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SOCIOLOGICAL AND LEGAL ASPECTS OF EUTHANASIA

Abstract. The European integration policy of Ukraine oblige representatives of its authority to take into account international experience in the field of euthanasia legalization, its spread and to prepare a solution regarding this issue. At the same time, the complexity of this issue is manifested in the fact that today, there is no unified approach to the terminology understanding within the specified topic by the Ukrainian and foreign scientists, as well as the public. In turn, this leads to an inadequate reflection of the reality in the said society and causes a certain fear in front of it. Therefore, the purpose of this article is to provide a brief overview of general philosophical and medical-legal conceptual developments to conduct further theoretical research on the topic, and also relevant law-making and educational activities. To achieve this goal, a sociological survey was conducted among the physicians – listeners of the Kyiv Institute of Physician Improvement, that formed an empirical basis for research in this area. The scientific and theoretical basis is the works of domestic and foreign scientists in the fields of medicine, criminal law, medical law, psychology, sociology, philosophy and the like.

Keywords: *the right to die, the crime against life, active euthanasia, passive euthanasia, mercy killing*

Introduction. Advances in modern medicine in resuscitation changed fundamentally the attitude to death as a one-time phenomenon, stretching it over time, respectively, the destruction of separate body parts. The previously used criteria for determining the death of human beings are contradictory to the new scientific understanding. This contradiction contributed to the heightened perception of one of the most difficult issues – euthanasia. Euthanasia receives serious attention in the special literature, especially in Western countries. The increased interest in euthanasia is not only connected with the medical success in the era of the scientific and technological revolution, which unusually expanded the boundary zone between life and death, but with the changes in human worldview, recognition of the priority of the spiritual values. These processes have influenced the fact that euthanasia in a broad sense was legalized in such countries as Belgium, France, Israel, Colombia, Canada, the Netherlands, USA (Oregon, California), Switzerland, autonomous education. In Andalusia, Spain. Large-scale debates on the legalization of euthanasia are provided in the UK, Greece, Italy, Spain, Russia. Some countries, as an alternative to the legalization of euthanasia, signed the special legal act – murder out of compassion (Georgia, Denmark, Germany, Moldova, Poland, etc.).

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The European integration policy of Ukraine obliges its authorities to take into account international experience in the field of euthanasia legalization expansion and preparation to settle this issue. It should be noticed, like in many other unusual spheres for the post-Soviet Ukraine, particularly in countering people trade, criminal income, torture, domestic violence, corruption, etc., at first it is advisable to conduct an appropriate information campaign to educate the establishment and the society with the essence of the problem, which could eliminate the distorted perceptions of the problem. At the same time, the complexity of such an information campaign is manifested in the fact that today there is no unified approach to understanding both Ukrainian and foreign scientists, as well as the public, of terminology, within the specified subject. In turn, this leads to an inadequate reflection of reality in this area of society and causes a certain fear of it.

Provision of comprehensive and complex scientific research requires the appropriate use of scientific and special methods of cognition. Appropriate systematization of methods is provided due to the methodological strategy of studying the interdisciplinary synthesis of the legal consciousness and the dynamics of empirical processes. The method of abstraction is based on dialectical principles of research was used in the consideration of the concept of euthanasia. Historically legal and comparatively-legal methods are based on the study of the euthanasia institute establishment a form of human right to die in certain countries of the common law. The attitudes towards euthanasia of health workers, patients and lawyers are studied through sociological and sociological – psychological methods. legal composition and legal consequences of euthanasia are investigated through formal legal and systemic-structural methods. The dogmatic method helped to investigate the practice of euthanasia use in foreign countries.

To achieve this goal, a sociological survey was conducted among the physicians – listeners of the Shupyk National Medical Academy of Postgraduate Education, that formed an empirical basis for research in this area. The scientific and theoretical basis are works of domestic and foreign scientists in the fields of medicine, criminal law, medical law, psychology, sociology, philosophy and the like.

