

# THE RIGHT ON EUTHANASIA: THE EXPERIENCE OF THE WORLD'S DEVELOPED COUNTRIES AND THE PROSPECTS OF ITS IMPLEMENTATION IN UKRAINE

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## ABSTRACT

*The article explores the right on euthanasia in developed countries of the world and the prospects for its implementation in Ukraine. The results of a number of sociological studies on the perception of euthanasia by the population, in particular in the Netherlands, Turkey, USA, Finland, also, special attention was paid to the gradual increasement in the percentage of people who support the idea of euthanasia. The concept of euthanasia and the conditions under which it can be carried out are revealed. The legislative provisions of the Netherlands and Belgium regulating euthanasia in these countries were stated. It has been found out that the shortage of consensus among European states on the question of a decent end to human life leads to the existence of a case law of the European Court of Human Rights on euthanasia cases. It is concluded that the introduction of euthanasia is not promising for Ukraine, as it is directly contrary to a number of national legislation acts, first of all the Constitution of Ukraine, also, to international acts, in particular the Convention for the Protection of Human Rights and the Founder of Freedoms. It is emphasized that a single position on euthanasia should be chosen at the level of the European Union by the Member States.*

**Keywords:** Euthanasia, Right to Die, Right to Personal Autonomy, Patient, Doctor, Health Care, Palliative Care.

## INTRODUCTION

Nowadays, protecting the health of individuals is one of the major issues of each government. However, the issue of euthanasia is one of the most debated in the entire world, due to the lack of a unified approach to the legalization of euthanasia, as well as the concept of the euthanasia origin, which is on the border of medicine and law. At the same time, if we look at the list of states where euthanasia is a legal procedure, we will see that these are mostly highly developed countries: Netherlands, Belgium, Ireland, Colombia, Luxembourg, France, etc. That is, it is more likely that the socio-economic development of these countries enables them to perceive euthanasia positively and to create the necessary conditions for such procedures.

## Formulation of the Problem

Euthanasia, as a form of person's life termination with his or her consent and in case of appropriate conditions, already exists in a range of countries, but at the international and regional level there is no position on the expediency of its legalization or, conversely, the need to find more humane ways to help those, who suffer for incurable diseases and their family members. Thus, most countries in the world, including Ukraine, must come to a reasoned conclusion about the definitive ban on euthanasia and find alternative ways to support people diagnosed with incurable diseases during their lifetime. Accordingly, research of the moral, ethical, medical and legal aspects of euthanasia is appropriate.

## METHODOLOGY

The methodological basis for the study of the ethical and legal aspects of euthanasia in Ukraine and in the world consists of the logical-semantic, comparative-legal and formal-logical methods, each of which allows to fully disclose the nature of euthanasia discussion in Ukraine. Logico-semantic method was used to determine the essence and features of the "*euthanasia*" concept. The comparative-legal method allowed to reveal the foreign experience of legalization of euthanasia. The formal-legal method made it possible to study the legal foundations of euthanasia in foreign countries and the prospects for their implementation in Ukraine.

## LITERATURE REVIEW

The specificity of euthanasia has led to its study by a wide range of specialists in the fields of medicine, bioethics, law. Thus, in recent years a number of scientific works have been devoted to euthanasia. Hendriks notes that the European Convention on Human Rights does not instruct States to regulate end-of-life issues, including euthanasia. The right to life states that governments must, first and foremost, protect human life and take action in case of a violation of this right. Moreover, the scientist notes that in the last year the European Court of Human Rights has recognized that persons still have the right to personal autonomy. The content of this right states that people who are reasonably competent to make informed decisions, may decide to refuse treatment and, in certain circumstances, to make a decision to shorten their life, in accordance with the provisions of national law (Hendriks, 2019).

