case of “surrogate will”, or better, in the case of consultation with the patient relatives, they shall aim the so-called substitute medical decision. In simple words, a surrogate must take into account the patient’s emotional, physical, and social health, not merely the illness, injury, or infirmity. Specifically, surrogates should take into consideration, between others, the patient’s present levels of physical, sensory, emotional, and cognitive function; (2) the quality of life, life expectancy, and prognosis for recovery with and without treatment as well as whether the medical treatment being provided is causing or may cause pain, suffering, or serious complications.¹⁶ Thus, the medical staff – in consultation with the patient’s relatives – shall act according to the patient’s best interests (understood as objective medical criteria) when those wishes are unclear.¹⁷

By considering that Article 39 Albanian Code of Medical Ethics includes several legal and ethical controversial problems, *ad hoc* rules governing end-of-life decisions is fundamental. Thus, in the case of request to withhold or withdraw medical treatments by unconscious patients, physicians have would have clear legal rules.

Currently, an academic legal discussion regarding end-of-life decisions has been developed. On one side, part of the legal doctrine¹⁸ believes that withdrawing treatment cannot be punished because despite the facts being similar to criminal offences – such as international homicide, homicides committed in other specific circumstances, or aid in suicide, also recognized in the Albanian Penal Code in Articles 76, 79, and 99 respectively – physicians cannot be punished since they fulfilled a duty (Article 21 PC).¹⁹ However, part of the legal community²⁰ argues that humans do not have the moral right to die. Thus, in the case of an unconscious patient, even if the patient has during some point of his life given consent to withhold or withdraw medical treatments, there is the necessity to save the patient’s life. In these cases, the doctor is neither liable for kidnapping nor for

15 States should decide to what extent advance directives should have binding effect. Advance directives which do not have binding effect should be treated as statements of wishes to give due respect. States should address the issue of situations that arise in the event of a substantial change in circumstances.

16 Thaddeus Mason Pope, “The best interest standard: both guide and limit to medical decision making on behalf of incapacitated patients”, *The Journal of Clinical Ethics*, 22:2 (2011), pp. 134-138.

17 Veshi and Neitzke, “Advance directives in some Western European Countries: a legal and ethical comparison between Spain, France, England, and Germany”, p. 327.

18 Stefano Canestrari, “Le diverse tipologie di eutanasia: una legislazione possibile”, *Rivista Italiana di Medicina Legale*, 25: 5 (2003), pp. 751-775.

19 Article 21(1) PC states *no one shall be held criminally liable while acting to exercise rights or fulfill duties determined by law or an order issued by a competent authority, unless the order is obviously unlawful* [translation by the authors].

20 Gianfranco Iadecola, “Note critiche in tema di “testamento biologico”, *Rivista Italiana di Medicina Legale*, 24:3-4 (2003), pp. 473-483.

unlawful detention (Articles 109 and 110 PC) since there exists the exculpation act of extreme necessity (Article 20 PC).²¹

Focusing on instructional medical directives, some principles can be stated. First, ADs should be legally binding. Thus, physicians shall follow the patient's wishes, except when the instructional medical directives are contrary to the legal provisions. For instance, instructional medical directives shall impose on physicians a legal obligation of "not acting" or to withdraw medical treatment, but cannot include an obligation to act (i.e. euthanasia). Second, ADs shall not have a time limitation. Although the renewal of ADs means to legally codifies the philosophy of Derek Parfit (1994),²² who believes that personal identity is not continuous over time and place. Currently, only few countries establish a time limitation. These examples of time limitation can be found in: Austria (Article 7(1) Law of 8 May 2006),²³ and in Portugal (Article 7(1) Law of 16 July 2012). Also, France, which previous established a time limitation, in 2015, abrogated it (Article 1111-11 CSP).²⁴ Third, instructional medical directives should not have an object limitation either; in particular, artificial nutrition and hydration or artificial ventilation can also be included in the case of instructional medical directives. Also, the ECtHR has underlined that it is lawful to withdraw these types of life-supporting medical equipment.²⁵

These instructional medical directives should be established only in written forms in order to not confuse the "instructional medical directives" with the concept of *amanet*, which derives from the Turkish language and translates to "a supplication for God's sake". *Amanet* are oral declarations given to the closest family member that generally include concern about property, internment and funeral arrangements (i.e. place to be buried, the funeral ceremony) as well as advice for the future (i.e. taking

21 Article 20 PC states *no one shall be held criminally liable having committed the criminal offence due to the necessity to confront a real and imminent danger threatening him, another person or the property against a serious damage, not avoidable by other means, provided that it has not been instigated by him and the damage incurred is greater than the damage avoided*; Article 109(1) states *kidnapping or holding a person hostage in order to gain wealth or any other benefit, to facilitate the preparation of conditions for committing a crime, helping in hiding or departure of perpetrators or collaborators of a crime, avoiding the punishment, forcing the realization of certain requests or circumstances, for political or other reasons, is punishable by ten to twenty years of imprisonment*; Article 110(1) PC states that the *unlawful detention of a person constitutes criminal contravention and is punishable by fine or by up to one year of imprisonment* [translation by the authors].

