

## Albania, the Right-to-not be Treated, and COVID-19

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**ABSTRACT:** This paper studies the right-to-not be treated in conjunction with the Albanian legislation during the time of a pandemic situation. Although the current Albanian legislation might consider withholding or withdrawing treatment from an unconscious patient as a criminal offense, in the existing pandemic situation, the application of the ethical principle of justice concludes in the key result of not punishing physicians. Therefore, in these cases even in the absence of specific rules governing end-of-life decisions, physicians should not be liable for criminal offenses.

**KEYWORDS:** Albania; CoViD-19; Criminal Law; Right not to be treated; principle of justice

**SUMMARY:** 1. Introduction – 2. The right-to-not be treated in Albania: a general overview – 3. A criminal approach to the right-to-not be treated in Albania: the case of COVID-19 – 4. Conclusion.

### 1. Introduction

The right to health, which also includes the right-to-not be treated,<sup>1</sup> as well as human dignity in medical treatment, considered as the obligation to respect patient autonomy,<sup>2</sup> are two of the main fundamental human rights. Thus, their protection is found in several international, supranational, and national laws.<sup>3</sup> However, the pandemic situation has negatively impacted on the right to health and has created several difficulties in the protection of dignity in medical treatments. On January 11<sup>th</sup>, 2020, the first victim of COVID-19 died. Immediately, the pandemic situation was declared. As a result, the health care system is facing an important challenge since the pandemic situation has clearly shown the scarcity of the medical resources; in particular, the absence of artificial ventilation. While COVID-19 patients require ventilation treatment and intensive care beds, citizens requesting to not be treated intend to end medical treatments which, in general, also includes artificial ventilation and intensive beds. However, the absence of clear rules from a criminal approach leads to different legal uncertainties for medical staff.

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<sup>1</sup> Italian Constitutional Court 26 June 2002

<sup>2</sup> V.L. GRIFFIN-HESLIN, *An analysis of the concept dignity in Accident and emergency nursing*, 13/4, 2005, 251-257.

<sup>3</sup> B. TOEBES, *The right to health as a human right in international law in Refugee Survey Quarterly*, 20/3, 2001, 180.

This paper aims to uncover the legal interpretation of advance directives (ADs), as the main instrument to establish a “bridge” between unconscious patients and physicians, for three main reasons. First, differently from English-, German-, and Romance-speaking countries, Albania does not regulate end-of-life decisions.<sup>4</sup> Second, neither before nor during the pandemic situation<sup>5</sup> there has been found no case-law dealing with withholding or withdrawal of treatment from an unconscious patient in the Albanian jurisprudence. Third, the two main public bodies established as advisory bodies for medical issues, the National Ethics Committee and the National Committee of Health, have not published any legal document dealing with end-of-life situations or ADs, neither before nor during the pandemic situation.<sup>6</sup> Thus, in simple words, no other scientific research has examined the application of ADs during COVID-19 in the Albanian legal system, where there is an absence of an *ad hoc* law ruling end-of-life decisions.

This paper considers right-to-not be treated in Albania through an innovative interpretation of criminal rules in the case of a pandemic situation. This contribution has the following structure: Section II gives a general overview of the different types of end-of-life situations by focusing on ADs, as the main instrument for the application of the right-to-not be treated. Section III analyses the right-to-not be treated in Albania through a criminal approach. In specific, it shows the grey area of a combination of different types of crimes with exculpation acts. In the conclusions, the paper offers a novel interpretation of the right-to-not be treated in a pandemic situation.

## 2. The right-to-not be treated in Albania: a general overview

There are several types of end-of-life circumstances.<sup>7</sup> While conscious patients may legally withhold or withdraw medical treatments in the EU,<sup>8</sup> the application of similar options to unconscious patients varies in legality. Laws on withholding or withdrawing treatment, physician-assisted suicide (PAS), or euthanasia (or “mercy killing”) are not universal. All German-, English-, and Romance-speaking countries in Europe recognize the right to not be treated.<sup>9</sup> These rights are also established by most European Council members.<sup>10</sup> Furthermore, legalized versions of PAS or euthanasia exist in many Western European countries, such as the Netherlands, Belgium, and Luxemburg, Germany, or Switzerland, which is the only country in Europe allowing assisted suicide by non-physicians. Moreover, in the last

<sup>4</sup> D. VESHI et al., *The Role of Legal Proxies in End-of-Life Decisions in Albania: the need for an ad hoc Law*, in *BioLaw Journal – Rivista di BioDiritto*, 3, 2020, 303-313.

