UDC 341.231.14
DOI: 10.33270/04221201.68

# Interpretation of Euthanasia in Conditions of Conflict of Bioethical Principles

Vitaliy Yu. Seredyuk*

Ministry of Internal Affairs
01601, 10 Akademik Bohomolets Str., Kyiv, Ukraine

**Abstract**

The purpose of the research article is a theoretical and legal analysis of the issue of interpretation of euthanasia in a conflict of bioethical principles, considering philosophical, medical, biological, and legal positions. The novelty of the article is a comparative analysis of the legal regulation of euthanasia in the face of differences in bioethical principles to find optimal ways to interpret the law and apply forms of control of processes related to euthanasia. The author examines the existence of ethical grounds for the legalisation of euthanasia and interprets this phenomenon from the standpoint of the universal and objective value of human life. The ambiguity of the concept of euthanasia naturally contains a set of interrelated bioethical, medical, legal, religious aspects that cannot be considered separately. Each of them is filled with polar thoughts. Moral differences between "death with mercy" and "permission to die" are based on the principles of respect for freedom and non-harm. At the regulatory level, there are differences between the categories of "murder" and "permission to die". From a bioethical point of view, euthanasia is focused on the principle of "do not kill", which conflicts with the principles of charity, non-harm, respect for human freedom. The conflict of bioethical principles can be resolved by distinguishing between categories such as "murder" and "permission to die"; "refusal of maintenance treatment" and "discontinuation of maintenance treatment"; "direct and indirect termination of life"; "the patient's right to euthanasia" and "the right to refuse treatment and other medical intervention", etc. In Ukraine, euthanasia is prohibited by law. To legalise euthanasia in Ukraine, it is necessary to make appropriate amendments to the Constitution of Ukraine and create an appropriate regulatory framework. A recommendation is made on the expediency of forming substantive and procedural criteria at the UN and WHO levels for permitting euthanasia

**Keywords:**

interpretation of legal norms; the principle of law; euthanasia; criminal law; international law; bioethical principles; right to die

## Introduction

Technological advances in biomedical science have opened up unprecedented opportunities, which are realised with good intentions in the mystery of human existence, life, and death. Against this background, there is a tendency to devalue human life. The higher the technology, the lower the ethical values. On February 26, 2020, the Second Senate of the Constitutional Court of Germany ruled on euthanasia. This was the reason for the resumption of professional discussion on the scope of human exercise of the right to life guaranteed by article 2 of the European Convention on Human Rights [1].

At this stage, the issue of euthanasia occupies

**Article's History:**
Received: 28.08.2021
Revised: 16.01.2022
Accepted: 15.02.2022

**Suggest Citation:**

Seredyuk, V.Yu. (2022). Interpretation of euthanasia in conditions of conflict of bioethical principles. *Law Journal of the National Academy of Internal Affairs*, 12(1), 68-76.

*Corresponding author

a special place among the medical, legal, and religious problems of modern society. There is no ethical reason for "deadly tourism" and euthanasia to become the rule of law. After all, there is a universal belief that human life is the main value of modern civilisation. Euthanasia is not just a painless death, but a death that corresponds to the will of the dying person. Modern legislators are looking for the best ways to regulate and control the processes related to euthanasia.

Ethical norms regarding euthanasia have evolved from a ban to its recognition in exceptional circumstances as a patient's right to refuse medical care and the right to a dignified death. The urgency of this issue has led to two opposing views. On the one hand, euthanasia is unacceptable in terms of morality and law. On the other hand, it is simply necessary to save a person from long-lasting, unbearable moral and physical suffering. There is a conflict between the value of life and its quality, between the "best" human interests and the interests of family and society. In addition, the issue of euthanasia in medicine requires an urgent legal solution. The legalisation of euthanasia at the legislative level will deprive the state of an incentive to fund research to find effective treatments.

At the same time, the legislation of Ukraine on this issue is not being improved, the real picture is not shown against the background of changes in public opinion, considering the experience of foreign countries in legalising euthanasia. The main problem is that, even though euthanasia is prohibited by law, the Criminal Code of Ukraine[1] does not contain a special rule that provides for punishment for euthanasia. The established judicial practice of convicting persons who have committed euthanasia as a simple murder does not consider the specifics of this act and violates the fundamental principles of law – humanism, and justice.

At the present stage of development of Ukrainian legislation on fundamental human rights and freedoms, the issue of legal consolidation of the right to die and the adoption of a special law, the content of which will regulate the concept, tasks, principles, and procedures of euthanasia, is not considered at the state level. However, this issue is increasingly attracting the attention of scholars and is being studied at the doctrinal level [1, p. 18].

