

EUTHANASIA OF COMPANION ANIMALS: A LEGAL AND ETHICAL ANALYSIS

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EUTHANASIA OF COMPANION ANIMALS

Summary

In Italy, the conditions under which euthanasia of small pets is justified are only partially regulated by law no. 281/91, art. 2 no. 6 and 9, by the later Ministry Circular no. 9 made on 10/03/1992 and by law no. 189/2004.

Law no. 281/91, besides delegating the job of birth control in cat and dog populations to the regions, has made it statutory that stray dogs may only be euthanised when they are “seriously or incurably ill or proven to be dangerous”. The Ministry Circular underlines the fact that “euthanasia of dogs is prohibited except in special justified cases”. On the other hand, due to the legal classification of animals as property, the owner has the right of ownership over his animal so that he can sell it and kill it (*ius vitae ac necis*). In this view a request for euthanasia is licit, whatever the animal’s state of health may be.

The authors feel that further legislation to regulate the question more completely would be opportune and thus they analyse the problems of legal-ethics and public health that a veterinarian faces when carrying out euthanasia, also bearing in mind the laws and codes of professional ethics. They suggest possible solutions which could be adopted by the competent authorities.

Key words: euthanasia, companion animals, ethic, legislation.

L'EUTANASIA DEGLI ANIMALI DA COMPAGNIA: ANALISI ETICO-GIURIDICA

Riassunto

Limitatamente alle disposizioni vigenti in Italia, le fattispecie che giustificano il ricorso all'eutanasia di piccoli animali d'affezione sono state disciplinate solo marginalmente nella legge n. 281/91 art. 2 nn. 6 e 9, nella successiva circolare ministeriale n. 9 del 10/03/1992 e nella legge n. 189/2004.

La legge quadro n. 281/91, oltre ad aver delegato alle regioni il compito di provvedere al controllo delle nascite delle popolazioni canine e feline, ha stabilito che i cani randagi non possano essere più soppressi se non nel caso in cui siano “gravemente malati, incurabili o di comprovata pericolosità”.

La circolare ministeriale sottolinea che “è vietata la soppressione di cani se non in casi particolari e giustificati”. Di converso, poiché per gli animali padronali il proprietario è l'unico titolare dello *ius vitae ac necis* sul proprio animale, la richiesta di sottoporlo ad eutanasia risulta giuridicamente lecita a prescindere dallo stato di salute del medesimo.

Gli autori, ritenuto opportuno un idoneo intervento del legislatore volto a regolamentare la materia in maniera più chiara, effettuano un'attenta analisi delle problematiche di carattere giuridico, etico e sanitario cui va incontro il medico veterinario nell'eseguire interventi di eutanasia anche nel rispetto delle disposizioni legislative e del codice di deontologia professionale, e suggeriscono delle possibili soluzioni da adottarsi, eventualmente, nelle sedi competenti.

Parole chiave: eutanasia, animali da compagnia, etica, legislazione.

INTRODUCTION

The legitimacy of euthanasia is nowadays a human health topic widely discussed in human medicine, with its related problems about uncontrolled forms of abuse which could be generated by the possibility of its legalization. In veterinary medicine the resort to euthanasia is considered licit and, despite the growing community attention on animal needs, ethical concerns about this issue rarely arise.

Many owners request euthanasia as a remedy for various, more or less justifiable, situations. Also, many veterinarians recommend euthanasia correctly, as they find diseases that seriously and irreversibly compromise the quality of the animal's life [1]. But sometimes, due to negligence or malpractice, they wrongly consider euthanasia as a rapid solution for out of routine and embarrassing situations that they would not like to deal with. In the case that the companion animal is affected by a curable disease but the treatment is beyond the veterinarian's capabilities, normally the veterinarian should ask for a specialist's intervention in the respect of professional ethics. Otherwise the recommendation of euthanasia would be proof of imperfect knowledge, and above all, a blameworthy poor professionalism. Consequences of this type of behavior are: the betrayal of the client's trust and the death of the animal, despite the protective law and the veterinarian's moral judgment. By this procedure the veterinarian also loses a resource of income.

Considering that an animal should be euthanised only in the case of an extremely serious clinical picture, it seems right to underline that the owner's consensus is an inescapable requirement. In fact - except for the cases provided by veterinary police regulations [2] - euthanasia, carried out without the owner's consensus, is illegal as well as ethically wrong. It is a crime regulated by articles 544-bis e 638 of penal code (p.c.) [3, 4].

Legislation confirms abusing animals as illegal (art. 727 p.c. and following modifications) [5-7] as well as killing other people's animals (articles 544-bis and 638 p.c.) [3]; the first law aims to protect the right of life of these creatures, the second applies sanctions against those who choose an unjustified euthanasia of their animals.

