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## **EUTHANASIA: INTERNATIONAL EXPERIENCE**

The article considers the euthanasia institute as one of the elements of somatic human rights. The legislative and practical experience of realization of the human right to a “decent death” is analyzed, as well as the importance of the moral-ethical and religious component, which influences the possibility of legalization of this institute into national legislation. The main types of euthanasia have been investigated and attention has been focused on social euthanasia, which is particularly relevant in the current context. The experience of those countries that have legally provided euthanasia for minors is analyzed, and the peculiarities of resolving the issue of applying the procedure to the latter in relation to the peculiarities of achieving physical and mental development of each person are emphasized.

**Keywords:** euthanasia, decent death, patient, human rights, somatic rights.

Human rights are a particular asset of the civilized world, and their proper implementation is a testament of the progress made in democratic and rule-of-law states, with the aim of creating the best possible conditions for their citizens and qualitatively guaranteeing the fulfillment of state obligations in the field of human rights and freedoms.

Development is a progressive process that is linked to the progress of all spheres of human activity and the constant desire to improve their existence. With the development of medicine, the emergence of the latest biotechnology, genetic engineering, a person has new opportunities to improve his/her life and change his/her body. For the full and real legal definition of these rights, the scientific community identifies a new “fourth” generation of human rights and defines them as – somatic rights<sup>1</sup>. These rights relate to the human body and include extensive opportunities and variations such as sex change, surrogacy, reproductive rights, cloning rights, organ transplants, euthanasia, and more. Today, somatic rights relate to the most important aspects of life and are so innovative that they are the subject of debate among lawyers, medical workers and law-makers as subject of normalization of the rules of conduct in the research field.

Of course, scientific and social progress poses more and more challenges for legal practitioners, as the regulation of these rights is so contradictory and does not always coincide with established moral aspects prevailing in the country, giving rise to particular interest in the detailed study of this issue. Let us turn our attention to one of the most debatable issues – the problem of euthanasia legal regulation. Considering the possibility of legalizing euthanasia in Ukraine, it is of the utmost importance to emphasize that in our moral, religious and cultural environment the position on the inadmissibility of life deprivation is dominant, so we should first note that, in our opinion, legalization of euthanasia in the Ukrainian legislation is impossible in current realities.

The research of the legal aspects of euthanasia was carried out by: S. Bakunina, N. Borysevych, V. Voron, V. Grishchuk, O. Miroshnichenko, M. Rapayeva, A. Tymoschuk and others.

Euthanasia is an “easy death” or “death with dignity”. It is customary to distinguish between the two types of euthanasia passive and active. To active euthanasia we include the method of “filled syringe” – are those cases where the procedure is carried out with the help of a doctor in the form of injection special drugs that cause death of a patient. And passive euthanasia is a “delayed syringe method” – is characterized by the fact that a person refuses further treatment, which can be expressed in the disconnection of devices that support human life.

Institute of euthanasia is forbidden in Ukraine, this is stipulated by Art. 52 of the Ukrainian Law on the “Fundamentals of the Ukrainian legislation on health care”, which states that “medical workers are prohibited from euthanasia execution – intentionally speeding up the death or killing of a terminally ill patient in order to end his or her suffering<sup>2</sup>”.

In Ukraine, patients who are in a state of serious illness and are told by doctors that treatment for them is no longer effective are offered palliative and hospice care. “The palliative care system was launched in England in the 1960s by the efforts of Cecily Saunders, a former graduate nurse who understood how

<sup>1</sup> Крусс, В.И. (2002). Личностные («соматические») права человека в конституционном и философско-правовом измерении: к постановке проблемы. *Государство и право*, 7, 46-53.