22 Derek Parfit, *Reasons and persons* (Oxford: Oxford University Press, 1984).

23 In Austria ADs could be legally-binding or not. In case of legally binding AD, the interested party must receive complete medical information by the physician and legal information by the Noter. In addition, this document is valid for five years; if not renew with the same formalities, it will have only an advisory power. This document may be registered in the Austrian Chamber of Notaries.

24 The old version of the French law established that advance directives have a validity of 3 years. Nevertheless, they could be renewed by a simple signature of the existing document (article 1111-18 CSP). On the contrary, the new version of the French Law of (2015) does not establish any time-limited of these documents.

25 Arend Cornelis Hendriks, "End-of-life decisions. Recent jurisprudence of the European Court of Human Rights", *ERA Forum*, 19:4 (2019), pp. 561-570

care of the spouse or for his/her children).²⁶ Although the Albanian legal system is based on liberty of forms (Article 663 CC), unilateral acts that produce a legal effect in the non-pecuniary sphere – i.e. recognition of a natural child (Article 181(1) Family Code) or its legitimacy (Article 176 Family Code) – has always established them in a written form *ad substantiam*.²⁷ Thus, in Albania, also the ADs should be considered valid only if they are established in written forms.

Focusing on “surrogate will,” the granter might have the possibility to nominate more than one surrogate (Principle 4(2) Recommendation REC(2009)11 and Article 10(4) Mental Capacity Act in the UK).²⁸ The nomination of multiple surrogates will solve the problems that might arise when the surrogate is not found²⁹ or it will give the opportunity to balance the powers.³⁰ In addition, Albania should also establish a third party to evaluate eventual conflicts of interests or to supervise the surrogates (Principle 12(2) Recommendation REC(2009)11).³¹ The review of the Western European policies on this issue concludes that two possible models can be used. The first one, codified in Portugal, resolve the controversial within the hospital, while the German and Great Britain and Northern Ireland approach to it is the *ad hoc* judge, which underlines the principle of impartiality.³²

To sum up, the “instructional medical directives” and “surrogate will” are the two main forms of ADs. Article 39 Albanian Code of Medical Ethics should be considered unconstitutional since it also violates the ethical principle of patient autonomy. Moreover, *ad hoc* rules are needed for governing end-of-life decisions. The Albanian legislator should also consider the experience of other Western European countries.

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- 26 Gentian Vyshka, and Jera Kruja, “Inapplicability of advance directives in a paternalistic setting: the case of a post-communist health system”, *BMC Medical Ethics*, 12:1 (2011), p. 12.
- 27 Article 663 CC states *The requisites for the existence of the contract are: consent of the party that has undertaken the obligation, the legal motive of the obligation, the object that constitutes the content of the contract and the form as required by law* [translated by the authors]. Article 181(1) Family Code state, *The father of a child born outside of wedlock is considered to be the adult male who recognizes him/her as their child* [translated by the authors]. Article 176 Family Code states, *When a child has been registered with unknown parents, the mother can recognize the child. The recognition of the child can be also performed by a minor mother* [translated by the authors].
- 28 Principle 4(2) Recommendation REC (2009), 11 states *The granter may appoint more than one attorney and may appoint them to act jointly, concurrently, separately, or as substitutes*. Article 10(4) Mental Capacity Act states, *The instrument may appoint them to act (a)jointly; (b)jointly and severally, or (c)jointly in respect of some matters and jointly and severally in respect of others*.
- 29 Joint Committee on the Draft Mental Incapacity Bill, „Draft Mental Incapacity Bill 1st Report“, <http://www.publications.parliament.uk/pa/jt/jtdmi.html>, accessed 30 November 2021.
- 30 Council of Europe, Committee of Ministers, *Recommendation CM/Rec (2009)11 and Explanatory Memorandum* (2009) [98].
- 31 *States should consider introducing a system of supervision under which a competent authority is empowered to investigate. When nan attorney is not acting in accordance with the continuing power of attorney or in the interests of the granter, the competent authority should have the power to intervene. Such intervention might include terminating the continuing power of attorney in part or in whole. The competent authority should be able to act on request or on its own motion*.
- 32 In Portugal: Article 9 of the Law No 25 of 16 July (2012); in England and Wales: Articles 45–53 of the *Mental Capacity Act 2005*; in Ireland: Articles 13–32 of the *Assisted Decision-Making (Capacity) Bill 2013*; in Scotland: Article 50 of the *Adults with Incapacity (Scotland) Act 2000*; in Germany: Article 1904 of the *German Civil Code*.

III. An Islamic Approach to Advance Directives: Focusing on the case of Albania

This Section examines end-of-life decisions through an Islamic approach since cultural and religious aspects impact on the implementation of ADs.³³ The authors review the various notions – such as ‘disease,’ ‘death,’ ‘futile treatment,’ ‘euthanasia,’ and ‘PAS’ – according to Islamic sources of law by considering the Qur’an and *hadith*. In addition, the authors offer a short overview of the Islam literature on end-of-life issues by also considering the application of these results to the international, supranational and in particular Albanian legal systems.