ANIMAL LAW

In current society, animals are worldwide viewed as personal property, things in human hands, following the predominant Jewish-Christian religious idea that God has given humans the dominion over animals [8]. This religious idea, besides being the core of the relationship between humans and animals, has also influenced the animal law.

So far in Italy, civil code (c.c.) has considered animals as *res*; animals are equalized to personal property with the same system of civil protection law. In the third book, second section, article 812 c.c distinguishes between movable and immovable properties, decreeing that: “soil, spring and watercourse, trees, buildings and others are immovable properties (...), even if these are only temporarily tied to the soil, and generally immovable is everything that is incorporated into the soil naturally or artificially (...) moveable properties is everything else”. Animals are included in this definition of moveable properties.

In contrast, articles 727 and 544 bis c.p. consider animals as sensitive beings, i.e., they are worthy of being under the protection of a law, which recognizes their capacity to perceive pain and pleasure (Pret. Amelia, 07-10- 1987, Riv. Pen. 1988, 167; Cass. Pen., Sez. III, 4-03-1990; Cass. Pen, 1992, 951; Cass. Pen Sez III, 08.10.1996, n. 9574).

The animal-being essence is pointed out in article 820 c.c., which distinguishes between natural fruits and civil fruits: natural fruits are those which come from things, (...) as agricultural products, woods and parts of animal (...). ”.

Finally, also article 1496 c.c., which regulates animal trading, regarding animals as *res*, decrees that: “(...) special laws guarantee for the flaws or, if there are no laws, local customs shall guarantee. When local customs do not provide anything, previous laws should be observed”, i.e. civil code regulations regarding property sale should be applied. The parties to the case, if they are at variance or if laws do not provide anything, should use the regulations of the trading area. Also flaws of “sold things are regulated by local customs, while civil code is considered as subsidiary”, considering that special laws addressed to the flows of “sold thing” are lacking. Thus these articles clearly show that the owner, as *dominus*, may treat his animal as he wishes, even observing the existing protective laws.

However, animals should be treated not as objects but as subjects “worthy of consideration” and accepted in a new legal framework. This new legal framework should comprise the new important aspects that ethological studies have highlighted on animal behaviour and animal social life as well, casting new light on their capacity of feeling pleasure, pain, as well as having interests and being capable of satisfying these interests [9-16].

DUTIES AND RESPONSIBILITIES OF VETERINARIANS: GENERAL THOUGHTS

Killing (articles 544 *bis* and 638 p.c.) and euthanasia of animals are considerably different due to the methods through which they are performed and their legal consequences. Considering the legal consequences, killing animals is a crime. In contrast euthanasia is legal even if only in specific cases.

Euthanasia is frequently requested by the owner, who desires a “good death” for his pet, because he wants to put it out of its pain or because the pet behaves intolerably, e.g. becomes vicious, dangerous, unmanageable, or due to economical reasons. A veterinarian should attempt to communicate with the owner, explaining the medical options of etiological and palliative treatments, which can include pain pharmacological treatment, effective to relieve either temporary or chronic pain, and to guarantee a good quality of life.

The owner can treat the animal as he wishes, even respecting the laws about their protection and welfare. However, because these laws are incomplete, they are applied with difficulty, allowing such aberrations as a request of euthanasia of a healthy or not seriously impaired animal. On the contrary, euthanasia of a healthy animal should be considered a crime except in limited cases, for example when the animal unnecessarily suffers.

In law no. 281/91 [17] the legislator, more concerned in protecting stray dogs and cats and wrongly convinced that pets are protected by the owner, prohibits that animals are put down after three days from the capture (in contrast with the veterinary police regulations). In fact, dogs captured must be admitted in kennels (sanitary kennels or shelters) and they can be adopted by private citizens after sixty days from their capture or finding. Thus the law is mostly focalized on the stray rather than on companion animals.

Even if the above-said law tries to limit the euthanasia of stray animals, the same law does not provide anything for animals with owners. Any owner may request to euthanize his own animal with only one restriction: the law orders that euthanasia must be carried out by a veterinarian. The legislator who conceived this law perhaps was wrongly persuaded that none of the owners would want the death of their animal.

Thus, it should be desirable not to permit the owner to request the euthanasia for his pet. This should be part of the veterinarian’s duties as an extreme solution thoroughly evaluated.

At present a request of euthanasia comes from the type of situations listed below:

- a) euthanasia of an animal suffering from serious/incurable disease or of proven dangerousness (i.e. zoonotic disease with a great impact on public health);
- b) euthanasia of a healthy animal [18];
- c) euthanasia of an animal affected by pathologies of primary and secondary character which however do not affect the prospective of a good-quality long life.

