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# Legal regulation of the use of euthanasia: Foreign experience and Ukrainian realities

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## Abstract

The purpose of the study is to analyse the legal regulation of the use of euthanasia in foreign countries and to outline the prospects for the introduction of euthanasia in Ukraine. In the furtherance of this goal, it was necessary to perform the following tasks: to find out the content of the concept of euthanasia, to determine the constitutional basis for its introduction in foreign countries; to characterise the legal mechanisms for the introduction of euthanasia. The methodological basis of the research was a set of general scientific and special methods, and their complex application was aimed at achieving the goal and fulfilling the tasks of research. Constitutional and legal regulation of the use of euthanasia has also become the object of contemporary research in Ukraine. Defining in this paper is the comparative legal method, which allowed comparing approaches to the use of euthanasia in different countries. The forecasting determined the possible consequences of the use of euthanasia in Ukraine. Scientific originality consists in forming on the basis of studying the content of the concept of "euthanasia", analysing and systematising the views of opponents and supporters of legalising euthanasia the position that the introduction of euthanasia is not a component of the right to life, but, on the contrary, is a violation of this right and denies the idea that human life is the highest social value. In the context of legal regulation of euthanasia, it should be clearly defined that the state encourages the termination of a person's life at will, and therefore departs from the postulate that a person's life is the highest value. The trend towards legalising euthanasia is observed in states with high living standards. It is probably related to circumstances that are outside the scope of legal science, so there is an urgent need to consider such processes by psychiatry, psychology, and sociology. In states that have legalised euthanasia, there are many problems, including cases of abuse by medical personnel, pressure from relatives of patients pursuing illegal interests, the relativity of doctors' conclusions about the condition of a sick person, and the inability to adequately assess what is happening to patients in serious condition. In connection with the above, the study suggests that legal regulation, including at the level of international legal standards, should address issues related to the use of artificial maintenance of human life, so there is a need to develop its procedure, conditions for application, start and termination. The issue of euthanasia as the termination of a person's life at their request due to illness, old age or due to a person's self-perception should be reviewed, and a number of states where it is legalised can already analyse the consequences of such a decision. It should also be borne in mind that the absolute inadmissibility of euthanasia in Ukraine does not solve issues related to the suffering of terminally ill people. Therefore, the study of this topic is important for Ukraine

**Keywords:** euthanasia; legalisation of euthanasia; forms of euthanasia; palliative care; "right to die"; active euthanasia; passive euthanasia

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## Introduction

In the context of the liberalisation of the world, and in connection with the rapid pace of technological development, the issue of euthanasia and granting a person the “right to die” as an integral element of the right to life is becoming increasingly relevant. At one time, in 1991, American doctor J. Kevorkian was deprived of his license to practice medicine for developing the Mercitron device to perform euthanasia, and subsequently, his case was heard four times in court; nowadays, more than a dozen countries have consolidated the possibility of euthanasia procedure in a certain form at the legislative level.

At the same time, most countries traditionally oppose euthanasia, arguing for a variety of reasons. Ukraine also belongs to the list of countries where euthanasia is prohibited by law. However, as a member of the international community, it cannot ignore global trends in which disputes continue over the feasibility of legalising the “right to death”. Despite the fact that the ideas of legalising euthanasia are spreading around the world, there is no unambiguity about this issue. Thus, scientists, philosophers, and lawyers were divided into supporters and opponents of euthanasia. Despite this, the problem of legalising euthanasia remains insufficiently investigated, which determines the relevance of the study.

The purpose of the study is to analyse the views of scientists on the problems of life and death, to investigate the experience of legal regulation of euthanasia in foreign countries, to identify its general patterns and determine the possibility of using it in modern conditions in Ukraine.

In order to reach the objective, the following tasks need to be solved:

- consider the theoretical and legal aspect of understanding the concept of euthanasia;
- investigate the legal aspects and experience of foreign countries that have legalised this procedure;
- analyse the negative and positive consequences of legalising the “right to death” for Ukraine.

Aspects of the elements of the human right to life were studied by A. Kolodiy [1], M. Maleina [2], Yu. Todyka [3]. Many researchers have considered the right to life in the aspect of the death penalty. There is a growing body of work that treats the right to death as an implementation of the right to life. This aspect and the issue of euthanasia were analysed by O. Dombrovska [4], M. Kovaleva [5] et al.