According to Islamic literature, disease is a natural phenomenon and a type of suffering that expiates patient’s sin.³⁴ This interpretation helps Muslim families cope with the diseases.³⁵ As a result, sometimes, patients prefer to not receive pain management to show to Allah patience. This is also based on two important parts of the Qur’an: Qur’an 2:155³⁶ and Qur’an 57:22.³⁷ In addition, for Muslims, death is the starting point of a future life.³⁸

Although disease is considered a natural phenomenon, patients should request medical treatments, if it is not a *haram* (futile treatments). In other words, if the medical treatment is *mandub* (preferred) or *makruh* (optional), Muslims should request medical treatments. Unfortunately, due to emotional issues as well as the effects of the medical treatment and financial costs, it is difficult to define in concrete medical situations the case of medical futility.³⁹ In addition, in the case of Muslim families, futility is even more a difficult concept for two reasons. First, Muslim families strongly believe in God’s miraculous cures.⁴⁰ Second, Muslim families believe that Allah pre-determines the exact time and place of death.⁴¹ Eventually, therefore, on several

33 Baharoon H Al-Jahdali, et al., “Advance medical directives: A proposed new approach and terminology from an Islamic perspective”, *Medicine, Health Care and Philosophy*, 16:2 (2013), pp. 163–169.

34 Mohammed Ali Albar, “Seeking remedy, abstaining from therapy and resuscitation: An Islamic perspective”, *Saudi Journal of Kidney Diseases and Transplantation* 18:4 (2007), pp. 629–637.

35 Mohamad A Tayeb, et al. “A “good death”: perspectives of Muslim patients and health care providers”, *Annals of Saudi Medicine*, 30:3 (2010), pp. 215-221.

36 *And certainly, We shall test you with something of fear, hunger, loss of wealth, lives and fruits, but give glad tidings to the patient.* Baharoon H Al-Jahdali, et al., “Advance medical directives: A proposed new approach and terminology from an Islamic perspective”, p. 165.

37 *No calamity befalls on the earth or in your selves but it is inscribed in the Book of Decrees before We bring it into existence. Verily, that is easy for Alla’h (God)* Baharoon H Al-Jahdali, et al., “Advance medical directives: A proposed new approach and terminology from an Islamic perspective”, p. 165.

38 Sarhill Nabeel, et al., “The terminally ill Muslim: Death and dying from the Muslim perspective”, *The American Journal of Hospice & Palliative Care*, 18:4 (2001), pp. 251–255.

39 Keri L Rodriguez, and Amanda J. Young “Perceptions of patients on the utility or futility of end-of-life treatment”, *Journal of Medical Ethics* 32:8 (2006), pp. 444-449.

40 Baharoon H Al-Jahdali, et al., “Advance medical directives: A proposed new approach and terminology from an Islamic perspective”, p. 166.

41 Mohamad A Tayeb, et al. “A “good death”: perspectives of Muslim patients and health care providers”, p. 218.

occasions, families demand futile heroic treatments.⁴² The fact that Allah predetermines the exact time and place of death is also based on the hadith 1, vol. 76 Kitab of Sahih al-Bukhariyy.⁴³ However, when medical treatments create more harms than benefits for the patients, physicians shall be able to stop end-of-life treatments,⁴⁴ although contrary to the family's position, since the majority of the Islam literature agrees that medical attention is recommended and not mandatory.⁴⁵ In these cases, although medical treatment stops, care and nutrition shall continue.⁴⁶

After explaining the “accessory” notions – such as ‘death,’ ‘medical treatment,’ ‘futility,’ – it should be underlined that the Muslim sources of law take a clear position regarding the different types of medical situations. PAS and euthanasia are prohibited in Muslim beliefs since life not worth living is an unacceptable concept because it violates the principle of sanctity of life. This approach is clearly stated on the interpretation of the various parts of the Qur’an: Qur’an 2:195,⁴⁷ Qur’an 5:32,⁴⁸ Qur’an 17:33,⁴⁹ and Qur’an 45:26.⁵⁰

Regarding advance directives, Al-Bukhari underlines that the Prophet Muhammad recognized the right to not be treated. In other words, when the Prophet Muhammad was terminally ill and unconscious, he asked his wives to not pour medication in his mouth. Nevertheless, his wives did not follow the medical declarations of the Prophet Muhammad. Once conscious again, the Prophet Muhammad underlined the importance of the application of the right to not be treated.⁵¹ The right to not be treated is clearly established in two different parts of