Analysis of recent research and publications. Euthanasia (translated from Greek – good or easy death) is an intentional acceleration of the death of a terminally ill to stop his or her suffering (Vengerov, 2004). Euthanasia, from a legal point of view, can be defined as the intentional killing of a hopelessly ill patient to alleviate his or her suffering. In the special literature, there are two types of such death. Active (positive) euthanasia, the essence of which is to take active action accelerating the death of a suffering person with a hopeless prognosis at the last stage of the disease. Passive (negative) euthanasia is a rejection of measures to support the life of the terminally ill. Some scientists still distinguish two concepts – orthonasia and distanasia. Therefore, distanasia is understood as the doctor's maintenance of the patient's life, who is not suffering excessively but already considered incurable, even with the help of expensive and hard-earned funds. Orthonasia is understood as the instant death of the patient after the stop of the provision of certain measures, and sometimes only their limitation (Sih, 1976, p. 57). In similar cases there is a difference between «assistance while dying»; where the doctor is legally obliged to facilitate the suffering of the patient and provide him with psychological support, and «assisted dying» that includes active and passive euthanasia, as well as assisted suicide attempts (Fuchs & Hennings, 2014, p. 98).

There are two important aspects of the reviewed complex of issues. The first aspect is the doctor's responsibility to resuscitate, and the second is his right to interrupt the relevant actions. In various situations, the legal aspects of a doctor's resuscitation refusal, and the limits of his or her responsibility are dealt with differently. The indicative situation of stopping the heartbeat and breathing of an organism due to the incurable disease or natural outcome is an integral part of the human death, caused by the depletion of vital forces. What means and actions should

be used in resuscitation if death, in this case, is the inevitable end of a person's life and irreversible? Another, opposite in meaning situation is characterized by the cessation of breathing and circulatory function after the accident (injury, attempted suicide, etc.), while the body has a certain amount of strength to prolong life.

The purpose of our article is to provide a brief overview of the developments general philosophical and medical-legal conceptual apparatus for further theoretical research on the topic, as well as relevant law-making and educational activities.

Formulation of the main material. The problem of euthanasia has political, legal, economic, eugenic and ethical sides. Currently, modern society is increasingly faced with the care needs of terminally ill patients (particularly in a vegetative state) as well as newborns, fatally ill patients, or patients with a severe form of pathology (Benner, 2001). Opportunities in this area involve a certain social level of security and compliance with the rights and legitimate interests of citizens who need medical care, relief, relief of the condition during the impending death. One of the arguments of impracticality in assisting in death delaying is the assertion that the price of medical services in the last week the patient's life is very high. 80% of U.S. patients die in hospital, and their maintenance in the last year of life takes 22% of the medical budget (Blondon et al., 2014). As F. Miller points out, modern medicine in many cases spends too much effort to delay death. At the same time, the medical workers could pursue purely scientific goals: get more data on the dying process, the effects of drugs, etc. But technology must not be allowed to turn dying patients into «dying plant organisms» and doctors in «prolongers of the dead life» (Miller, 1987).

The legal meaning of the problem lies, on the one hand, in the assessment of the legal measures, particularly assessing the limit of the doctor's responsibilities in decision making regarding the need of the relevant interventions, the doctor's powers and liabilities, and on the other hand, protection of the rights and legitimate interests of citizens at the last stage of their lives. Moral, ethical and legislative problems of euthanasia are accurately illustrated in foreign literature. (Sherova et al., 2015, p. 64).

Human life must be protected from the process of birth to the process of death. It's a humane demand of the criminal law. Nevertheless, the literature raises the question of the impractical side of the torment continuation of the dying person. C. Cassel believes that when deciding to help the elderly, it is necessary to proceed from three principles: usefulness, respect for the patient's personality and justice. The justification for the legality of the refusal, according to the scientist, is: a) treatment is useless from a medical point of view; b) the patient refuses from the treatment; c) the patient's life, according to his own opinion, during and after treatment, will be unbearable (Kassel, 1987, p. 11-12). Ideally, attempts to revive the patient should only be used in those cases when there is a good chance of a successful patient's survival and his or her normal existence. An example: deliberate abandonment of attempts to revive a 32-year-old woman, a drug addict who has already made 18 suicide attempts, was put into hospital with a spinal injury after another attempt (Baskett, 1986, p. 189-190).

This case leads to the suffering alleviation of the dying as a result of the physiological, pathological or unfortunate case. Another interesting case: the so-called Krefeld decision of the Federal Court of Germany, which confirmed the duties of the doctor in any attempt of the patient to commit suicide, but at the same time acquitted the doctor, who did not take steps to save the lives of the old and hopelessly ill woman who took a lethal dose of sleeping pills. Moreover, the court was concerned with the fact that the patient, if she survives, will live with very serious health problems (Verbakel & Jaspers, 2010).