The fundamental human right, according to Article 27 of the Constitution of Ukraine, is the right to life, which guarantees the inviolability of its physical existence. According to Article 3 of the Basic Law, a person, their life and health, honour and dignity, inviolability and security are recognised as the highest social value [6].

There is still a discussion about the moment of the beginning of a person's life, but it is mainly in the legal and political planes. In Particular, A. Dzhuska and

A. Paliukh, exploring the current approach to the constitutional human right to life, consider suicide, euthanasia, and abortion to be problematic issues related to the human right to life. Researchers note that a person has the opportunity to manage their life at their own discretion, first of all, to use all legitimate means and resources for the prevention of premature mortality, etc. [7].

In turn, the official website of Princeton University published the conclusions of scientific research on the beginning of human life: “Life begins with conception. A new human embryo, the starting point of human life, appears with the formation of a single-celled zygote” [8].

The issue of the beginning of a person's life is important, and it can be stated that in different legal relations, in different branches of law, different approaches to solving this issue have developed. One important aspect is that the issue of the legality and permissibility of abortion has long been relevant, but there is no unified approach at the international level. Abortion advocates simply ignore the conclusions of researchers regarding the fact that a person's life begins with conception. This is only indirectly related to the subject of this study, but it is also significant.

Medicine in the world has made significant progress, so now there are real ways and means of intervening in the processes of conceiving a child, and the possibility of artificially maintaining human life.

However, the primary task of medical professionals to preserve a person's life and maintain their health loses its meaning with the advent of auxiliary medical technologies that help a person pass away, thereby levelling the main tasks of the doctor.

The problem of euthanasia, which has become increasingly common in European countries in recent years, is also finding supporters in Ukraine. However, this problem requires a detailed analysis, since the possibility of euthanasia is on the verge of morally permissible and has a deep spiritual component both for each individual and for the people as a whole.

The subject of the right to life is a person, a person who naturally, that is, through birth, acquires this right. Euthanasia is the practice of stopping the life of a person who has an incurable disease by a doctor to satisfy their request in a painless or minimally painful form to stop suffering.

Despite the fact that theoretical research on the right to life is carried out in Ukraine, there are many issues related to the implementation of this right that require detailed legal regulation. In particular, they include the problems of legal boundaries of life, the definition of new elements of crimes related to the abuse of modern medicine and the use of euthanasia [6].

## Presentation of Main Material

The term “euthanasia” (from the Greek “eu” – “good” + “thanatos” – “death”), which literally means “a good, easy death” was proposed in the 16<sup>th</sup> century by the

English philosopher F. Bacon, who, discussing the purpose and objectives of medicine in one of his works, focused on the issue of incurable diseases. He also wrote: “the duty of a doctor is not only to restore health, but also to alleviate the suffering and torment caused by illness...” [9].

Part 8 of Article 52 of the Law of Ukraine “Fundamentals of legislation of Ukraine on Health Care” prohibits euthanasia, consolidating its definition in the legal field. In particular, the Law interprets “euthanasia” as the deliberate acceleration of the death or killing of a terminally ill person in order to stop their suffering [10].

The Oxford English Dictionary offers three definitions of the word “euthanasia”: “calm and easy death”, “means for it”, “actions for its implementation” [11].

The concept of “euthanasia” by R. Stefanchuk interprets it as a type of behaviour of a medical worker (action, omission, or decision), committed consciously and intentionally, and also aimed at stopping unbearable suffering (physical, mental, moral, etc.), carried out by repeated and unambiguous request of the patient (and in cases provided for by law, their legal representative), provided that the person is fully, timely, and objectively aware of the consequences of such intervention, resulting in death [12].

Analysing the definition, the main components of euthanasia can be distinguished: actions (active actions, passive inactivity), intent (termination of life), subject (medical worker), and consequence (death of the patient).

The emergence of bioethics was conditioned by increased attention to human rights in the context of the active creation of new medical technologies, which create a significant number of problems that need to be solved from the standpoint of both law and morality. In addition, the establishment of bioethics was due to significant changes in medical practice, which were made possible by the success of genetic engineering, transplantology, the emergence of equipment for artificial support of patient life, and the accumulation of relevant practical and theoretical knowledge. All these processes have sharpened the moral issues facing the doctor and patient. Are there any limits to providing medical care in maintaining the life of a terminally ill person? From what exact moment does death occur? Is euthanasia acceptable? [13].