The “a” hypothesis appears clinically correct and ethically justified, only in the case in which the animal has a serious and irreversible disease (i.e. terminal illness or progressively debilitating disease), characterized by useless suffering and with unfavourable prognosis [19-22].

It is important to underline that a dangerous behaviour must be evaluated in each dog and must be unequivocally verified.

Nevertheless, if the veterinarian considers the request not to be rightly motivated, he should intervene in defence of the patient through the following instruments:

- giving an accurate and etiological diagnosis;
- prescribing the best therapy;
- correction of the anthropomorphic vision held by the owner towards his/her “companion” through illustrated material showing the profound differences between the world of man compared to that of small pets (interspecies biodiversity) [23].

In fact, from an ethical and a deontological point of view, the veterinary profession may involve not only an exact etiological diagnosis and a prescription of the best therapy, but also the necessity to give the client some information about his pet’s physiological and ethological characteristics, which are deeply different from those of humans.

As far as the hypothesis “b” is concerned (euthanasia of a healthy animal), without any doubt the veterinarian should feel repugnance for such a request, also considering a corrected interpretation of the professional ethics code [24].

With regard to the “c” hypothesis informing the pet’s owner about an incipient or already existing condition of impairment, this could provoke two kinds of responses:

1) the owner, deeply affectionate to his pet, could ask the veterinarian to adopt the best solutions to guarantee an acceptable quality of life for his pet. He is willing to confront the difficulties of the disease and to support the animal. This behaviour, recognizing the special value of living creatures, indicates the right involvement of human being in the relationship between animals and natural environment and it is the foundations which gives man the role of positive artificer of animal bioethics [25];

2) the owner could request the euthanasia for his pet, justifying it with a plethora of reasons: to protect it from presumed pains and useless suffering, wrongly thinking that such a state of health is incompatible with a good quality of life; to avoid the responsibility, (also in terms of economical responsibility), linked to having an unfit animal. Finally the owner assumes that the animal is not longer fit to do specific tasks to which it was assigned, such as hunting or defence.

CURRENT LEGAL ASPECTS OF EUTHANASIA OF COMPANION ANIMALS IN ITALY

Parameters of animal welfare, animal experimentation and animal games as well as illegal abandonment, abuse and other situations and conditions are enforced by laws [3, 7, 17, 26-32]; unfortunately these laws do not say anything specific about euthanasia of dogs with owner. The Italian legislator, although providing the prohibition to put down captured dogs admitted in public facilities (kennels or shelters), with derogations related to terminally-ill or dangerous subjects, was not concerned about animals subjected to the owner's will. Apart from law no. 189\2004, that generically refers to "everybody who causes the death of an animal" only certain Italian Regional laws, listed below, attempt a weak protection of animals with owners.

Regional law no. 39 made on 4-9-90 by the autonomous Region Friuli- Venezia Giulia in art. 7 says: "in case that the owner for serious reasons cannot continue to hold the animal, he shall communicate it to the veterinary section of the Local Health Unit (ASL, Azienda Sanitaria Locale), which has the responsibility to take it and give it to public or private recovery structures, operating within the national health service". This regulation does not let the owner choose, but provides a specific order-prohibition.

Also Regional law no. 35 made on 21-10-99 by Abruzzo Region, later integrated by Regional law no. 8 made on 23-01-2004, decrees: "putting down animals should be done only on the owner's request for valid health reasons". Also the owner can give his animal to kennels when the maintenance of it is proven to be impossible.

Regional law no. 21 made on 18-05-94 by the autonomous Sardinia Region integrated and modified by regional law no. 35 made on 01-08-1996, in art. 9 explicitly prohibits the putting down of animals, except in cases considered in the previous paragraph. Article 13 states that the owner should ask the veterinary service permission to give the animal to delegated public or private structures, only in the case of unexpected and proven impossibility of maintaining it.

Article no. 2 of no. 9 Regional law by the autonomous Bolzano province made on 15-5-2000, consents that animals are euthanised only by a veterinarian, who must write the relative certification; art. 4, paragraph 2, orders the suppression of captured dogs only if they are seriously ill, incurable or proven dangerous or rather they put at risk public health and security (if there is no provision in art. 86, 87, 91 and 104 of DPR. 320/1954 and following modifications).

Article 14, made on 25.01.93, of Basilicata Region's Regional law no. 6 states the possibility that the owner gives his dog to recovery structures when the impossibility of support is proven.

Regional law no. 23, made on 22-03-2000, article 9 paragraph 2 by Liguria Region explicitly prohibits the killing of dogs, included those with owners, but excluding those which are incurably ill or dangerous.