<sup>5</sup> B. BARA, G. VYSHKA, *A right to die: a comparing discourse of case laws in united states of america, european court of human rights, United Kingdom and Albania*, in *Jahr: Europski časopis za bioetiku*, 5/1, 2014, 135-156.

<sup>6</sup> *Ibid.*

<sup>7</sup> L. HACPILLE, *Medical Decisions, Symposium on the decision-making process regarding medical treatment in end-of-life situations*, 2010.

<sup>8</sup> ECtHR, *Pretty v. the UK*, application no. 2346/02, para. 63.

<sup>9</sup> E. KOKA, D. VESHI, *A new law of ‘living will’ in Italy: A critical analysis*, in *Liverpool Law Review*, 40/2, 2019: 113-130.

<sup>10</sup> R. 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.

two years, the Italian Constitutional Court<sup>11</sup> and the German Constitutional Court<sup>12</sup> have considered the national laws prohibiting assisted suicide as partially unconstitutional by allowing cases of medical assistance to die.

In Albania, PAS and euthanasia are considered criminal acts. If there is no clear request of the patient, physicians will be liable for intentional homicide (Article 76 Penal Code; PC) or homicide committed in other specific circumstances; in particular, homicide against physical or mental disabled persons or seriously ill patients (Article 79(1)(b) PC). On the contrary, if patient's request exists, the physician responsible will be liable for causing or helping on suicide (Article 99 PC). It shall also be mentioned that Article 39 Code of Medical Ethics clearly prohibits both PAS and euthanasia.<sup>13</sup>

Meanwhile, the withhold or withdraw medical treatments from a conscious patient is legal. In other words, consent is the basics principle of patient-physician relationship. In the case that the patient is conscious, he has the right to refuse medical treatments. This is clearly established in Art. 6(2)(ç) Law no. 10.107 of 30 March 2009 and Art. 4 Order no. 657 of 15 February 2010 by the Ministry of Health, which codifies the "Albanian Charter of Patient Rights."<sup>14</sup>

While the Albanian Parliament has taken a decision regarding PAS, euthanasia, and withhold or withdraw medical treatments from a conscious patient, nothing is stated regarding the withholding or withdrawal of medical treatments from an unconscious patient. This difference stems from the ability of conscious patients to consent to medical treatment options, including the withholding or withdrawal of medical treatment. The absence of an *ad hoc* law governing ADs has a direct impact on the already complicated discussion of legal and bioethical issues related to withholding or withdrawal of treatment from an unconscious patient.

ADs are considered to be one of the main instruments for unconscious patients to communicate with their physicians. These medical declarations could be divided into: "instructional medical directives" (also known as "living wills") and "surrogate wills". Nevertheless, from a medico-legal perspective, these two different forms of ADs should be complementary to each other. From a strict Albanian legal perspective, instructional medical directives should be regarded as a unilateral legal transaction, written by fully-competent persons (Articles 6-11 of the Albanian Civil Code (CC)). In Albania, a person who

<sup>11</sup> Italian Constitutional Court, R.O. 207/2018

<sup>12</sup> German Constitutional Court, 2 BvR 2347/15

<sup>13</sup>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].

<sup>14</sup> Article 6(2)(ç) Law no. 10.107 of 30 March 2009 states that "every citizen is responsible for [has the right to]: ç) 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].

is over eighteen years of age or emancipated and not declared to be incompetent is considered competent.

In case there is a nomination of a legal proxy by the court for incapable adults, the national parliaments may apply either the “monistic” approach such as in German- and English-speaking countries, or the “pluralistic” one such as in Romance-speaking countries.<sup>15</sup> According to the “monist” model, there is the need to specify in concrete the legal transactions that incapable adults can conclude. However, in the “pluralistic” model, the legal notion applied to a person can already offer a general idea of valid acts that incapable adults can conclude. For instance, in Italy, in general, the competence of the person declared interdicted (*interdetto*) is lower than the case of a person declared unable (*inabilitato*) (Art. 427(2) Italian CC). The Albanian legislator has applied a “monist” system (Art. 10 CC and Articles 382-387 Code of Procedure) following a similar approach as in German- and English-speaking countries.