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- 42 Clarissa de Pentheny O’Kelly, Catherine Urch, and Edwina A. Brown, “The impact of culture and religion on truth telling at the end of life”, *Nephrology Dialysis Transplantation*, 26:12 (2011), 3838-3842; Hassan Chamsi-Pasha, and Mohammed Ali Albar, “Ethical dilemmas at the end of life: Islamic perspective”, *Journal of Religion and Health*, 56:2 (2017), pp. 400-410.
- 43 *There is no disease that Allah has created, except that He also has created its treatment*
- 44 Baharoon H Al-Jahdali, et al., “Advance medical directives: A proposed new approach and terminology from an Islamic perspective”, p. 167.
- 45 Mohammed Ali Albar, “Seeking remedy, abstaining from therapy and resuscitation: An Islamic perspective”, *Saudi Journal of Kidney Diseases and Transplantation*, 18:4 (2007), pp. 629–637.
- 46 Wahaj D. Ahmed, “An Islamic View of Death and Dying”, *Journal of the Islamic Medical Association of North America*, 28 (1996), pp. 175-177.
- 47 *Nor kill (or destroy) yourselves* Khan, Farouque A. “Religious teaching and Reflections on Advance Directive-Religious Values and Legal Dilemmas in Bioethics: An Islamic Perspective.” *Fordham Urban Law Journal* 30:1 (2002), pp. 267-275.
- 48 *For that we have ordained to children of Israel; that whoever slains a person, without being soul (life) for soul (life) or corruption on earth, it is as if he stained the whole of humanity; and that who saves a life, he is as he saved the whole of humanity* Khan, Farouque A. “Religious teaching and Reflections on Advance Directive-Religious Values and Legal Dilemmas in Bioethics: An Islamic Perspective.” *Fordham Urban Law Journal* 30:1 (2002), pp. 267-275.
- 49 *Do not kill the soul which Allah prevented except in righteous situation* Hamdan Al-Jahdali, et al. “Advance medical directives: a proposed new approach and terminology from an Islamic perspective”, p. 167.
- 50 *It is Allah Who gives you life, then gives you death* Khan, Farouque A. “Religious teaching and Reflections on Advance Directive-Religious Values and Legal Dilemmas in Bioethics: An Islamic Perspective.” *Fordham Urban Law Journal* 30:1 (2002), pp. 267-275.
- 51 Baharoon H Al-Jahdali, et al., “Advance medical directives: A proposed new approach and terminology from an Islamic perspective”, p. 169.

the *hadith* of Sahih al-Bukhariyy: vol. 7, Book 70, Hadith 550,⁵² and vol. 7, Book 71, Hadith 610.⁵³

According to the Islamic literature on medical jurisprudence the Islam sources of law allow both types of ADs: *wakalah* (“instructional medical directives”) and *wakeel* (“surrogate will”).⁵⁴ Nevertheless, most of the Muslim communities – both physicians and patients – were not aware of ADs: once they understand this concept, they advocate for ADs.⁵⁵ In order to correctly apply ADs, patients should be aware of their diagnosis and prognostic since in most of the cases, death does not happen suddenly.⁵⁶ But, while in Western European countries, telling the truth to patients is one of the main ethical principles, studies in Muslim communities has shown the application of family-centered approach,⁵⁷ which might also contradict medical confidentiality.⁵⁸ Generally, the truth is hidden to Muslim patients in Muslim countries since it might increase fear on the patient,⁵⁹ although the patient knows that he is dying and pretends that he does not know.⁶⁰ Thus, patients do not have the opportunity neither to say goodbye to his relatives nor to write or change important legal documents, such as *testamentum*, or to decide where to die (home or in the hospital). It should also be underlined that the family-centered approach is also codified in the codes of medical ethics in 14 different Islamic countries,⁶¹ as well as in the Albania,⁶² a country with a Muslim majority.

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- 52 *I visited the Prophet (peace and blessings be upon him) while he was suffering from a high fever. I touched him with my hand and said, "O Prophet! You have a high fever." The Prophet (peace be upon him) said, "Yes, I have as much fever as two men of you have." I said, "Is it because you will get a double reward?" The Prophet (peace and blessings be upon him) said, "Yes, no Muslim is afflicted with harm because of sickness or some other inconvenience, but that Allah will remove his sins for him as a tree sheds its leaves.*
- 53 *Abu Bakr kissed (the forehead of) the Prophet when he was dead. 'Aisha added: We put medicine in one side of his mouth but he started waving us not to insert the medicine into his mouth. We said, "He dislikes the medicine as a patient usually does." But when he came to his senses he said, "Did I not forbid you to put medicine (by force) in the side of my mouth?" We said, "We thought it was just because a patient usually dislikes medicine." He said, "All of those who are in the house will be forced to take medicine in the side of their mouth while I am watching, except for Al-'Ab-bas, for he had not witnessed your deed*
- 54 Abul Fadl Ebrahim, "The living will (Wasiyat Al-Hayy): a study of its legality in the light of Islamic jurisprudence", *Medicine & Law*, 19 (2000), p. 147.
- 55 Mohamad A Tayeb, et al. "A "good death": perspectives of Muslim patients and health care providers", p. 219.
- 56 Hein JJ Wellens, et al. "Sudden death in the community", *Journal of Cardiovascular Electrophysiology*, 14 (2003), pp. S104-S107.
- 57 M. A.Chamsi-Pasha, and M. A Albar, "Ethical challenges of deactivation of cardiac devices in advanced heart failure", *Current Heart Failure Reports*, 11:2(2014), 119–125; Subrata Chattopadhyay, and Alfred Simon, "East meets West: Cross-cultural perspective in end-of-life decision making from Indian and German viewpoints", *Medicine, Health Care and Philosophy*, 11:2 (2008), pp. 165-174.
- 58 Mohamad A Tayeb, et al. "A "good death": perspectives of Muslim patients and health care providers", p. 221.
- 59 Abdullah Mobeireek, et al., "Information disclosure and decision-making: The Middle East versus the Far East and the West", *Journal of Medical Ethics*, 34:4 (2008), pp. 225–229.
- 60 Farzaneh Zahedi, "The challenge of truth telling across cultures: A case study", *Journal of Medical Ethics and History of Medicine*, 4 (2011), p. 11.
- 61 Hunida E. Abdulhameed, Muhammad M. Hammami, and Elbushra A. Hameed Mohamed, "Disclosure of terminal illness to patients and families: Diversity of governing codes in 14 Islamic countries", *Journal of Medical Ethics*, 37:8 (2011), pp. 472–475.
- 62 Denard Veshi, et al., "End-of-Life Decisions in Albania: The Call for an Ethical Revision", p. 321.