In international documents that contain moral and ethical norms, there is a noticeable evolution from a complete ban to the recognition of euthanasia in exceptional cases. International medical organisations (WHO, MMA), established in the 1940s in response to the inhumane medical practices of Nazi doctors and following the decisions of the Nuremberg tribunal, enshrined in their documents the requirements for the protection of human life.

In many countries, bills on the right to die are considered rather frequently, for example, the British Parliament has rejected it more than twenty times. There has long been a real "war" in the West between supporters and opponents of euthanasia. Lying in the middle, more moderate points of view suggest clarifying and limiting each of the extremes, as well as working out the details related to the control and safety of patients.

In 2019, the leaders of monotheistic religions declared the protection of life in its final stage. The Vatican Joint Declaration states that no health worker can be coerced or pressured to directly or indirectly contribute to the intentional death of a patient through suicide or any form of euthanasia, especially if it is contrary to religious beliefs. The signatories of the document stressed the need to respect conscientious objection against actions that are contrary to human ethical values. This also applies to those actions that have been recognised as legal by the local legal system or by certain groups of citizens. Personal beliefs about life and death, of course, belong to the category of conscientious objection, which everyone should respect [2].

Some aspects of legal and bioethical regulation of euthanasia were covered in the publications of E. Lukash and A. Mernik [1], O. Drozdov and O. Drozdova [2], V. Aryadoust [3], I. Onyshchuk [4; 5], S. Dierickx, L. Deliens, and J. Cohen [6], K. Koyan [7], M. Aryaev, V. Zaporozhyan [8], V. Morozov and A. Popova [9], M. Antonenko [10], and others.

The problem of euthanasia is one of the few studied, as evidenced by the lack of special monographic studies that would fully and objectively cover the legal aspect of euthanasia. The available legal literature to some extent touches on this issue, but quite fragmentary because only some areas of the issue are revealed. That is why it is difficult to use the findings in the legal field. Thus, *the purpose of the study* is a theoretical and legal analysis of the issue of legal regulation in combination with bioethical principles of euthanasia, moral norms, and considering philosophical, moral and ethical, and medical and biological positions. The development of this issue is important for the further development of medical law.

## Materials and Methods

The empirical basis of the study was the results of the analysis of the Constitution of Ukraine and current legislation on health care, international legal acts, a handbook on the application of article 2 of the European Convention on Human Rights, the Declaration on Euthanasia, the Lisbon Declaration on Patient Rights, legal literature and research, comments, etc. To rethink the unique combination of legal and bioethical aspects for the legal protection of life, as well as the interpretation of euthanasia, several research methods were used. The research methodology covers general scientific means: analysis and synthesis, induction and deduction, analogy,

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

comparisons, which are developed by logic and used to solve clearly defined cognitive problems.

To clarify the content of certain scientific concepts of understanding euthanasia, the formal-logical method is used as a set of means and methods of logical study of law. It is based on the concepts, categories, rules, and laws of formal logic. Here, the law is not associated with other social phenomena (culture, religion, morality, etc.) and economics. In this situation, the researcher abstracts, for example, from the issues of the subjects of law enforcement, its effectiveness, and so on. The methodological basis for the study of legal regulations and bioethical principles of euthanasia was the method of legal science as a system of means of knowledge of the law, which consists of the following subsystems: philosophical means; general scientific means; special legal means; research methods and techniques.

The study of theoretical and practical principles of euthanasia was accompanied by the application of several leading approaches. The main methodological approach, combining various aspects of the issue, is activity (to reveal the dependencies of research on the subjects, means, forms, and conditions of their implementation), with its focus on the organic unity of ideal and material factors, subjective and active components of euthanasia.

The principles of complexity and interdisciplinary consider the complex social phenomenon of euthanasia and the functional relationship of legal regulation of euthanasia with bioethical principles that conflict with each other. An inseparable approach to the study of this issue has become scientific, which is characterised by a scientific statement of the purpose of the study and the use of scientific apparatus in its conduct. The scientific approach ensures the implementation of such requirements as objectivity, provability, accuracy, criticality, focus on adequate assessment of the law, and so on. If everyday knowledge is mostly a statement of phenomena, external relations, and relations, then the science is focused on the study of patterns, the search for new, hence its high explanatory and predictive ability, as well as its systematic organisation of one of the innovative fundamental approaches – system and its method. Systems analysis, which is considered an effective method of studying legal objects and processes.

A positivist approach to the study, aimed at identifying, measuring, and evaluating the phenomenon of euthanasia from a legal perspective and providing a rational explanation, was implemented. It was used to try to establish causal links and relationships between different elements of the subject of study (detection of multiple interpretations, contradictions between bioethical principles, and legal norms of different regulations). Using a compressive (comprehensive) approach, they search for an understanding of the relationship between rational and irrational components, in particular the perception of the studied issues using lexical mechanisms and phonological elements [3, p. 3].