Although the Albanian legal framework does not establish specific rules regarding the ADs, the Albanian Code of Medical Ethics of November 2011 established some rules regarding this issue. Art. 39 of the Albanian Code of Medical Ethics does not recognize at all the instrument of ADs, yet it considers the role of the family only as subordinate since the physician shall act according to the principle of the patient’s best interest. As a result, Art. 39 of the Albanian Code of Medical Ethics is not only incompatible with Art. 9 of the Oviedo Convention, which since 2011, is considered to be a ratified international treaty (Art. 116 Constitution), but also with ethical principles since the patient’s best interest should be used only in cases where the patient’s wishes are impossible to be known.

Moreover, the *ad hoc* law ruling ADs is important because the *ad hoc* law will make a clear expectation of the general rule that the right to representation ends when one of the parties (the representative or the representee) is unconscious. This rule is clearly established in Art. 76(1)(c) CC. This expectation is needed since the cause of the ADs is the communication of the patient with the medical staff through “instructional medical directives” (also called “living wills”) or a legal proxy (also called a “surrogate”) while the patient is unconscious.

Last, it should be mentioned that during the pandemic situation, COVID-19 has impacted not just the health care system but also the judicial system. In addition, in the case of the Albanian judicial system, a review process of the performance of the judges, called Vetting, is still going on. It should be noted that due to vetting, the Albanian judicial system is suffering from the absence of judges. Indeed, currently, the Constitutional Court has seven out of nine members while in the Supreme Court is composed with only seven out of nineteen judges. Due to these two factors, COVID-19 and the vetting of judicial members, the judicial system is stuck. Despite the Constitutional Court now having the majority of the members, its absence for a few years due to vetting and then later COVID-19 has resulted in a backlog of work. Therefore, it will be difficult for the Constitutional Court to deal with the coherence of Art. 39 of the Albanian Code of Medical Ethics with ratified international treaties. In addition, considering the lack of Albanian medical jurisprudence regarding end-of-life decisions,<sup>16</sup> it will also be difficult for the Supreme Court to deal with the right-to-not be treated by unconscious patients.

<sup>15</sup> D. VESHI, G. NEITZKE, *The role of legal proxies in end-of-life decisions in Italy: A comparison with other Western European countries*, in *Journal of Law and Medicine*, 24/4, 2017, 959-969.

<sup>16</sup> D. VESHI, *op.cit.*

To sum up, Albanian law does not regulate ADs. An *ad hoc* law ruling ADs is necessary due to the lack of Albanian medical jurisprudence, which will further be delayed due to the impact of COVID-19.

### 3. A criminal approach to the right-to-not be treated in Albania: the case of COVID-19

In end-of-life decisions, where eventual criminal charges might be filed due to the absence of clear guidelines and a lack of medical jurisprudence, physicians face a grey area of legal uncertainty.

The legal interpretation of criminal code by academic scholars states that the withdrawal of treatment is thought not to be punishable because of the exculpation act of fulfilling a duty (Art. 21 PC), despite the similarity to criminal offenses, such as intentional homicide, homicides committed in other specific circumstances, or assisting in suicide, which can be found in the Albanian Penal Code (PC) in Articles 76, 79(1)(b), and Article 99 respectively. However, an act that may be considered a criminal offense cannot be punished if there is an exculpation act. In this case, physicians cannot be held criminally liable while acting to exercise rights or fulfil duties determined by law (Art. 21 PC). In other words, through the interpretation of Article 21 PC,<sup>17</sup> the authors believe that, in these cases, physicians were protecting patient autonomy and the right to self-determination by protecting human dignity, which is established in the Albanian constitution, in the international law ratified by Albania, and in the national laws as well as in the Code of Medical Ethics.<sup>18</sup>

Although this paper does not focus on PAS or euthanasia, it should be mentioned that in 2018, the Italian Constitutional Court<sup>19</sup> has declared the partial unconstitutional criminal rules that establish an absolute violation of assisting in suicide by allowing cases of medical assistance to die. Between others, this decision of the Italian Constitutional Court is based on the protection of Article 2 (protection of inviolable rights of the person), Article 3 (principle of equity), Article 13 (personal liberty), and Article 32 (right to health) of the Italian Constitution as well as Article 2 (right to life) and Article 8 (right to privacy) of the European Convention of the Human Rights (ECHR). Therefore, the authors believe that the exculpation act of exercising a right, codified in Article 21 Albanian PC, might eventually be applied in other medical circumstances as well to allow other forms of end-of-life situations.