Some scholars⁶³ might be against ADs since Muslim citizens cannot decide the time and place of death and they shall support the pain. However, on the other hand, there is the *hadith* of Sahih Bukhari that underlined the fact that the Prophet was not happy when his right to not be treated was not respected. The joint interpretation of these legal documents concludes that Muslims are allowed to write ADs that are applicable in the case that they are unconscious and that others are obliged to follow them. The respect of ADs can also be understood from the analysis of the story of the migration of the Prophet Muhammad to Yathrib (Medina) where planning was fundamental.⁶⁴ However, ADs should be respected only if the efforts are sincere and do not violate the commands of Allah.

After briefly reviewing the Islamic ethical and legal literature on end-of-life situations, it is important to understand the application of this literature to the legal documents. In other words, from this review it is understood: 1. There is a distinction of documents classified as ADs from other similar legal documents; 2. The right to not be treated by an unconscious patient is different from euthanasia and PAS; 3. In the Muslim community, physicians apply a family-centered approach rather than a patient-centered approach.

First, the Islamic literature has underlined the importance to distinguish between the concept of *alwasiyah* and the notion of ADs.⁶⁵ *Alwasiyah* is an Islam term that indicates the last wishes of the person before his death that mostly includes issues regarding inheritance. On the contrary, ADs are documents that are applicable when the patient is still alive, but he is unconscious and deals only with medical issues. Both the *alwasiyah* and ADs are recognized in the Muslim sources of law. In concrete, the *alwasiyah* is established in the Qur'an⁶⁶ and on the *hadith* of El-Bukhari,⁶⁷ while ADs are established in two different parts of the *hadith* of El-Bukhari: vol. 7, Book 70, Hadith 550 and vol. 7, Book 71, Hadith 610.

Also, the international and European literature has underlined the difference between ADs from *testamentum*. First of all, the importance of ADs has been

63 Margaret A. Miklancic, "Caring for patients of diverse religious traditions: Islam, a way of life for Muslims", *Home Healthcare Nurse*, 25:6(2007), pp. 413–417; Abdul Rashid Gatrad, "Muslim customs surrounding death, bereavement, postmortem examinations, and organ transplants", *British Medical Journal*, 309:6953 (1994), pp. 521–523.

64 Faroque A. Khan, "Religious teaching and Reflections on Advance Directive-Religious Values and Legal Dilemmas in Bioethics: An Islamic Perspective", *Fordham Urban Law Journal*, 30:1 (2002), pp. 267-275.

65 Hamdan Al-Jahdali, et al. "Advance medical directives: a proposed new approach and terminology from an Islamic perspective", p. 168.

66 *If one of you facing death can leave a legacy, he should bequeath "leave" it to his parents and relatives, according to the law. This is the duty of the pious*

67 *It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him*

recognized by several international scholars.⁶⁸ With the recognition of the importance of ADs, a patient's position evolves from a passive role of personal, physical, and mental protection to an active role of freedom and quality of life.⁶⁹ Moreover, and more importantly, it should be underlined that the term "living will" is confusing for people because wills take effect only after an agent's death, and are directed to other people.⁷⁰ Thus, in order to not confuse between these terms – *testamentum* (will) and future medical declarations applicable at the moment of unconsciousness – the term used is "instructional medical directives."

Similarly, the Albanian literature has given a similar result.⁷¹ Indeed, the authors agree that shall be a difference between the notions of *amanet*, *testamentum* and ADs. As stated above, *amanet* derives from the Turkish language and translates to "a supplication for God's sake". As stated above, this notion is given to the closest family member through (in general) oral declarations in order to deal with issues about property, internment and funeral arrangements (i.e. place to be buried, the funeral ceremony) as well as advice for the future (i.e. taking care of the spouse or for his/her children). On the contrary, *testamentum* is a unilateral legal transaction written by a competent citizen that has its own legal effects after death. However, this document deals only with the economic relations of the *de cuius* (testator). On the other side, although there is no *ad law* ruling ADs, the literature, as stated above, has qualified ADs as unilateral legal transactions that produce legal effects in the non-pecuniary individual sphere. ADs should be viewed as an application of the right to self-determination recognized by Article 27 of the Albanian Constitution since there exists a right to life, but not a duty to live.