The research methodology also uses a phenomenological approach. This is a research approach from the standpoint that human behavior is not as easy to measure as a phenomenon in the natural sciences. A person's motivation for euthanasia, as well as the legal regulation of the final phase of human life, are formed by factors that are not always noticeable, at least the internal mental processes. In addition, people invest their meanings, which do not always coincide with how others interpret them.

According to the sociological approach, the legal regulation of euthanasia is interpreted as an endowed element of the social system, rather than as a phenomenon. This approach allows considering modern social influences on the formation of legal norms and at the same time to abstract from non-social causal influences of transcendental, cosmic, anthropological nature. The synergetic approach involves the study of the processes of organisation of the assessment of the legal regulation of euthanasia and the development of forecasts on the consequences of the adoption of regulations in the field of biomedicine.

## Results and Discussion

The idea of euthanasia originated a long time ago and has undergone a complex process of formation from ancient society to the present day. From the time of Hippocrates to the present day, traditional medical ethics have prohibited anyone, even those who ask from doing so, from giving death-giving drugs or advising them to do so.

The term *"euthanasia"* comes from the Greek words: "*ev"* – good, good, and *"Thanatos"*, which means death. Hence, euthanasia means good death. This term was introduced into scientific usage by the English philosopher Francis Bacon in the XVI century. In his work "On the dignity and multiplication of sciences" F. Bacon wrote: "I am convinced that the duty of the doctor is not only to alleviate the suffering and torment caused by disease, and not only when such pain relief as a dangerous symptom of the disease can lead to recovery, but even in the case when there is absolutely no hope of salvation, and you can only make death easier and calmer ... ". At present, there are different approaches in the legal literature to the definition of the term "euthanasia". Speaking of euthanasia as a criminal act, it is essential to distinguish the definition of euthanasia between medical, philosophical, and legal approaches [1, p. 142].

Doctors are willing to resort to this practice, especially when the patient himself asks for death. How should we treat this trend? How about liberation from outdated prohibitions or about some permissiveness, which is both morally incorrect and dangerous in practice? At the beginning of the last century, lawyer Binding and psychiatrist Grohe proposed to call euthanasia the destruction of so-called "*inferior"* lives.

This interpretation of the term "*euthanasia"* later

became widespread in the countries occupied by Nazi Germany. Newborns with "*abnormal development*", the mentally ill, patients with tuberculosis or malignant neoplasms, the disabled, and the elderly were killed. A special killing industry in the form of gas chambers, killers, crematoria, etc. was created. The International Military Tribunal in Nuremberg described these actions as crimes against humanity, which marked the beginning of codification in the field of crimes against humanism. One of the most important documents in international law was the Declaration on Euthanasia, adopted by the 39th World Medical Assembly *(Madrid, October 1987)*, which states: "At the request of his loved ones, unethical. This does not exclude the need for a respectful attitude of the doctor to the patient's desire not to interfere with the natural process of dying in the terminal phase of the disease" [2, p. 81].

Legislative regulation of the right to dispose of the right to life is directly related to the problem of euthanasia. For two or even three decades, disputes between lawyers, physicians, sociologists, and philosophers have not subsided about euthanasia, that is, the cause of a person's death at his or her request. Now the interest in this concern has grown significantly. It is also advisable to evaluate the legal regulation of euthanasia, which is closely linked to examinations and monitoring. In some projects, evaluation integrates legal control, monitoring, and expertise. In others, legal control and monitoring may use legal regulation assessment as a tool or form. Thus, evaluation procedures are added: public consultations and independent examinations [4, p. 442].

For example, in Belgium, euthanasia became legal in 2002. In the same year, a law on palliative care was adopted, which regulated the basic rights of the patient and formulated measures to improve the provision and access to palliative care services. In Belgium, the possibility of euthanasia can be used not only by people with a terminal condition, but also people with a chronic non-terminal disorder who are also entitled to euthanasia, but these requests must meet additional legal requirements. A 1-month waiting period between the request for euthanasia and the performance of euthanasia. For people who request euthanasia due to a terminal disorder, there is no waiting period [6, p. 115].

At the level of current Ukrainian legislation, euthanasia is prohibited: article 3; 27 of the Constitution of Ukraine[1] (a person, his life and health, honor and dignity, inviolability and security are the highest social value; everyone has the inalienable right to life; no one can be arbitrarily deprived of life); item 8 of article 52 Fundamentals of the legislation of Ukraine on health care (medical workers are prohibited from intentionally accelerating the death or killing of a terminally ill patient to end his suffering)[2]; item 2 of article 52 Fundamentals of the legislation of Ukraine on health care (medical workers are obliged to provide full medical care to a patient who is in an emergency); item 4 of article 28 of the Civil Code of Ukraine (prohibition to satisfy the request of an individual to terminate his life)[3]; part 1 of article 115 of the Criminal Code of Ukraine (commission of euthanasia is considered premeditated murder).