Despite the delay in its application, the law no 281/91, article 9 of Regional law no. 15 made on 03-07-2000 by Sicily Region falls into line with the other Italian Regions' laws.

This law allows the owner to give his companion animal to authorized public structures only in case of unexpected and proven impossibility to support it. Moreover, the same paragraph 9 limits euthanasia to captured, abandoned or recovered dogs in sanitary refuges, depending whether they are rabid (art. 86, 87 and 91 of D.P.R. 320/1954) or "proved as dangerous" or affected by "serious or incurable diseases". In addition paragraph 9 and 10 of art. 18 permits euthanasia of cats without owner, when they are affected by "serious and incurable diseases".

Similarly art. 7, paragraph 3, of Regional law no 4 made on 3-3-2000 by Calabria Region, regulates euthanasia of captured stray dogs only when seriously ill and incurable, and obliges veterinarians in charge of the Local Health Unit to consult protective associations before putting down any stray dog. The protective association's opinion is not a mere advice, as it can become an obligation.

All attempts of Italian Regions to regulate this issue are appreciable. However, it is inconceivable that the same problems are faced and resolved through different methods in the same country. An effective law should regulate such a topical and delicate subject (also from a sanitary point of view) in an uniform manner.

REMARKS

It should be viewed as ethically and legally wrong that the life's end of a companion animal is still subjected to the owner's will, also considering the numerous cases of reported maltreatment.

Everyone of us may destroy, damage or even abandon the materialistic aspects of property, without incurring penalties, unless others are affected.

In contrast, the application of a punishment just in the case of abandonment and maltreatment of an animal has been considered by law (including the offences committed by the owners), pursuant to art. 544-bis and foll. and 727 p.c.; in fact, it is forbidden to kill the animal even through a "good death"

The veterinarian, who has the cultural, technical and scientific knowledge, is required to be the guarantor and the promoter of animal rights. In the social context he has to acquire a managerial position to create a balance in the relationship between man and pet.

The practical applications of the scientific aspects of veterinary medicine, which represent the veterinary profession in the strict sense, pledge the veterinarian to specific responsibilities, not only with respect to medical competence but also in the confront of ethical choices to which he should respond.

It is indisputable that it is ethically blameworthy the euthanasia of a dog not because it is affected by a serious pathology but because of the owner's insensibility.

Also, for animals with owners only a verified dangerous or a chronic and incurable state of health should justify the resort to euthanasia, as stated by law no. 281/91 for stray dogs. Thus also for animals with owners the prohibition of resorting to euthanasia should be imposed (if not in particular cases) avoiding an extensive interpretation of art 544-bis p.c.

It is the veterinary sector's duty to oppose the spread of an euthanasia culture, in open contrast with the ethical aspects of the profession. The resort to this intervention could be carried out after an accurate diagnosis has been reached. This involves predictions on the effects of specific therapies and above all when the general conditions of the animal result particularly incompatible with a long life prognosis. On the contrary, when the veterinarian practices the euthanasia without an accurate diagnosis he incurs criminal responsibilities, violating art. no. 544-bis p.c. and he commits three different errors simultaneously:

- he does not respect the obligations of the professional code [18] which states that the veterinarian "dedicates his work to the prevention, diagnosis and cure of animal diseases" and the art. no. 7 clarifies that "the veterinarian (...) must always inspire to scientific knowledge and to his own moral conscience. In the scrupulous fulfilment of the required interventions, the veterinarian is to safeguard the patient's private interest, always having awareness of the community's concern and the legal framework (...);
- he implicitly recognizes his professional failure for the incapacity to reach a diagnosis;
- he causes economic damage to himself losing a patient that would have continued to be a source of income.

CONCLUSIONS

According to the authors, Italy is ready to confront the euthanasia issue and to create a new legal framework, stimulating the debate in public opinion as in the veterinarian community. It is mandatory the emission of a law that carefully regulates this issue to eliminate all sorts of ambiguity and to limit the vast discretion that until now consented the putting down of many companion animals, even if a painless death is ensured. It should be recommended, as a strategy of prevention, that those who choose to have a four-legged friend at home become responsible through

a process of information about the problems concerning an animal. Abandonment or even worse euthanasia should not be considered as a solution to these problems.

It is admirable the legislative effort undertaken at a national and European level in the approach to animal welfare and protection. Nevertheless, it would be auspicious that the *iter* undertaken would reach the realisation of rules, with a degree of assurance for a good quality of life for companion animals, according to natural longevity. In the worldwide context, the UNESCO (United Nations Educational, Scientific and Cultural Organizations) with the Universal Declaration of Animal Rights aims to guarantee the dignity of being alive, stating that “every animal that man has chosen for a companion has a right for a duration of life in accordance with its natural longevity” (art. 6) [30].

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