For a long time (until the middle of the 19<sup>th</sup> century), death was stated not by doctors, but by priests or hired people. Subsequently, representatives of the medical profession received the right, and then the obligation, to state death. At the same time, there is a problem of establishing the actual moment of death, which was difficult at all times. For thousands of years, in practice, the criteria for death were considered cardiac arrest, respiratory arrest, lack of sensitivity, etc. The imperfection of these ideas about the essence of death was that

the lack of functions of individual organs was identified with the death of the organism as a whole [14].

Scientific studies offer a variety of classifications of euthanasia. They can be distinguished according to the following criteria:

– by type of service provision:

a) active (carrying out any actions, administration of drugs that accelerate the fatal outcome. Active medical euthanasia can take three forms [15], it is performed without the patient's consent (for example, if the patient is in a coma), when close relatives or a doctor approve the procedure instead; with the help of a doctor; self-euthanasia, in which the patient injects themselves with a drug or turns on a device that helps them commit suicide);

b) passive (this is the non-use of drugs and non-fulfilment of medical manipulations that would support a certain time of life of a seriously ill patient. The authors do not share this position, because the right to refuse medical intervention is a subjective legal right of the patient, which can be realised by not agreeing to medical intervention, but euthanasia is a combination of the individual freedom of one person and the duty of another. Thus, passive euthanasia requires certain actions on the part of a medical professional, which determines the presence of a social component) [15].

– by mode of implementation:

a) positive (or “filled syringe method”) (the use of special means or other actions to a terminally ill person that entails a quick and painless death);

b) negative (or “delayed syringe method”) (refusal of measures that contribute to maintaining life, its meaning is to stop providing medical care aimed at prolonging life, which accelerates the onset of natural death);

– according to the subject's will:

a) voluntary (i.e., the use of medicines or other means to a terminally ill person, which leads to an easy and peaceful death at the request of a patient who is aware of their own actions and can direct them);

b) forced (means causing an easy death to a terminally ill person by appropriate means and actions, but by decision of family members, legal representatives, or public institutions) [16].

The following countries approve euthanasia: Albania, Belgium, the Netherlands, Luxembourg, Switzerland (Zurich only), Sweden, Germany, and some US states. In addition, the United States did not legalise euthanasia at the state level, entrusting this complex decision separately to the government of each of the states. Currently, it is allowed in the states of Oregon, Missouri, New Jersey, Vermont, Washington, Montana, and Georgia. Japan and Colombia supported the legalisation of euthanasia, but did not legalise it. There are also countries that adopted the law, but later repealed it. These include France, which supported euthanasia in 2014 and completely abandoned it in the spring of 2016.

Some researchers believe that only active euthanasia can be considered as real euthanasia, and passive can not be considered as a type of euthanasia at all, since in essence such actions of a medical worker are not directly aimed at causing death to a terminally ill person, but only at relieving them of suffering. However, there are categorical positions regarding passive euthanasia.

Polish state consultant in the field of Palliative Medicine Ya. Yutak suggests that the most important thing is the motive for such activities, and not the use or termination of such activities [17]. A negative attitude towards passive euthanasia was also expressed by Tadeusz Brzezicki, who noted: "Passive euthanasia is an unjustified medical termination of treatment in order to accelerate death, motivated by a sense of compassion for the sufferer" [17].

Another classification of euthanasia is carried out depending on the patient's will. According to this criterion, euthanasia is divided into voluntary (which is carried out with the free consent of a person), involuntary (which is carried out without the consent of a person), and forced (which is carried out against the person's will).

The world's first attempt to legalise euthanasia was made in 1906 in Ohio (USA). However, the legislative assembly voted against the bill. Since 1998, the state of Oregon (USA) has a law that allows active euthanasia, but the implementation of euthanasia is complicated by some legal formalities [18].

The world's first Law "On the Human Right to Death" was adopted in 1977 in the state of California (USA). If the list of certain mandatory conditions is met and strict control over suicide with medical assistance is not prosecuted, it is not punishable under the laws of the states of North Carolina, Utah, and Wyoming. In the state of Indiana, there is a so-called "lifetime will", in which the patient officially confirms their desire to not support their life artificially and under certain circumstances.