During the preparation of the Civil Code of Ukraine in 2003, there were attempts to legalise voluntary passive euthanasia, but such a rule did not fall into the current Civil Code of Ukraine [1, p. 17]. It is important to distinguish between euthanasia and concepts such as suicide with medical assistance, patient refusal of treatment as a form of passive euthanasia, killing disabled children by not helping them, and turning off the equipment when cerebral death is recorded [7]. In post-war Europe, euthanasia (active) was first legalised in the Netherlands in 2001. The list of countries in which euthanasia is legally allowed at this stage is quite large: Belgium, Luxembourg, Switzerland, Austria, France, Sweden, Germany, some US states (Montana, Washington). There is a tendency for it to grow. The most famous Dignitas clinic was opened in Switzerland in 1998 and today has offices in other countries. Today there is such a kind of medical tourism as "*euthanasia tourism*" [11, p. 4].

However, revolutionary changes in medical practice and science in the last third of the XX century, combined with powerful social movements to protect the rights of various social groups, stimulated the adjustment of ethical documents, and in the direction of recognising the patient's right to a dignified death. The Lisbon Declaration on the Rights of the Patient (1981)[4] recognises in exceptional cases, per the will of the patient, his right to a dignified death in the form of refusal of treatment. The Declaration on Euthanasia (1987) [12] treats euthanasia as unethical, but at the same time requires the doctor to "*respect the patient's desire not to interfere with the process of natural death".* The "Statement of Assistance to Physicians in Suicide" (1992) [11, p. 417] highlights this phenomenon as unethical and condemns suicide with the assistance of a physician, however, the physician must respect the patient's right to refuse medical care, even if the refusal leads to the death of the patient [11, p. 5].

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2]Law of Ukraine No. 2801-XII "Fundamentals of Ukrainian Legislation on Health Care". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text.
[3]Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15/ru/ed20131011#Text.
[4]WMA Declaration of Lisbon Declaration on the Rights of the Patient. (October, 1981). Retrieved from https://www.wma.net/wp-content/uploads/2005/09/Declaration-of-Lisbon-2005.pdf.

Particular attention should be paid to the differences in the legislative definition of the way patients express their demands or consent to the application of the act of euthanasia. Thus, the Polish Criminal Code[1] refers to a "*requirement*"; in the German Criminal Code[2] – on the "*categorical and persistent request of the victim*"; in the Swiss Criminal Code[3] – on the "serious and persistent requirement"; The Spanish Penal Code[4] describes the request as "*persistent, serious and clear*"; the Peruvian Penal Code[5] emphasises that the request must be "*explicit*"; the Criminal Code of Georgia[6] emphasises the need to meet the requirements of the patient "*his true will*" [9, p. 54].

The authors believe that such careful wording is designed to exclude the possibility of both falsifications of the will of the victim and the use of the perpetrator's ill-considered, hasty statement made by the victim in a state of frustration. The criminal law of the vast majority of foreign countries in the rules on liability for euthanasia does not consider its form, which occurs, although for reasons of sympathy, but without the request or consent of the victim. The only exception is the Criminal Code of Colombia[7], wherein article 326 "Murder out of compassion" does not mention the need for a request from the victim.

Meanwhile, in our time, the manifestation of this form of euthanasia is not uncommon. It is possible to maintain the patient's life for years in modern clinics, even with complete attenuation of brain functions. Because of this, doctors on their initiative or at the request of close relatives of such patients are sometimes forced to turn off the means of supporting the patient's life, to carry out passive euthanasia.

In some countries, the responsibility for the passive form of euthanasia is much stricter than for its active form. Thus, for assisting in suicide (passive euthanasia) the perpetrator faces: in Peru – up to four years in prison; in Italy – up to twelve years; in Portugal – up to three years; in Spain – up to five years; in Colombia and Brazil – up to six years; in Venezuela and the Republic of Korea – up to ten years; in Canada, up to fourteen years in prison.

The exception is the Polish legislation, which in some cases leaves the question of the punishment for euthanasia to the discretion of the law enforcer. Yes, according to article 150 of the Polish Criminal Code, "a person who kills a person at his request and under the influence of compassion for him shall be punishable by imprisonment for a term of three months to five years, but in exceptional cases, the court may apply extraordinary mitigation and even to refuse its execution". This brief analysis of the legislative experience of foreign countries in establishing responsibility for euthanasia shows that in the vast majority of them any form of euthanasia qualifies as a crime. However, unlike Ukraine, the legislators of the vast majority of countries have included in their criminal codes special privileged rules on liability for the analysed act [9, p. 54-55].