<sup>2</sup> Закон про основи законодавства України про охорону здоров'я 1992 (Верховна Рада України). *Офіційний веб-сайт Верховної Ради України*. <<https://zakon.rada.gov.ua/laws/show/2801-12>> (2020, January, 08).

inadequate the treatment that terminally ill patients received in conventional hospitals was. It was she who founded the hospice of St. Christopher, in one of the London suburbs and headed the movement with the same name<sup>1</sup>". The principles of palliative care in Ukraine were researched by K.V. Danyluk, noting that "palliative care is aimed at improving or maintaining an optimal standard of quality of life for a patient, because his or her illness is not treatable. At a certain stage of a progressing disease, the patient's treatment loses its meaning, becomes ineffective and unpromising. This leads to a transition from treatment to care, aimed at: relieving of suffering, reducing pain, other painful symptoms of an incurable patient; meeting the needs and providing the patient with comprehensive support, including social, moral, psychological and spiritual support, which enables him or her to remain active at the highest possible level until the last moment of his or her life."<sup>2</sup>

A vivid supporter of the "right to die" is considered an American pathologist Jack Kevorkian, who created a device that allowed the patient to self-commit suicide, so the doctor helped 130 people to realize their desire for a "decent death" and attracted special attention of the whole world to the problem of euthanasia<sup>3</sup>.

Of course, it should be noted that the primary condition for euthanasia should be medical indications of the incurability of the disease, in other words, that the patient has no chance of recovery and the consent of the patient, and in cases where, for example, a person is in a vegetative state, the relatives request for euthanasia is needed. It is worth noting that the problems (in the case of relatives' request) lie in the good faith of the latter, since it is possible to assume that the death of the patient will be a relief for them and will open a faster path to inheritance or other self-serving motives, which cannot be taken into account in the assessment of each particular situation. It should also be emphasized that a person who is in a difficult psychological and physical state and is aware of the inevitability of his or her death may be pressured by relatives, which may also influence the decision to use euthanasia as a relief not only of their suffering, but also of the others.

In modern times, the issue of social euthanasia is becoming more and more important, since it is affecting the interests of not only one particular person, but of the state, which is called upon to maximize the effective use of material goods to secure and protect its citizens. Italian researchers Antonio J. Spagnolo, Dario Sakkin and Maddalena Pennakini have noted that "euthanasia is a social concern for patients whose pathologies last too long and cost too much for society"<sup>4</sup>. The issue of social euthanasia is based on the proportionality of the use of funds for the treatment of a person who no longer has a chance to return to independent functioning, and his or her life time even with such support is negligible. The motive for carrying out such type of euthanasia, which is characterized by termination of treatment (life support) of such patient, is the possibility of using funds for people who have a chance for recovery provided the necessary treatment. This issue is extremely complicated, and given the great distrust of the Ukrainian society for healthcare workers and the health care sector in general, we cannot speak about the use of this type of euthanasia today.

In the world practice, we find cases where euthanasia was applied to physically healthy people with mental disorders or abnormalities. One such case occurred in Belgium in 2015<sup>5</sup>, where a girl with depression and suicidal ideation has achieved euthanasia. A similar case occurred in the Netherlands in 2018 when euthanasia was applied to a physically healthy girl who had severe mental disorders that prevented her from living. At her request, after many years of trial, the doctors had given her a lethal injection by court order<sup>6</sup>.

We believe that euthanasia in cases, where the patient is suffering from psychological illness should

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<sup>1</sup> Згречча, Е., Спаньоло, А. Дж., П'єтро, М. Л. та ін. (2007). *Біоетика: підручник*. Львів: Видавництво ЛОБФ «Медицина і право», 572-573.

<sup>2</sup> Данилюк, К. В. (2018). Сутнісна характеристика паліативної та хоспісної допомоги і принципи її надання в Україні. *Державне управління: удосконалення та розвиток*. <[http://www.dy.nauka.com.ua/pdf/2\\_2018/102.pdf](http://www.dy.nauka.com.ua/pdf/2_2018/102.pdf)> (2020, January, 08).

<sup>3</sup> Джек Кеворкян: Доктор Смерть. <<https://www.bagira.guru/crime/dzhek-kevorkyan-doktor-smert.html>> (2020, January, 08).