In Australia, a law on euthanasia was proposed by an MP as a 1995 "Bill on the rights of the terminally ill". Although this law was passed in July 1996, however, since the idea of the project contradicted the position of the Australian Medical Association and social groups that protect the right to life, it was repealed in 9 months.

In the Netherlands, the law "On Termination of Life at Will or Assistance in Suicide" was adopted in 2002. Notably, the Netherlands is the only country in the world where both physician-assisted suicide and voluntary active euthanasia are openly practiced. In the fall of 2016, the Dutch government began drafting a bill that would legalise suicide among people who feel that their "life is over" but are not necessarily terminally ill [19]. In November 2015, the German Bundestag voted to pass a law that allows, under a number of conditions, to help people voluntarily pass away. According to the law, citizens, in particular, relatives of terminally ill people, have the right to facilitate euthanasia "on an individual basis, guided by altruistic motives". At the same time, the

provisions of the law prohibit promoting euthanasia on a commercial basis and provide for a penalty of up to 3 years in prison for the violator. For Germany, euthanasia is an extremely sensitive topic, since the last time this procedure was allowed under the Nazis. At that time, more than 200 thousand people with physical disabilities or mental illnesses were executed [20].

The criminal codes of Uzbekistan and Georgia establish criminal liability for euthanasia [21]. In other countries, including the CIS countries, euthanasia is outside the scope of legal legalisation.

Thus, the analysis of the legislative experience of foreign countries gives grounds to assert that most countries qualify euthanasia as a crime against life, while the public of foreign countries gradually approves of euthanasia.

The study of the provisions of the national criminal legislation gives grounds to assert that euthanasia is prohibited by the current legislation, its commission is considered a crime in Ukraine – premeditated murder (Part 1 of Article 115 of the Criminal Code of Ukraine), for the commission of which a penalty of imprisonment for a period of 7-15 years is provided).

In legal science, medical practice, and moral norms, the issue of attributing failure to provide medical care to a terminally ill patient due to the lack of special medical equipment, medicines, or money from relatives to passive euthanasia remains debatable. The position that passive euthanasia is the failure to provide medical care due not to lack of funds, but to a conscious desire to direct their actions to stop the suffering of an incurable patient by death is justified.

The problem of euthanasia is becoming more and more urgent in the context of improving medical services, resuscitation, which allows endlessly fighting for human life and the total ageing of the population. In this regard, there are many questions about the maintenance of elderly people, terminally ill people, their supervision and treatment. Among these individuals, the largest number is those who want to end their lives.

The issue of the painful course of a number of diseases that medicine considers incurable, moral and physical suffering experienced by patients, is solved differently in different countries, depending on the economic situation, religion, national traditions, respect for old age, etc. For this purpose, special medical institutions are created in which patients feel comfortable, because they are alive, and do not live out their lives. Such special medical institutions are called hospices.

Unlike hospitals, there are no restrictions in a hospice: patients can keep an animal, receive relatives and friends, spend any holidays, etc. In such institutions, a special method of tracking the patient's moral state is used.

S. Boldizhar, analysing euthanasia as a way to end a person's life, comes to the conclusion that Ukraine will soon also face the issue of legalising euthanasia,

then there will be a need for a clear administrative and legal regulation of these processes to avoid abuse of the “right to death” for any selfish reasons. As long as active euthanasia is prohibited at the legislative level, the right to life remains one of the fundamental rights, an inalienable and absolute right that the state has undertaken to protect [22].

The study suggests that, first of all, constitutional and legal regulation of this issue should be ensured. Currently, Part 2 of Article 27 of the Constitution of Ukraine stipulates that no one can be arbitrarily deprived of life. The duty of the state is to protect a person's life; if it is impossible to take a person's life arbitrarily, then there is a possibility of non-arbitrary deprivation of life, but the protection of human life is consolidated as the duty of the state.

In countries where euthanasia is legalised, one of the conditions for its use provides that a person must be ill with an incurable disease, and this disease must cause them unbearable suffering. That is, if a person's suffering does not lead to death, it means that they can be sustained.

Considering that one of the achievements and priorities of democratic states is the protection of human rights, ensuring the rule of law to meet first of all the individual needs and interests of each individual, and Article 3 of the Constitution of Ukraine defines that a person, their life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value, euthanasia should not be legalised in Ukraine.