In 1986, at the 56th Congress of German Lawyers in Berlin, held together with surgeons, the subject «Right to own death? Contradictions between the duty of saving life and one's own opinion in criminal law». were discussed. Based on the discussion, it was proposed that the German Penal Code will be edited with a section on assisting the dying. The main provisions of the project are: a) helping the

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dying – universal debt; b) the doctor is obliged to relieve pain; neglect of anesthesia is punishable by law; c) direct interventions for accelerating death are unacceptable; d) the testamentary order of the dying person must be assessed critically, because he or she does not always correctly assess the situation; e) the intervention of the lawyer should be rejected (no agreement has been reached between lawyers and doctors (Carstense & Schreiber, 1987, p. 303-304).

In this regard, a considerable scientific and practical interest is given to the Dr. O. Sullin's case, reviewed in 1965 by the District Court of the city Gallivara (Sweden). With the consent of the relatives of an 80-year-old partially paralyzed and unconscious patient, after another heart attack, O.Sullin stopped resuscitation activities due to the futility of resuming the vital systems of her body. The patient died. The District Court acquitted the doctor, finding that the actions of the accused fully correspond to the duties of the doctor. Emergency life-threatening activities can be interrupted due to a lack of improvement in health and for reasons of humanity. The court's point of view was approved by Swedish public opinion (Hendry, 2013, p. 55).

It is necessary to strive for a society in which everyone will choose the moment of his or her death, to a society in which suicide becomes the norm (Hendry, 2013). The State of California (USA) passed the Right to Die Act, allowing chronically ill people to give up artificial means of sustaining life after signing a will at the presence of two witnesses. 23 U.S. states currently have an acting legal document «Will in life» in which the person determines the measure of help he or she wants to get in a possible hopeless state. According to U.S. experts, this document will be approved by all the States (Rudnev et al., 2018). If the patient suffers and there is no hope of curing him, American scholars note that mercy demands to support voluntary active euthanasia (Rudnev et al., 2018, p. 33). It should be noted that in 1936, 1969, 1976 the House of Lords in the UK has been introduced law projects on the feasibility of legalizing euthanasia. In Holland, the country's parliament considered the possibility of passing a law allowing lethal injection to suffering from severe pain to terminally ill patients, i.e. «active euthanasia». Some countries have recognized the desirable creation of special clinics in which terminally ill people could painlessly and calmly end their lives. Such clinics are being set up, particularly in Krakow, Poland, where there is a society of friends of the sick «Shelter»; with a special care center, caring for patients in a terminal state (Bortnowska, 1985, p. 149-157). In Canada, there is a «Society of palliative care»; The medical director of one of these institutions S. Saunders notes that «this is an alternative to the negative and socially dangerous notion that a sufferer of an incurable disease tormenting him should have a legal right to a quick death or euthanasia» (Saunders, 1981).

There is a need to establish a special service of mercy, in particular, centers of mercy, which would provide possible assistance to the dying. An example is the creation of hospices in St. Petersburg. Such a service is useful for different points of view. Deontologically and ethically: provision of favorable conditions of trust between doctor and patient, elimination of the possibility of mental trauma for other patients. Taking into account mercy – the relatives and beloved ones of the patient do not see the suffering of the dying.

Scientifically – the research of the processes of dying and training of highly qualified specialists-thanatologists. Eugenically – psychological preparation of a person for the inevitability of death. Naturally, the experience of other countries in establishing and operating such institutions needs to be examined more thoroughly.

Foreign sociological studies conducted, in particular, in the United States, show a certain attitude to euthanasia among both medical professionals and patients: a) from 61 to 67% of doctors expressed their support for active and passive euthanasia; b) most doctors surveyed (86%) advocate for the use of passive euthanasia; c) there are more supporters of euthanasia among Protestants and atheists than among Catholics; d) opponents of euthanasia are the mostly found among pediatricians, surgeons, obstetricians and gynaecologists; e) an opinion poll

shows that 53% of respondents support active euthanasia, while 36% oppose; f) from 10 terminal patients surveyed, 7 were in favor of negative euthanasia. For the same – 60% of doctors and 70% of relatives. However, 9 out of 10 nurses serving such patients opposed it. A study of 40 cancer deaths showed that in 70% of cases, passive euthanasia tactics were used (Brown et al., 1976, p. 319–329). Our study of the attitude to this issue among doctors – listeners of the Shupyk National Medical Academy of Postgraduate Education showed that more than 90% of them are in favor of the use of active and passive euthanasia.