Second, the Islam literature recognizes the right to not be treated by an unconscious patient through ADs, while it considers euthanasia and PAS as criminal offences. In concrete, while euthanasia and PAS are considered as violation of sanctity of life (Qur'an 2:195, Qur'an 5:32, Qur'an 17:33, and Qur'an 45:26), the *hadith* of El-Bukhari (Vol. 7, Book 70, Hadith 550 and Vol. 7, Book 71, Hadith 610) recognizes the right to not be treated. This is why it is fundamental to distinguish between forms of PAS and euthanasia, on one side, and ADs, on the other side.

68 Susan E Hickman, et al., "Hope for the future: achieving the original intent of advance directives", *The Hastings Center Report*, 3:6 (2005), pp. S26-S30; Maria J. Silveira, Scott YH Kim, and Kenneth M. Langa, "Advance directives and outcomes of surrogate decision making before death", *New England Journal of Medicine*, 362:13 (2010), pp. 1211-1218; Joan M. Teno, et al., "Do advance directives provide instructions that direct care?", *Journal of the American Geriatrics Society*, 45:4 (1997), pp. 508-512; Linda L. Emanuel, et al., "Advance directives for medical care—a case for greater use", *New England Journal of Medicine*, 324:13 (1991), 889-895; Marion Danis, et al., "A prospective study of advance directives for life-sustaining care", *New England Journal of Medicine*, 324:13 (1991), pp. 882-888.

69 Veshi and Neitzke, "Advance directives in some Western European Countries: a legal and ethical comparison between Spain, France, England, and Germany", p. 327.

70 Giuseppe Spoto, "Questione di Fine Vita tra modelli adottati in Europa, negli Stati Uniti e Proposte Interne", *Europa e Diritto Privato* 13:4 (2011), pp. 1175-1196.

71 Denard Veshi, et al., "End-of-Life Decisions in Albania: The Call for an Ethical Revision", p. 320.

In the international level, the international code of medical ethics does not clearly recognize the right to euthanasia or PAS by establishing an obligation to comply with the national ethical codes. Also, the Council of Europe, neither with the Oviedo Convention of 1997 nor with the Guide on the decision-making process regarding medical treatment in end-of-life situations of 2014 establish rules about euthanasia or PAS. However, regarding withholding and withdrawing medical treatments by a conscious patient, the international code of medical ethics states *a physician shall respect a competent patient's right to accept or refuse treatment*. Also, Article 5(1) of the Oviedo Convention underlines that *an intervention in the health field may only be carried out after the person concerned has given free and informed consent to it*.

In the EU level, neither the European Charter of Medical Ethics nor the European Code of Medical Ethics take a position regarding PAS or euthanasia. Thus, national codes of medical ethics have the competence to establish rules regarding these types of medical practice. As stated above, in Albania, while PAS and euthanasia are considered criminal offenses (violation of Articles 76, 79, and 99 PC as well Article 39 Code of Medical Ethics) and withholding and withdrawing treatment by a competent patient are considered legal (Article 6(2)(c) Law no. 10.107 of March 2009), nothing has been established regarding the right to withholding and withdrawing treatment by a unconscious patient. Currently, there is an academic debate regarding the application of ADs, which was uncovered in Section II.

Third, in the Muslim community, physicians apply a family-centered approach rather than a patient-centered approach. On the other side, several studies have shown that patients discuss end-of-life issues more with their families rather than with physicians.⁷² Thus, the legal validity of family-centered approach should be considered.

In the international level, the International Code of Medical Ethics states that *a doctor shall preserve absolute secrecy on all he knows about his patient because of the confidence entrusted in him*. In the EU level, the European Charter of Medical Ethics and the European Code of Medical Ethics underline the importance

72 Ciaran T. Bradley, Karen J. Brasel, and Margaret L. Schwarze, "Physician attitudes regarding advance directives for high-risk surgical patients: a qualitative analysis", *Surgery*, 148:2 (2010), pp. 209-216; Keshia M. Pollack, Dan Morhaim, and Michael A. Williams, "The public's perspectives on advance directives: Implications for state legislative and regulatory policy", *Health Policy*, 96:1 (2010), pp. 57-63; Ronald S. Go, et al., "Advance directives among health care professionals at a community-based cancer center", *Mayo Clinic Proceedings*, 82:12 (2007), pp. 1487-1490; Hines, Stephen C., et al. "Dialysis patients' preferences for family-based advance care planning", *Annals of Internal Medicine*, 130:10 (1999), pp. 825-828; Morrison, R. Sean, Elizabeth W. Morrison, and Denise F. Glickman, "Physician reluctance to discuss advance directives. An empiric investigation of potential barriers", *Archives of Internal Medicine*, 154:20(1994), 2311-2318; Davidson, Kent W., et al., "Physicians' attitudes on advance directives", *The Journal of the American Medical Association*, 262:17 (1989), pp. 2415-2419.

of professional confidentiality. In more concrete terms, Principle 5 European Charter of Medical Ethics states that *the physician is the patient's essential confidant. He betrays this confidence on revealing what he has learned from the patient.* Moreover, Articles 7⁷³ and 8⁷⁴ of the European Code of Medical Ethics establish similar rules.