Such a ban has made the right to life an obligation for many terminally ill people to live or, moreover, to be "*human in general*". However, a person must have a choice, and this choice can become a legalised euthanasia procedure for him. Regarding the legalisation of euthanasia, the main problem is the need to develop a legal procedure for its implementation. In addition, it should be borne in mind that a serious alternative to euthanasia is a network of medical institutions that specialise in providing care to dying patients, the so-called "*hospices*", which also require special attention and a certain legal framework [7].

M. Antonenko singled out the features of euthanasia as a kind of compassion murder, which are as follows: a) the object of encroachment are social relations directly related to the life of a terminally ill person; b) the objective side of euthanasia is expressed in non-violent action (inaction), the consequence of which is the death of a terminally ill person and the causal link between them; c)the subject of this crime is a person aware of the disease, a family member of the patient or a medical worker; d) the subjective side of euthanasia is expressed in the direct intent to take the life of a terminally ill person at his voluntary request; e) the main motive is compassion; e) the goal is to rid a terminally ill person of unbearable physical suffering caused by an existing disease [10, p. 199].

There are differences in the current legislation of Ukraine regarding euthanasia. Thus, according to Article 34 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care"[8], the doctor is not responsible for the health of the patient in case of refusal of the latter from medical prescriptions or violation by the patient of the established regime. According to Article 43 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care"[9] a patient who has

[1]Criminal Procedure Code of the Republic of Poland. (1997, June). Retrieved from https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997_am%202003_en.pdf.
[2]German Criminal Code. (1998, November). Retrieved from https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.pdf.
[3]Swiss Criminal Code. (1937, December). Retrieved from https://www.legislationline.org/download/id/8991/file/SWITZ_Criminal%20Code_as%20of%202020-07-01.pdf.
[4]Criminal Code of Spain. (1995. November). Retrieved from https://www.legislationline.org/download/id/6443/file/Spain_CC_am2013_en.pdf.
[5]Peruvian Penal Code. (1991, April). Retrieved from https://www.legal-atlas.net/sites/default/files/law/Peru_CriminalCode_1991.pdf.
[6]Criminal Code of Georgia. (1999, July). Retrieved from https://matsne.gov.ge/en/document/view/16426.
[7]Criminal Code of Colombia. (2000, July). Retrieved from https://biblioteca.cejamericas.org/bitstream/handle/2015/4225/pen_colombia.pdf?sequence=1&isAllowed=y.
[8]Law of Ukraine No. 2801-XII "Fundamentals of Ukrainian Legislation on Health Care". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text.
[9]*Ibidem*, 1992.

acquired full civil capacity and is aware of the importance of their actions and can manage them, has the right to refuse treatment. These articles contain signs of passive euthanasia. The doctor is not responsible because no one can force a person to be treated if he or she does not want to. The question arises about a patient who is in a "*chronic autonomic state*" and is usually considered alive only from a biological standpoint. How to treat a person who has ceased to be a person, permanently lost consciousness? Is it necessary to continue to make every effort to save lives? Maybe it is advisable to limit the care, that is, "allow" to die?

According to C. Culver and B. Gert, an organism that has ceased to be a person should not "require" treatment as a person. This means that persistent, sustained efforts should not be made to sustain life in such patients, as such efforts are not justified from an economic or humanitarian perspective. On the other hand, one cannot expect anyone to actively take the life of such a patient. An acceptable way out of this situation is to stop providing care, which includes both medical care and routine care, which "allows" the patient to die. It should be noted that such a patient does not suffer from failure to provide care because he is no longer a person, irreversibly lost consciousness [8, p. 238].

On October 28, 2019, in the Vatican, representatives of the monotheistic Abrahamic religions signed a joint declaration on the end of life. The document states that euthanasia and suicide during medical care are morally and religiously erroneous and should be prohibited without exception. No healthcare worker should be coerced or pressured to participate directly or indirectly in the voluntary and intentional death of a patient [13].

The European Court of Human Rights conditionally divides the issues related to the termination of life into 2 groups: euthanasia itself and cessation of treatment that supports vital functions. The Court considers that it is not possible to deduce from article 2 of the European Convention on Human Rights the right to die both at the hands of a third party and with the assistance of a public authority. In all the cases before it, the Court emphasised the State's obligation to protect life *(Pretty v. The United Kingdom, § 39*).

The ECHR considers that in matters concerning the end of life as well as the beginning of life, States should be allowed to consider not only the authorisation or prohibition of discontinuation of life-sustaining treatment and related formalities but also how the protection of the patient's right to life is balanced. And the right to respect for his private life and personal autonomy. At the same time, the Court emphasised that this discretion was not unlimited and that it reserved the possibility of monitoring the State's compliance with its obligations under Article 2 (§§ 147-148) [14, p. 17].