<sup>4</sup> Згречча, Е., Спаньоло, А. Дж., П'єтро, М. Л. та ін. (2007). *Біоетика: підручник*. Львів: Видавництво ЛОБФ «Медицина і право», 565.

<sup>5</sup> У Бельгії дівчині, яка страждає від депресії, дали право на евтаназію. <<https://tsn.ua/svit/u-belgiyi-divchini-yaka-strazhdaye-vid-depresiyi-dali-pravo-na-evtanaziyu-448674.html>> (2020, January, 08).

<sup>6</sup> У Голандії піддали евтаназії фізично здорову дівчину з психічними відхиленнями. <<https://religions.unian.ua/religionsworld/2379340-u-gollandiji-piddali-evtanaziji-fizichno-zdorovu-divchinu-z-psihichnimi-vidhileniyami.html>> (2020, January, 08).

not be used, since a person with a mental disorder, which is expressed in persistent and long-term disorders, in our opinion, cannot objectively evaluate the reality and make informed decisions about euthanasia, since in history of mentally ill people are often signs of suicidal tendencies, which negates the basic purpose of the Euthanasia Institute, namely assistance in the "easy death" of people who are terminally ill physically and their lives are filled with pain, and medications no longer provide a qualitative reduction of pain. The decision must also take into account the circumstances that the patient's life will naturally end in a short period of time. In this case, we can talk about the multidimensionality and depth of euthanasia consideration for a person. When euthanasia is applied to people with mental disorders, we are at great risk of making a mistake when applying the procedure to such persons, thus raising a number of extremely important issues.

It should be emphasized that Belgium is one of the countries where euthanasia has been legally authorized since 2002, and in 2014 it became the first country to pass a law allowing euthanasia for terminally ill children. This law provides for stricter (narrower) conditions for the use of euthanasia than adults, and the obligation of a psychiatrist to diagnose a minor with regard to his or her understanding of the effects of euthanasia. Also, the procedure requires the mandatory written consent of both parents of the child and written confirmation of the doctor on the possibility of using this procedure, and the parents of the child are provided with psychological support by specialists<sup>1</sup>.

We believe that euthanasia for children is an extremely difficult issue, because of the immaturity of the individual and the individual stages of becoming a person, both physically and psychologically, making such a decision as euthanasia not fully conscious, since the issue of death is extremely difficult even for an elderly person. In this regard physicians and psychotherapists involved in this process, particular account should be taken of all the circumstances in each individual case.

N. Borysevych, exploring euthanasia, notes that "among the reasons that can theoretically initiate a request for the euthanasia, practicing doctors, in particular, called cancer of the fourth clinical group – especially with brain metastases, preagonal comatose conditions with various nature, brain death, agonizing condition with severe traumatic brain injury, incompatible with life, vegetative state, multiple sclerosis, severe generalization of the process with intoxication and pain, myotonia with impaired breathing, decompensated heart, liver, kidney, Alzheimer's and AIDS."<sup>2</sup> We believe that the above mentioned list of diseases is usually not exhaustive, but it includes major serious conditions that may be the basis for euthanasia and justifiably contain the basic prerequisites.

Henry Marsh is a reputed British neurosurgeon with years of experience. In his open lecture "Dying with Dignity", he noted that in his practice, he used an increase in the dose of painkillers that actually shortened the life of a dying patient, thus describing some latent euthanasia used by doctors in Britain, noting that even for a doctor it is challenging to inform relatives that treatment is no longer effective and the patient's future death<sup>3</sup>.

The experience of Switzerland, where suicide assisted by a doctor for both residents and non-residents of the country is permitted, and the relevant legislation is extremely liberal, is also significant. For foreigners, there are fixed rates for committing suicide, as well as mandatory medical check-ups and even funeral services, making Switzerland a specific tourist destination for a suicidal<sup>4</sup>. Of course, these conditions are perhaps the only chance for people with incurable diseases and their lives are filled with pain and suffering to undergo.