It seems that neither in the international level, nor in the EU level, there is clear information if the physician can share the patient information with the family. Thus, the national approach should be considered. Between the English-, German-, and Romance-speaking countries, the authors focus only on the Romance-speaking countries since all these countries as well as Albania share the Mediterranean Sea. The review of some Romance-speaking countries found out that the national codes of medical ethics can apply two different approaches: the information to the family can be given, unless the patient has decided the contrary *or* the information to the family is given only if there is the express consent of the patient. While the first approach is taken in France,⁷⁵ the second one is applied in Italy,⁷⁶ in Spain,⁷⁷ and in Portugal.⁷⁸

France, differently from the other countries, has had a strong colonial connection with North African Countries (Morocco, Algeria, and Tunisia) and other African countries (Niger, Burkina Faso, and Mali), where the Muslim religion is the vast majority; sometimes, also almost 95% of the total population is Muslim, as it is the case of Mali.⁷⁹ Today, a high number of Muslim families live in France.⁸⁰ Indeed, in 2016, the last available data, within the Romance-speaking countries,

73 *The doctor is necessarily the patient's confidant. He must guarantee to him complete confidentiality of all the information which he may have acquired and of the investigations which he may have undertaken in the course of his contacts with him. The death of a patient does not absolve a doctor from the rule of professional secrecy.*

74 *A doctor must respect the privacy of his patients and take all necessary steps to prevent the disclosure of anything which he may have learned in the course of his professional practice. Where national law provides for exceptions to the principles of confidentiality, the doctor should be able to consult the Medical Council or equivalent professional authority.*

75 Article 35 (3) code of Medical Ethics in France states: great care must be taken in revealing a terminal prognosis, but persons close to the patient should normally be informed, unless the patient has already indicated that he does not wish them to be informed or has designated third parties to whom the information should be given.

76 Article 34(1) code of Medical Ethics in Italy states: *Information to third parties may be provided with the explicit consent expressed by the assisted person, without prejudice to the provisions of Articles 10* [the case of professional secrets given to other doctors] *and 12* [information about the patient given to him or his legal representative], *when the health or life of the person himself or of others is in grave danger* [translated by the authors].

77 This is the result of the international of Article 9(2), Article 15(2), and Article 27(7) of the Spanish Code of Medical Ethics. In more concrete terms, Article 9(2) states *In the exercise of their profession, doctors will act correctly and delicately, respecting the privacy of the patient.* Article 15(2) underlines that *the information is to be transmitted directly to the patient, persons designated by him or his/her legal representative. The physician shall respect the patient's right not to be informed, noting this in the medical record;* Article 27(7) includes that *the doctor will preserve the confidentiality of patients in their social life, work and family.*

78 Article 50 (4) code of Medical Ethics in Portugal states: *the diagnosis and prognosis can only be made known to third parties, namely family members, with the express consent of the patient, unless the patient is minor or cognitively incompetent, without prejudice to the provisions of article 89 of this Code* [translated by the authors].

79 ArcGis Hub, „Mali Religion Areas“, <https://hub.arcgis.com/content/nga::mali-religion-areas/about> accessed 30 November 2021.

80 Global Religious Futures, „Europe“, <http://www.globalreligiousfutures.org/regions/europe/>, accessed 30 November 2021.

France has the highest number of Muslims among the total population.⁸¹ While in the other countries, Muslims constitutes less than 5% of the total population – Portugal (0.4%), Spain (2.6%), and Italy (4.8%) – in France, 8.8% of the local population is Muslim. This is why France has registered the largest Muslim community in the Western European Countries.⁸²

In Albania, the Code of Medical Ethics gives to family a fundamental importance. Indeed, Article 26 (Informing family members) states *the doctor has a duty to show understanding and concern with family members. S/he should keep them informed of the medical procedures and care provided to the patient, his progress and perspective, provided that such a thing does not go against the will of the patient* [translated by the authors]. It seems that the Albanian Code of Medical Ethics has applied a similar approach to the French one. In addition, in none of the Romance-speaking countries, a rule focusing on the right to be informed by the family was found.

To sum up, the legal analysis of the Islamic sources of law uncovers that the right to refuse medical treatment as well as the planning medical treatments are clearly established. In addition, the Muslim community applies a family-centered approach to end-of-life decisions. Moreover, the Islamic literature on ADs is very similar to the international literature on ADs. However, while Western European countries apply a patient-centered approach, the literature has shown that Muslim families apply a family-centered approach. But, this is not an issue for the Albanian legislation since the Code of Medical Ethics establishes a clear article focusing only on the right to inform the family members.

Conclusion

Differently from other Western European Countries, Albania does not have *ad hoc* rules governing end-of-life decisions. Although Albania has ratified international agreements that protect patient active role in medical situations, the national legislation has applied a paternalistic approach.

According to the medical literature, there are four main types of end-of-life situations: withholding or withdrawing treatment from a conscious patient, withholding or withdrawing treatment from an unconscious patient, PAS, and euthanasia. Although in the international and EU levels patient autonomy is protected, national lawmakers have the competence to rule on end-of-life situations.