The ECHR considers that it is impossible to deduce from Article 2 of the Convention the right to die both at the hands of a third party and with the assistance of a public authority. In all the cases before it, the Court emphasised the State's obligation to protect life *(Pretty v. The United Kingdom, § 39)*. In a recent case concerning a refusal by the authorities to grant access to drugs that would allow a mentally ill patient to commit suicide, the Court, recalling that the Convention should be read as a whole, decided to consider an application under Article 8 referring to Article 2. The Court has ruled that the latter legal provision obliges the public authorities to prevent a person from shortening his or her life if the decision was not taken voluntarily and with full knowledge of the case *(Haas v. Switzerland, § 54)* [14, p. 17].

When the ECHR is to investigate the provision or termination of medical care, it shall consider the following factors: the existence in domestic law and practice of a regulatory framework following article 2; taking into account the wishes previously expressed by the applicant and his relatives, as well as the opinions of other health professionals; and the possibility of a judicial appeal in case of doubt as to the optimal decision to be taken in the interests of the patient *(Gard and others v. the United Kingdom (dec.), § 83)* [14, p. 17].

According to I. Onyshchuk, to clarify the problems that have arisen today in the field of biomedicine, "it is necessary to use moral criteria and a correct understanding of the nature of the human person in his bodily dimension. Only in harmony with his true nature can the human person achieve self-realisation as a "whole": and this nature is both corporeal and spiritual. Given the substantial unity with the intangible soul, the human body cannot be interpreted as a simple set of tissues, organs, and functions, or regarded at the same level as the body of animals. Rather, it is a part of the person through which it manifests and expresses itself" [5, p. 70].

Deprivation of life (murder, suicide) is a criminal offense and any discussion on the legalisation of euthanasia has no legal basis. Life is not subject to legal regulation. This is an object that needs to be protected by both the law and the media [15].

The issue of multiple interpretations of euthanasia and the conflict of bioethical principles can be resolved by distinguishing between categories such as "*murder"* and *"permission to die*"; "*refusal of maintenance treatment"* and "*termination of maintenance treatment"*; "*direct and indirect termination of life"*; "*the patient's right to euthanasia"* and "*the right to refuse treatment and other medical intervention*", etc. The stability of the legal positions of the highest judicial body is of great importance for the elimination of the phenomenon of multiple interpretations (misinterpretation). Often the highest judicial body of the state causes legal uncertainty due to the formation of contradictory positions and different interpretations.

To legalise euthanasia in Ukraine, it is necessary to amend the Constitution of Ukraine[1] and create an appropriate legal framework in which the basic definitions

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

of the terms of the institution of euthanasia will be formed, the legal status of subjects, and the procedure for its implementation. Particular attention should be paid to the development of substantive and procedural criteria for authorising euthanasia, as well as to the study and use of experience, for example, in the Netherlands and Belgium, which have already legalised it. It also seems appropriate to develop a unified legal model on euthanasia at the UN and WHO levels to implement it in national legal systems.

## Conclusions

In Ukraine, euthanasia is prohibited by law. Before allowing it, there is a need to have a high moral society in which the laws are enforced. Due to neutral public opinion, Christian traditions, and the moral principles of doctors, the problem of euthanasia in Ukraine is not as acute as in the West. At this stage, it can be noted that Ukraine today is not ready for any step in this direction. The main reason for the multiple interpretations of euthanasia is the ambiguity of this concept, which naturally contains a set of interrelated bioethical, medical, legal, religious aspects that cannot be considered separately. Each of them is filled with contradictory thoughts. Probably, all this affects the impossibility to make an unambiguous decision on euthanasia. Moral differences between "*death by mercy"* and "*permission to die"* are based on the principles of respect for autonomy and non-harm. The legal consciousness of the patient, who defends the right to a dignified death, contradicts the right of the doctor not only to adhere to the professional principle of *"non-harm"* but also to fulfill the commandment – "*do not kill"*. However, the involvement of medical workers in active murder will harm their moral status. In addition, at the regulatory level, there are differences between the categories of "*murder"* and "*permission to die"*.

From a bioethical perspective, euthanasia is focused on the principle of "*do not kill"*, which conflicts with the principles of charity, non-harm, respect for human freedom. The main ethical conflict is the development of a treatment procedure for a patient who is in a critical or terminal condition, however, according to the legal definition of death, he is still alive. In addition, the existence of the institution of euthanasia will not be able to guarantee the integrity of this specific procedure. A specially created body should supervise, and this will be accompanied by significant financial costs.

The ECHR interprets the issue of termination of life in such a way that it is impossible to derive the right to die both at the hands of a third party and with the help of a state body. Emphasis is placed on the obligation of the state to protect life and, if necessary, to prevent a person from shortening his or her life if this decision has not been taken voluntarily and with full awareness of the case. Concerning the provision or termination of medical care, the ECHR examines the existence in Ukrainian law and practice of the legal framework by article 2 of the European Convention on Human Rights, as well as whether the previous wishes of the applicant and his relatives have been considered. The views of health professionals are also taken into account.