It should be noted that the experience of states in the field of euthanasia regulation is different. In the Netherlands, euthanasia has been taking place since 2002 and is carried out only under appropriate conditions, but the results of a study on the perception of euthanasia by the population in Turkey among students from different spheres showed that 73.2% of respondents do not approve of euthanasia (Karaahmetoglu & Kutahyaliloglu, 2019). Botti Caterina, Vaccari Alessio exploring the prospects for euthanasia in Italy, point out that in Italy there is also a debate on the feasibility of legislative introduction of euthanasia. However, in 2019, a bill has already been proclaimed, and its proponents still believe that the patient is entitled to either consent to long-term and even life-long treatment, or to refuse it and choose an euthanasia procedure (Botti & Vaccari, 2019).

Bahnik et al. emphasize that a study conducted in the US shows, that Americans believe that the conditions for euthanasia are the physical suffering of a person and its negative influence on other people (Bahnik et al., 2019). Thus, Stefanchuk et al. offer euthanasia to be understood

as a type of physician's behavior (action, inaction, decision), committed consciously and intentionally, aimed at ending unbearable suffering (physical, mental, moral), carried out at the repeated and unambiguous request of the patient (his legal representative), in case of fully awareness of the consequences of such interventions arising from the patient's death (Stefanchuk et al., 2018).

Scientists, such as Louhiala et al. also focus on changing trends in the perception of euthanasia. Thus, if in 2003 in Finland 61% of citizens were against euthanasia and only 29% of the population supported this idea, then in 2013, 46% supported the legalization of euthanasia in the country (Louhiala et al., 2015).

## FINDINGS AND DISCUSSIONS

As euthanasia is currently taking place in the Netherlands, we suggest paying attention to their experience, as well as the current situation of perception and prospects for euthanasia in Ukraine. First of all, it should be mentioned that Evenblij et al. show the results of a sociological survey according to which 2641 average citizens of the Netherlands were interviewed (75% respectively) and 3000 doctors (52% respectively). This sociological study has shown the eligibility of euthanasia. Thus, 53% of citizens believe that people with mental disorders should have right on euthanasia, 15%-against, and 32% remain neutral. The results of the study showed that the higher the level of education, ethnicity and urbanization, the more likely citizens are prone to euthanasia, while the religious position is less supportive of the idea. However, the percentage of medical professionals who believe that euthanasia is possible for people with mental disorders is 20%, and among general practitioners 47% support this idea (Evenblij et al., 2019).

It should be mentioned that, in general, euthanasia in the Netherlands was legalized in 2002 by a law "*The reduction of life at the request or assisted suicide*". This act defines euthanasia as a medical act, which is carried out only in the case of appropriate conditions and medical indications. (Schuurmans et al., 2019). Such conditions and indications are:

1. A voluntary and deliberate request;
2. Unbearable suffering of the patient with no possibilities of improvement;
3. Informing the patient;
4. Lack of a reasonable alternative;
5. Independent opinion of another doctor (Tuffrey-Wijne et al., 2018).

The law also states that anyone who is 16 years old has the right to independently determine the order and manner of ending their lives. For persons aged from 12 to 16 years, euthanasia is only possible with the consent of the parents or other legal entities, their representatives. The euthanasia physician must be sure that the patient's request is independent, repeated and well thought out, that the person's suffering is permanent and unbearable. The euthanasia physician must be sure that the patient's request is independent, repeated and well thought out, that the person's suffering is prolonged and unbearable (Kaminska & Nazarko, 2017). For comparison, in Belgium, unlike the Netherlands, a person, who has reached the age of 18 years is eligible for euthanasia (Kaminska & Nazarko, 2017).

To implement euthanasia, the doctor must obtain appropriate authorization, so he is always under pressure. This pressure may be related to the patient-doctor relationship and/or the

relationship between the physician and the patient's relatives, and the decisions and circumstances under which it should be made are characterized by some complexity (De-Boer et al., 2019). That is, the procedure for obtaining a decision on euthanasia leads to the emergence of a wide range of relationships between different entities. At one time with the adoption in 2002 in the Netherlands of a law on the reduction of life on request or assisted suicide, the first criminal case was initiated, since a woman with Alzheimer's disease was euthanized on the basis of her voluntary euthanasia consent. Subsequently, however, the Euthanasia Supervisory Committee found that the euthanasia physician did not comply with the euthanasia requirement. This criminal case is notable in that it is the first since the law came into force in 2002 (Miller et al., 2019).