Scientific originality consists in forming on the basis of studying the content of the concept of “euthanasia”, analysing and systematising the views of

opponents and supporters of legalising euthanasia the position that the introduction of euthanasia is not a component of the right to life, but, on the contrary, is a violation of this right and denies the idea that human life is the highest social value. In the context of legal regulation of euthanasia, it should be clearly defined that the state encourages the termination of a person's life at will, and therefore departs from the postulate that a person's life is the highest value.

## Conclusions

The trend towards legalising euthanasia is observed in states with high living standards. It is probably related to circumstances that are outside the scope of legal science, so there is an urgent need to consider such processes by psychiatry, psychology, and sociology.

In states that have legalised euthanasia, there are many problems, including cases of abuse by medical personnel, pressure from relatives of patients pursuing illegal interests, the relativity of doctors' conclusions about the condition of a sick person, and the inability to adequately assess what is happening to patients in serious condition.

In connection with the above, the study suggests that legal regulation, including at the level of international legal standards, should address issues related to the use of artificial maintenance of human life, so there is a need to develop its procedure, conditions for application, start and termination.

The issue of euthanasia as the termination of a person's life at their request due to illness, old age or due to a person's self-perception should be reviewed, and a number of states where it is legalised can already analyse the consequences of such a decision.

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## Правове регулювання застосування евтаназії: зарубіжний досвід й українські реалії

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### Анотація

Мета статті – проаналізувати правову регламентацію застосування евтаназії в зарубіжних країнах, окреслити перспективи запровадження евтаназії в Україні. Для її досягнення необхідно було виконати такі завдання: з'ясувати зміст поняття евтаназії, визначити конституційні засади запровадження її в зарубіжних країнах; схарактеризувати правові механізми запровадження евтаназії. Методологічною основою дослідження стала сукупність загальнонаукових та спеціальних методів, прийомів і засобів наукового пізнання, причому комплексне їх застосування спрямоване на досягнення мети й виконання завдань дослідження. Конституційно-правова регламентація застосування евтаназії стала об'єктом і сучасних вітчизняних досліджень. Визначальним у цій статті є порівняльно-правовий метод, що дає змогу порівняти підходи до застосування евтаназії в різних країнах. За допомогою принципу прогнозування вдалося окреслити можливі наслідки застосування евтаназії в Україні. Наукова новизна полягає у формуванні на підставі дослідження змісту поняття «евтаназія», аналізу й систематизації поглядів противників і прихильників легалізації евтаназії позиції про те, що запровадження евтаназії не є складовою права на життя, а, навпаки, є порушенням цього права та заперечує ідею, що життя людини є найвищою соціальною цінністю. За умов нормативного регулювання евтаназії має бути чітко визначено, що держава заохочує припинення життя людини за її бажанням, а отже, відступає від постулату, за яким життя людини є найвищою цінністю. Тенденція до легалізації евтаназії спостерігається в державах із високими показниками рівня життя. Вона, імовірно, пов'язана з обставинами, що знаходяться поза межами юридичної науки, тож актуальною є потреба дослідження таких процесів з боку психіатрії, психології та соціології. У державах, що легалізували евтаназію, постає чимало проблем, серед яких випадки зловживання з боку медичного персоналу, тиск родичів хворих, що переслідують незаконні інтереси, відносність висновків лікарів щодо стану хворої людини, неможливість адекватної оцінки того, що відбувається, хворим, який перебуває у важкому стані. У зв'язку з викладеним вище, вважаємо, що правове регулювання, зокрема й на рівні міжнародно-правових стандартів, має стосуватися питань, пов'язаних із застосуванням штучного підтримання життя людини, тому постає необхідність розроблення його порядку, умов застосування, початку та припинення. Питання евтаназії як припинення життя людини на її прохання через хворобу, літній вік або у зв'язку зі самосприйняттям людини слід переглянути, причому низка держав, у яких її легалізовано, уже може проаналізувати наслідки такого рішення. Варто також ураховувати, що абсолютна недопустимість евтаназії в нашій країні не вирішує питань, пов'язаних зі стражданнями невиліковно хворих людей. Тому дослідження цієї теми, на наш погляд, є важливою потребою для нашої країни

**Ключові слова:** евтаназія, легалізація евтаназії, форми евтаназії, паліативна допомога, «право на смерть», активна евтаназія, пасивна евтаназія