Conversely, there are those in the law profession who believe a patient's life ought to be saved because humans do not have the moral capability to choose to die. Ergo, the consent of the unconscious patient to withdraw or withhold treatment given at some point freely and consciously beforehand is irrelevant. In such cases, there exists the exculpation act of extreme necessity (Art. 20 PC). Thus, the doctor is not liable for kidnapping or unlawful detention (Arts 109(1) and 110(1) PC). Specifically, Arts 109(1) and 110(1) PC states that kidnapping or holding a person hostage to gain wealth or any other benefit

<sup>17</sup> 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].

<sup>18</sup> Preamble and Article 3 of the Albanian Constitution; Albanian law no. Nr.10 339 of 28 October 2010 ratifies the Convention on Human Rights and Biomedicine, which in Preamble and Article 1 protect human dignity; Article 5(1)(a) Law no. 44 of 8 May 2012 (Law ruling mental health services) and Article 4(1)(a) Law no. 138 of 4 November 2014 (Law ruling palliative care services) protect human dignity; Arts 1, 4, 5, 11, 32, 38, 42, and 46 of the Code of Medical Ethics protect human dignity by considering it as the core principle.

<sup>19</sup> Italian Constitutional Court, R.O. 207/2018

forcing the realization of a certain idea, for political reasons or otherwise (i.e. application of the personal ideology of what constitutes life) is punishable not only by fine but also with imprisonment. In addition, unlawful detention, which shall not be considered only as physical detention but also that which is psychological, is also considered a criminal offense. Nevertheless, the application of the exculpation act of extreme necessity (Art. 20 PC) makes this act not punishable. Simply, the physician committed the criminal offenses *ex-Art. 109 and 110 PC* since he aimed to avoid an imminent danger threatening another person (the death of his patient). The imminent danger was not instigated by the physician and the damage incurred (kidnapping or unlawful detention) is greater than the damage avoided (death). This test of proportionality is fundamental to apply the exculpation act of extreme necessity.<sup>20</sup>

In light of this legal uncertainty, when a COVID-19 patient requests to withdraw artificial ventilation, will physicians be criminally liable? There is no Albanian jurisprudence about the right to withdraw life-supporting medical equipment neither before the pandemic situation nor during it. However, Albania has been part of the ECHR since 1996. In several case-law cases, the Albanian jurisprudence, including the Albanian Constitutional Court V-52/11, has incorporated decisions coming from the ECtHR. According to the ECtHR, it is lawful to withdraw life-supporting medical equipment.<sup>21</sup> In other words, the Strasbourg Court has recognized the right-to-not be treated by ruling that there would be no violation of Art. 2 (the right to life) of the ECHR if life-supporting medical equipment were to be withdrawn from a patient in a vegetative state. Unfortunately, this decision is narrowed to only pertain to patients in a vegetative state. To be in a vegetative state one shall not show any signs of cerebral cortical function.<sup>22</sup> Simplifying the doctrine about cases with the absence of any cerebral cortical function, it should be mentioned that the startle response or an orienting reflex with the head and eyes turning briefly towards the stimulus is not sufficient to determine that there is a cerebral cortical function.<sup>23</sup> Not all invasively-ventilated patients with COVID-19 are in a vegetative state.

Thus, according to the Strasbourg Court, in the case of the withdrawal of artificial ventilation of invasively-ventilated COVID-19 patients who are in a vegetative state, physicians do not commit a crime, what is the legal answer for the other cases? The impact of the pandemic situation led to a development of new triage protocols to deal with the absence of medical equipment.<sup>24</sup> Thus, perhaps the

<sup>20</sup> 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].

<sup>21</sup> A.C. HENDRIKS, *End-of-life decisions. Recent jurisprudence of the European Court of Human Rights*, in *Era Forum*, 19/4, 2019, 561-570.