## References


[1] Mernik, A.M., & Lukash, E.Yu. (2019). Legalisation of the institute of euthanasia in Ukraine: Theoretical and legal approach. *Legal Scientific Electronic Journal*, 3, 15-18.

[2] Drozdov, O., & Drozdova, O. (2020). Euthanasia in the legal dimension: Does a person have the right to self-determination through death*. The Practice of the ECtHR. Ukrainian Aspect*. Retrieved from https://www.echr.com.ua/evtanaziya-u-pravovomu-vimiri-chi-maye-lyudina-pravo-na-samoviznachennya-shlyaxom-smerti/.

[3] Aryadoust, V. (2017). An integrated cognitive theory of comprehension. *International Journal of Listening*, 33(2), 71-100. doi: 10.1080/10904018.2017.1397519.

[4] Onyshchuk, I.I., Onyshchuk, S.V., & Rudenko, O.M. (2020). Conceptual basis of legal monitoring implementation in the system of public administration*. Journal of History Culture and Art Research*, 9(1), 345-353. doi: 10.7596/taksad.v9i1.2547.

[5] Onyshchuk, I.I. (2021). Correlation of norms of international law and biomedical ethics as a system of regulation of public relations. *The Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, 2, 66-73. doi: 10.32886/instzak. 2021.02.07.

[6] Dierickx, S., Deliens, L. Cohen, J., & Chambaere, K. (2018). Involvement of palliative care in euthanasia practice in a context of legalised euthanasia: A population-based mortality follow-back study. *Palliative Medicine*, 32(1), 114-122. doi: 10.1177/0269216317727158.

[7] Koyan, K.V. (2010). Problems of legal regulation of euthanasia. In G.A. Shumak et al. (Eds.), *Legal support of innovative development of society and the state: Materials of the international scientific conf. students, undergraduates and graduate students* (pp. 86-87). Minsk: BSU.

[8] Zaporozhyan, V.M., & Aryaev, M.L. (2013). *Bioethics and biosafety*. Kyiv: Health.

[9] Morozov, V.I., & Popova, A.S. (2014). Legal regulation of euthanasia: What should be Russia's position? *Legal Science and Law Enforcement Practice*, 1(27), 47-57.

[10] Antonenko, M.M. (2018). *Euthanasia as a form of murder in Russian criminal law.* (Doctoral dissertation, Immanuel Kant Baltic Federal University, Kaliningrad, Russian Federation).

[11] Life as a value. The problem of euthanasia and the ethics of palliative care. (2015). Retrieved from https://studfile.net/preview/13472052/.
[12] Hamer, J.J. (1980). *Sacred Congregation for the doctrine of the faith. Declaration on euthanasia*. Retrieved from http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19800505_euthanasia_en.html.
[13] In the Vatican, representatives of Judaism, Christianity, and Islam signed a declaration against euthanasia. (2019). Retrieved from https://lb.ua/society/2019/10/29/440968_vatikane_predstaviteli_treh.html.
[14] Council of Europe. European Court of Human Rights. (2018). *Handbook on the application of Article 2 of the European Convention on Human Rights*. Retrieved from https://www.echr.coe.int/Documents/Guide_Art_2_UKR.pdf.
[15] Chekhovska, I.V., Balynska, O.M., Blahuta, R.I., Sereda, V.V., & Mosondz, S.O. (2019). Euthanasia or palliative care: Legal principles of the implementation in the context of the realization of human rights to life. *Wiadomości Lekarskie*, LXXII(4), 677-681. doi: 10.36740/wlek201904133.