81 Pew Research Center, „5 facts about the Muslim population in Europe“, <https://www.pewresearch.org/fact-tank/2017/11/29/5-facts-about-the-muslim-population-in-europeeurope/>, accessed 30 November 2021.

82 European Monitoring Centre on Racism and Xenophobia, „Muslims in the European Union“.

In general, national parliaments have recognized the right to refuse medical treatments by conscious adult patients. Regarding ADs, all Western European Countries have recognized it. On the contrary, only few Western European countries have established clear rules regarding PAS and euthanasia.

In Albania, the national lawmaker has not taken a clear position for all these types of end-of-life situations. While PAS and euthanasia are considered criminal offenses (violation of Articles 76, 79, and 99 PC as well as Article 39 Code of Medical Ethics), withholding and withdrawing treatment by a competent patient are considered legal (Article 6(2) (c) Law no. 10.107 of March 2009). The importance of clear rules governing ADs is fundamental since this approach will eliminate legal uncertainties. By considering the legal experience of other Western European countries, ADs should be without time or object limitations. Moreover, attention should be given to the solutions of the conflicts between surrogates and physicians. Furthermore, the importance of international law – including *soft-law* – should be considered.

The review of the Islamic literature showed the similarities and differences between the Western approach and Islamic approach to end-of-life decisions. Although there is the principle of sanctity of life, patients do not have an obligation to seek medical treatment since medical treatment might be *mandub* (preferred) or *makruh* (optional). In addition, if the medical treatment is a *haram* (futile treatments), Muslims should not request medical treatment. As a result, due to the principle of sanctity of life, euthanasia and PAS are considered as a violation of Qur'an (Qur'an 2:195, Qur'an 5:32, Qur'an 17:33, and Qur'an 45:26). However, since Muslims do not have an obligation to seek medical treatments, *hadith* recognizes the right to not be treated (Vol. 7, Book 70, Hadith 550 and Vol. 7, Book 71, Hadith 610). Both literatures agree on the fact that there is a difference between ADs and *testamentum* as well as between the right to refuse medical treatments by an unconscious patient from euthanasia or PAS. However, while the medical culture in Western European Countries is based on the patient, in the Islamic culture, physicians – as well as Codes of Medical Ethics – apply a family-centered approach.

Although Albania is located in Europe, the majority of the population is Muslim. Between the Islamic approach and national Code of Medical Ethics there are several similarities. First, both the Qur'an and the Albanian Code of Medical Ethics recognize the right to withhold or withdraw medical treatments by a conscious patient. Second, both these documents consider PAS and euthanasia not coherent with their own principles. Third, the family-centered approach, typical for Muslim culture, is also established in Article 26 Albanian Code of Medical Ethics.

On the contrary, in the case of ADs, while the Islamic literature as well as *hadith* recognizes the right to refuse medical treatments also in the case of unconscious patients, the Albanian Code of Medical Ethics does not recognize instructional medical directives while it codifies the role of the surrogate as a guardian to protect patient's best interest rather than patient's wishes.

To sum up, Albania does not rule end-of-life decisions. *Ad hoc* rules on ADs are fundamental in order to protect patient extended autonomy. The approach on end-of-life situations between the current Albanian legislation and the Islamic source of law is similar. The impact of the Muslim culture on end-of-life decisions can be shown by the family-centered approach on end-of-life situations established not only in the other Muslim countries, but also in the Albanian Code of Medical Ethics. But, while the *hadith* recognizes the right to refuse medical treatments also in the case of unconscious patients, the Albanian Code of Medical Ethics takes a paternalistic approach by not recognizing instructional medical directives and focusing on the patient's best interest rather than patient's wishes.

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Odluke o okončanju života kod muslimana u Albaniji: interdisciplinarni pristup

Sažetak

Ova studija ispituje odluke o okončanju života u islamskom i uporedno pravnom pristupu u albanskom kontekstu. Metodologija primijenjena u ovom radu jeste kritičko-pravna analiza i pravna poređenja. Cilj istraživanja jeste dati pregled uticaja islamske pravne kulture (Kur'ana i hadisa) na albansku zakonsku regulativu koja se odnosi na odluke o okončanju života. Iz pravne perspektive rad naglašava neustavnost albanskog Kodeksa medicinske etike. Pored toga, pregled islamske literature o medicinskom pravu daje prikaz stava muslimanske zajednice o odlukama o okončanju života, zajedno sa naučnim ispitivanjem različitih pravila koja uređuju situacije vezane za okončanje života koje su kodificirane u islamskim pravnim izvorima, i ti razmatranjem samo Kur'ana i hadisa. Cilj tog istraživanja jeste bolje razumjeti sličnosti i razlike između ta dva različita pristupa kroz naglašavanje značaja islamskog pristupa odlukama o okončanju života za albansku zakonsku regulativu.

Ključne riječi: anticipirana naredba, kodeks medicinske etike, hadis, islamska literatura o medicinskom pravu, pravni pristup, Kur'an