Euthanasia litigation is not only present in national judicial systems but also in the European Court of Human Rights. In particular, in 2015, the European Court of Human Rights the case of Lambert and Others v. France (Grand Chamber) termination of life was considered (Cases, 2015). The claimants in this case were parents, half-sisters and brothers Vincent Lambert, who had four limbs paralyzed after a road accident in 2008. In January 2014, on the basis of a decision by a physician consultant, a decision was made to terminate the patient's nutrition and hydration, resulting in his death. In June 2014, the High Administrative Court of France proved the legitimacy of such actions by doctors, but relatives of the dead patient wrote a complaint to the European Court of Human Rights, challenging the actions of doctors to stop artificially maintaining the patient's life, alleging a violation of Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which declares the right to life, However, the European Court of Human Rights did not satisfy the applicants' claim, they justified their decision by, firstly, adopting a legal act on 22 April 2005 in which doctors were given the right to exclude patients from artificial life support in such cases, and secondly, there is no consensus on a final decision on the legal protection of the end of life between the Council of Europe and its Member States.

Ukrainian law forbids euthanasia. In particular, part 4 of Art. 281 of the Civil Code of Ukraine establishes a prohibition to accept an individual's request for the termination of his or her life. Besides this, in accordance with the provisions of the Fundamentals of the Ukrainian legislation concerning health care of Ukraine it is forbidden both to refuse measures that prolong the life of a patient who dies, and to intentionally accelerate with the help of medical means, at the request of a patient, a painless death or to kill an incurable patient in order to stop his or her suffering (Art. 52 Basics of the legislation concerning Ukrainian health care).

But it is also worth mentioning that euthanasia is not the only form of right to a worthy termination of a patient's life at his or her own desire, along with it, is also allocated orthonasia and suicide assisted by a doctor. At the same time, until the beginning of 2018 in Ukraine, the last of them remained legal. However, in February 2017, the legislature changed the content of Art. 120 of the Criminal Code of Ukraine "*Bringing to suicide*". Accordingly, the introduction of criminal liability for any promotion of suicide has actually admitted suicide, assisted by a doctor, a crime with all the criminal consequences. And this completely prevented the realization in Ukraine of the natural human right to a worthy end of life, in cases where he or she alone is not capable to do so due to certain circumstances.

## RECCOMENDATIONS

Taking into account everything, mentioned above, we support the view that priority should be given not to the legalization of euthanasia, but to the development of palliative care, which is aimed at eliminating pain and providing comprehensive support to patients, their families and others. (Stefanchuk et al., 2018). Palliative care, therefore, is an approach that improves the quality of life of patients and their families who face the problem of a life-threatening illness by preventing and alleviating suffering through early detection and treatment of pain and other problems (physical, psychosocial and spiritual) (De-Lima et al., 2017). Of course, euthanasia requires far less resources to implement it than palliative care, which is comprehensive. But the legalization of euthanasia in Ukraine will be directly contrary to the provisions of national law, in particular, to Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees one of the inalienable rights of everyone - the right to life.

## CONCLUSIONS

Thus, euthanasia is one of the most debatable issues today, because it is placed on the frontier of medicine and law, furthermore, it touches some aspects of bioethics and religion. Euthanasia research shows that today it is not a common phenomenon, but exists only in some highly developed countries, such as the Netherlands, Belgium, Luxembourg, Ireland, etc. It is also a legislatively regulated medical act, which takes place only under certain conditions and medical indications. In Ukraine, the implementation of euthanasia will directly contradict national and international legislation, in particular the Constitution of Ukraine, the Civil Code of Ukraine, the Criminal Code of Ukraine, the Fundamentals of the Ukrainian legislation on health protection, the Convention for the Protection of Human Rights and Fundamental Freedoms. That is why it is more advisable for Ukraine to introduce palliative care. As for other states, the position of the European Court of Human Rights should be supported, but there should still be a united position between the states of Europe, regarding the end of human life through euthanasia.

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