The study carried out by a representative of the Transcarpathian Law School, S. Buletsa has a scientific value, – on the issue of euthanasia in Japan and South Korea. Analyzing this experience, the author emphasizes the religious component, which does not allow to accept the active type of euthanasia at the legislative level, although the passive type of euthanasia (termination of treatment) is applied taking into account a number of requirements: incurable disease, consent of the patient, relatives or caregivers to perform the given euthanasia, which is governed by separate laws, and South Korea has a minimum age

<sup>1</sup> Dossier of the European Institute of Bioethics. Euthanasia of minors in Belgium. <<https://apmonline.org/wp-content/uploads/2019/01/belgium-en-euthanasie-minors.pdf>> (2020, January, 08).

<sup>2</sup> Борисевич, Н.М. (2008). Проблема легалізації евтаназії як законодавчого закріплення права пацієнта на гідну смерть. *Медичне право України: правовий статус пацієнтів в Україні та його законодавче забезпечення (генезис, розвиток, проблеми і перспективи вдосконалення)*: матеріали II Всеукраїнської науково-практичної конференції 17-18.04.2008, м. Львів, 35. <[http://medicallaw.org.ua/uploads/media/02\\_034\\_01.pdf](http://medicallaw.org.ua/uploads/media/02_034_01.pdf)> (2020, January, 08).

<sup>3</sup> Генрі Марш. Помирати з гідністю. <<http://journalism.ucu.edu.ua/video/9460/>> (2020, January, 08).

<sup>4</sup> Все включено. В Швейцарії за чотири тисячі євро лобого желяющего отправають на тот свет. <<https://lenta.ru/articles/2014/08/27/suicidetour/>> (2020, January, 08).

of 19 years for such a decision<sup>1</sup>.

The UK has repeatedly considered the possibility of euthanasia legalizing, but the issue was rejected by a majority of the House of Commons. The case of the European Court of Human Rights "Pritt v. The United Kingdom<sup>2</sup>," is extremely significant. In her appeal, a citizen, who is terminally ill with a degenerative disease, which deprived her of the opportunity to use her own body, requested immunity for her husband if he helped her to commit suicide. The applicant argued that Article 2 of the Convention on Human Rights "right to life" also protected the right of a person to die, which was supported by the human right to self-determination. However, the Court stated in its judgment that "Article 2 cannot be interpreted without distorting the text as conferring a diametrically opposite right, namely, the right to die; it also cannot give rise to the right to self-determination in the sense of giving a person the right to choose death rather than life."<sup>3</sup> Thus, the above mentioned decision may underlie the justification that euthanasia should be allocated to a separate type of human rights, namely the right to death, which in the future should be enshrined in the legislation of those countries that practice the use of this institute.

Today, due to religious and moral ethics, Ukrainian society is not yet ready to legalize the institute of euthanasia due to the low level of healthcare, public distrust of doctors, the possibility of a medical error and a non-satisfactory diagnostic program.

**Conclusions.** The institute of euthanasia and the main types of this procedure are analyzed. Investigating the foreign experience of countries that have envisaged in their legislation the possibility of euthanasia procedure, the emphasis is placed on the importance of its carrying out only in the case of incurable disease, accompanied by pain and suffering of the person, while medical treatment for its reduction or elimination no longer has the desired result. We believe that euthanasia for people with mental disorders who do not suffer from illnesses that bring physical pain and make it impossible for a person to function independently is unacceptable, since in our view, they contradict the main task that the investigated institute is facing and at the same time lead to a negative precedent.

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<sup>1</sup> Булеца, С.Б. (2019). Особливості евтаназії в Японії та Південній Кореї. *Порівняльно-аналітичне право*, 2, 64-69. <[http://www.pap.in.ua/2\\_2019/16.pdf](http://www.pap.in.ua/2_2019/16.pdf)> (2020, January, 08).

<sup>2</sup> Справа Європейського суду з прав людини "Прітті проти Сполученого Королівства". *Офіційний веб-сайт Верховної Ради України*. <[https://zakon.rada.gov.ua/laws/show/980\\_210](https://zakon.rada.gov.ua/laws/show/980_210)> (2020, January, 08).

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