## Список використаних джерел

[1] Мерник А.М., Лукаш Є.Ю. Легалізація інституту евтаназії в Україні: теоретико-правовий підхід. *Юридичний науковий електронний журнал*. 2019. № 3. С. 15–18.
[2] Дроздов О., Дроздова О. Евтаназія у правовому вимірі: чи має людина право на самовизначення шляхом смерті. *Практика ЄСПЛ. Український аспект*. URL: https://www.echr.com.ua/evtanaziya-u-pravovomu-vimiri-chi-maye-lyudina-pravo-na-samoviznachennya-shlyaxom-smerti/ (дата звернення: 17.01.2022).
[3] Aryadoust V. An integrated cognitive theory of comprehension. *International Journal of Listening*, 2017. Vol. 33, No. 2. P. 71–100. doi: 10.1080/10904018.2017.1397519.
[4] Onyshchuk I.I., Onyshchuk S.V., Rudenko O.M. Conceptual basis of legal monitoring implementation in the system of public administration. *Journal of History Culture and Art Research*, 2020. No. 9(1). P. 345–353. doi: 10.7596/taksad.v9i1.2547.
[5] Онищук І.І. Співвідношення норм міжнародного права і біомедичної етики як систем регулювання суспільних відносин. *Наукові записки Інституту законодавства Верховної Ради України*. 2021. № 2. С. 66–73. doi: 10.32886/instzak.2021.02.07.
[6] Dierickx S., Deliens L. Cohen J., Chambaere K. Involvement of palliative care in euthanasia practice in a context of legalised euthanasia: A population-based mortality follow-back study. *Palliative Medicine*. 2018. Vol. 32, No. 1. P. 114–122. doi: 10.1177/0269216317727158.
[7] Коян К.В. Проблемы правового регулирования эвтаназии. *Правовое обеспечение инновационного развития общества и государства*: материалы междунар. науч. конф. студентов, магистрантов и аспирантов / редкол.: Г.А. Шумак и др. (г. Минск, 29–30 окт. 2010 г.). Минск: БГУ, 2011. С. 86–87.
[8] Запорожан В.М., Аряєв М.Л. Біоетика та біобезпека: підручник. Київ: Здоров'я, 2013. 456 с.
[9] Морозов В.И., Попова А.С. Правовое регулирование эвтаназии: какой должна быть позиция России? *Юридическая наука и правоохранительная практика*. 2014. № 1(27). С. 47–57.
[10] Антоненко М.М. Евтаназия как разновидность убийства в уголовном праве России: дисс. … канд. юрид. наук: 12.00.08. Калининград, 2018. 253 с.
[11] Жизнь как ценность. Проблема эвтаназии и этика паллиативной помощи. Ингушский государственный университет. 2021. URL: https://studfile.net/preview/13472052/ (дата обращения: 17.01.2022).
[12] Hamer J.J. Sacred congregation for the doctrine of the faith. Declaration on euthanasia. URL: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19800505_euthanasia_en.html (accessed date: 17.01.2022).
[13] У Ватикані представники іудаїзму, християнства та ісламу підписали декларацію проти евтаназії. 2019. URL: https://lb.ua/society/2019/10/29/440968_vatikane_predstaviteli_treh.html (дата звернення: 17.01.2022).
[14] Довідник із застосування статті 2 Європейської конвенції з прав людини. Рада Європи. Європейський суд з прав людини, 2018. URL: https://www.echr.coe.int/Documents/Guide_Art_2_UKR.pdf (дата звернення: 17.01.2022).
[15] Euthanasia or palliative care: legal principles of the implementation in the context of the realization of human rights to life / I.V. Chekhovska et al. *Wiadomości Lekarskie*. 2019. №LXXII (4). P. 677–681. doi: 10.36740/wlek201904133.

# Тлумачення евтаназії в умовах конфлікту біоетичних принципів

Віталій Юрійович Середюк

Міністерство внутрішніх справ України
01601, вул. Академіка Богомольця, 10, м. Київ, Україна

**Анотація**
Метою статті є теоретико-правовий аналіз питання про тлумачення евтаназії в контексті конфлікту біоетичних принципів з урахуванням філософських, медико-біологічних і правових позицій. Новизна статті полягає в порівняльному аналізі нормативно-правового регулювання евтаназії в умовах розбіжностей біоетичних принципів з метою віднайдення оптимальних способів тлумачення норм права та застосування форм контролю процесів, пов'язаних з евтаназією. Досліджено питання щодо етичних підстав для легалізації евтаназії, розкрито її сутність з позиції універсальної та об'єктивної цінності людського життя. Неоднозначність поняття евтаназії закономірно містить комплекс взаємопов'язаних біоетичних, медичних, правових, релігійних аспектів, які неможливо розглядати окремо. Кожен з них означений полярними думками. Моральні розбіжності між «смертю з милосердя» й «дозволом умерти» аргументовано з огляду на принципи незаподіяння шкоди та поваги до свободи. На рівні нормативно-правового регулювання наявні розбіжності між категоріями «вбивство» та «дозвіл на смерть». З біоетичної точки зору евтаназія орієнтована на принцип «не убий», який суперечить принципам доброчинності, незаподіяння шкоди, поваги до свободи людини. Конфлікт біоетичних принципів можна усунути шляхом розмежування таких категорій, як «вбивство» та «дозвіл на смерть»; «відмова від підтримувального лікування» та «припинення підтримувального лікування»; «пряме припинення життя» та «непряме припинення життя»; «право пацієнта на евтаназію» і «право на відмову від лікування та іншого медичного втручання» тощо. Закріплення евтаназії на законодавчому рівні передбачає внесення відповідних змін до Конституції України та створення відповідної нормативно-правової бази. Доведено доцільність формування матеріальних і процесуальних критеріїв на рівні ООН і ВООЗ для дозволу на здійснення евтаназії

**Ключові слова:**
тлумачення норм права; принцип права; евтаназія; кримінальне законодавство; міжнародне право; біоетичні принципи; право на смерть