<sup>22</sup> B. JENNETT, *The vegetative state*, in *British Medical Journal*, 2002, 355-357.

<sup>23</sup> *Ibid.*

<sup>24</sup> I. DE MIGUEL BERIAIN, V. L. RAPOSO, *Futile treatment in the time of pandemics*, in *BioLaw Journal-Rivista di BioDiritto*, 22/3, 2021, 473-482.

answer might be found in the application of the main ethical principles to cases of scarce medical equipment during a pandemic situation. According to Beauchamp and Childress, there are four ethical core principles: autonomy (control by the individual), beneficence (do good), nonmaleficence (do no harm), and justice (fairness).<sup>25</sup> According to the current literature, during a pandemic, the principle of justice should guide the distribution of scarce medical resources.<sup>26</sup> First, physicians should not distinguish between COVID-19 patients and others.<sup>27</sup> Second, the distribution of artificial ventilation should consider the maximization of benefits<sup>28</sup> as well as the promotion of instrumental value.<sup>29</sup> It means that priority should be given to younger patients or healthcare workers and caregivers. Considering the absence of artificial ventilation equipment during a pandemic situation as well as the benefits of medical intervention, invasively-ventilated COVID-19 patients who have not expressed their will to withhold or withdraw medical treatments should have a priority.

This position seems to also have been taken in the case of the draft-proposal of the Dutch Medical Doctors Association in November of 2020.<sup>30</sup> Prior to the pandemic, the principle of “first come, first serve” was applied. Now, during the pandemic, given the scarcity of resources for artificial ventilation, non-medical criteria should be considered as well. This means that during a pandemic, the decision of the physician should go from patient-centered decision-making to population-based decision-making. Additionally, physicians shall consider ethical principles. In particular, the criteria then include the longevity of the use of artificial ventilation (guideline 3), the patient age (guideline 5), and under certain conditions, the status of the medical staff (guideline 4) as part of the ethical principles of maximization of benefits (guideline 3 and 5) and the promotion of instrumental value (guideline 4). Such criteria do not violate international law,<sup>31</sup> in particular, the United Nations Committee on Economic, Social and Cultural Rights, not only because deferential treatment may be permissible if there is a reasonable and objective justification<sup>32</sup> (as is the case in the situation of a pandemic) but also because these criteria might not be considered part of the discrimination cases.<sup>33</sup> However, these non-medical criteria, which are to be valued cumulatively, should be considered only when multiple patients cannot be distinguished from each other in terms of survival on medical grounds and who are in equal need of artificial ventilation.

<sup>25</sup> T. L. BEAUCHAMP, J. F. CHILDRESS. *Principles of biomedical ethics*, Oxford, USA, 2001.

<sup>26</sup> R. RHODES, *Justice and guidance for the COVID-19 pandemic*, in *The American Journal of Bioethics*, 20/7, 2020, 163-166.

<sup>27</sup> E.J. EMANUEL et al., *Fair allocation of scarce medical resources in the time of COVID-19*, in *The New England Journal of Medicine*, 382, 2020, 2049-2055.

<sup>28</sup> L. RICCONI et al., *Clinical ethics recommendations for the allocation of intensive care treatments, in exceptional, resource-limited circumstances*, in *Recenti progressi in medicina*, 111/4, 2020, 165.

<sup>29</sup> E.J. EMANUEL, *op. cit.*

<sup>30</sup> Dutch Medical Doctors Association, *Draaiboek Triage op basis van niet-medische overwegingen voor IC-opname ten tijde van fase 3 in de COVID-19 pandemie*, Retrieved 22 March 2021, <https://www.rijksoverheid.nl/documenten/rapporten/2020/11/24/draaiboek-triage-op-basis-van-niet-medische-overwegingen-voor-ic-opname-ten-tijde-van-fase-3-in-de-COVID-19-pandemie>

<sup>31</sup> A. DEN EXTER, *The Dutch Critical Care Triage Guideline on COVID-19: Not Necessarily Discriminatory*, in *European Journal of Health Law*, 27/5, 2020, 495-498.

<sup>32</sup> General Comment no 20: Non-discrimination in economic, social and cultural rights, E/C12/GC/20, para. 13.

<sup>33</sup> A. DEN EXTER, *op. cit.*

In a pandemic situation, artificial ventilators are fundamental to the treatment of COVID-19 patients and are in short supply. Although there is no *ad hoc* law ruling end-of-life decisions, a physician fulfilling the right-to-not be treated by an unconscious (COVID-19) patient that through ADs, through living wills, surrogate wills, or through the construction of the patient opinion through his family, friends, and relatives, has expressed that he does not want to be treated, cannot be charged for homicide committed in other specific circumstances (Art. 79 PC) or for homicide at the request of the victim (Art. 99 PC).

Nevertheless, while medical treatments are withheld or withdrawn, even during a pandemic, access to care should be guaranteed since care and treatment are two different concepts.<sup>34</sup> As it is stated in Principle 3 of the European Charter of Medical Ethics, of which the Albanian Order of Physicians is a part, physicians must give the patient essential and appropriate care without any form of discrimination. Thus, while medical treatment can be withdrawn or declined in these cases, physicians' care will protect human dignity as protected in the Albanian constitution.

To sum up, the need for an *ad hoc* law ruling end-of-life decisions in Albania is fundamental to avoid legal uncertainty that physicians are facing in these cases. The need for an *ad hoc* law is emphasized in cases of the withholding or withdrawal of artificial ventilation of COVID-19 patients; especially when they are not in a vegetative state.

#### 4. Conclusion

Contrary to the majority of the Western European Countries, Albania does not have *ad hoc* law governing the right-to-not be treated. Considering the impact of COVID-19, this law would create legal certainty in end-of-life decisions.

Competent adults, as well as emancipated minors, should have the right to write ADs. Moreover, Art. 39 of the Code of Medical Ethics, the only document that refers to ADs, should be considered unconstitutional. The vetting process first and now the impact of COVID-19 on the judicial system severely impairs the ability to review Art. 39 of the Code of Medical Ethics according to the constitutional principles.

More importantly, the Albanian law ruling end-of-life decisions will put an end to the grey area of legal uncertainty. In other words, physicians will be accused of neither intentional homicide nor of homicides committed in other specific circumstances or assistance to suicide (Articles 76, 79 and 99 PC), kidnapping, or unlawful detention (Articles 109 and 110 PC).

During the COVID-19 pandemic, Albania, along with other countries, is facing difficulties in covering the requests for artificial ventilation. The absence of clear rules in end-of-life decisions as well as the lack of medical jurisprudence has raised doubts about the criminal liability of physicians fulfilling requests of unconscious patients to withhold or withdraw artificial ventilation.

By applying the jurisprudence of the ECtHR, physicians are not liable for withdrawing life-supporting medical equipment to patients in a vegetative state, as is the case of artificial ventilation. This decision

<sup>34</sup> D. VESHI, G. NEITZKE, *Council of Europe: Guide on the decision-making process regarding medical treatment in end-of-life situations*, in *Medical Law International*, 16/1-2, 2016, 94-102.



was pronounced before the pandemic situation and is applicable during COVID-19 since the right to self-determination of patients in a vegetative state should also be protected in the case of a pandemic. For patients who are not in a vegetative state, during the pandemic situation, the physician behaviour should be governed according to the application of the ethical principle of justice in the absence of clear rules as well as those of national and international jurisprudence. In other words, there should not be discrimination of COVID-19 patients and others. Priority should be given to younger patients or health care workers, and other caregivers who have not expressed their will to withhold or withdraw medical treatments. As a result, during a pandemic, due to a scarcity of resources for artificial ventilation, the physician who withholds or withdraws the artificial ventilation of an unconscious patient who through ADs has requested to stop artificial ventilation cannot be charged for intentional homicide (Art. 76), homicide committed in other specific circumstances (Art. 79 PC), or assisting suicide (Art. 99 PC). However, care shall not stop despite the halt of treatment with artificial ventilation.

In conclusion, the *ad hoc* law ruling end-of-life decisions in Albania will put an end to the grey area of legal uncertainty. Nonetheless, during a pandemic situation, although there are no rules governing end-of-life decisions, the application of the ethical principle of justice makes unpunishable the case of withholding or withdrawal of artificial ventilation by unconscious patients that have requested that through ADs.