A well-known Russian lawyer A.F. Kony was also a supporter of euthanasia, who believed that euthanasia morally and legally permissible on condition of a) a conscious and persistent request of the patient; b) the inability to alleviate the suffering of the patient in known ways; c) by accurate and undeniable proof of the impossibility of saving a life established by the board of doctors with mandatory unanimity; d) advance notice to the Public Prosecutor's Office (Horses, 1967, p. 384). This position is currently supported by the specialists, which make one addition to it: euthanasia is an exclusive human right, not a duty, much less a right of a doctor, a third party or an institution (Potselev & Danilova, 2015, p.84).

The Right to Die Act has drawn criticism from some academics who believe that imperfect language, in this case, could open a door for abuse, ignoring the real problems of a dying person. This is the opinion of Polish author J.Bogush. «The doctor», he writes, «is responsible for saving the patient's life. Accelerating death by action or neglection is unacceptable. Where salvation is no longer possible, and mitigation is necessary, the doctor must quench the suffering» (Bogush, 1985). The same thoughts has another Polish researcher, G. Brzezinski, noting that in the terminal condition of the patient the task of the doctor is to support the hope of the patient, his or her optimism (Brzezinski). Many domestic authors believe that euthanasia is unacceptable from a moral and legal point of view: no one is free to take a person's life, which should be maintained in all cases until the natural end. Besides, it is necessary to take into account the possibility of errors in the prognosis of the patient's condition, and the possibility of abuse of euthanasia by the doctor and others (Brzezinski).

The complexity of the problem of euthanasia is also dictated by a differentiated approach to its resolution. A separate legal assessment of active and passive euthanasia is needed. As a rule, special literature denies the possibility of euthanasia used in the Soviet health care environment (Kovaleva et al., 2017, p.282), but does not distinguish the types of active euthanasia. This approach prevents the legal assessment of active euthanasia, both in the form of a system and as isolated cases.

As a system active euthanasia existed in Nazi Germany. The Euthanasia programme has been in development for several years. Its theoretical justification belongs to the German doctor Klinger, who claimed that the state is unprofitable to treat terminally ill patients, so they «should be given euthanasia, that is, a rapid painless death» (Antonenko, 2016). A special method of screening patients was developed for the implementation of the programme, and special organizations were in place.

As it was established at the Nuremberg Trials, in one year alone in Germany under the guise of patients killed about 275,000 people. Active euthanasia is known to have been condemned by the Nuremberg Military Tribunal as a crime against humanity.

A legal assessment of active euthanasia in some cases is unthinkable without considering negative euthanasia. Therefore, we need to investigate the current medical documents and relevant sources.

Currently, death is established based on a set of signs, the presence of which is necessary and sufficient to establish the fact of complete cessation of brain function and irreversibility of this condition, even in artificial maintenance through resuscitation measures of cardiac activity (artificial ventilation, cardiovascular stimulants).

Diagnosis of death, notes X. Pia, is based on establishing the fact of complete and irreversible violation of specific vital functions, regulated by the oblong brain. Particularly, the above disorders cause a complete cessation of the cortical activity

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of the brain. Resuscitation measures can support the vegetative functions of the body only for a certain period. The death of the cerebral cortex also means the death of the individual. This provision should guide physicians in solving the most important problem of ethical nature – the justification for the further extension of the existence of the decorated human body (Pia,1986). The issue of resuscitation in the United States, for example, is decided by an ethical committee that singles out a group of patients who are not provided resuscitation (Dyadyun, 2015).

However, there may be cases when the use of resuscitation measures leads to the recovery or maintenance of cardiac activity due to the lower parts of the nervous system, at the same time the recovery of brain functions does not occur, and the comatose condition is irreversible. At the same time, there is: (a) a state of persistent decorating and vegetative state, in particular, self-breathing; b) a state of «brain death»; when the entire brain dies.

In the first case, the patient is alive, and therefore his rights and responsibilities of the doctors are important. In the second case, resuscitation measures artificially support cardiac activity and circulation, creating only the appearance of life. The patient is dead. Continued resuscitation provides the only perfusion of the corpse and contributes to the accelerated development of brain autolysis.

Conclusions. Considering our review and discussion, we will try to give a legal assessment of euthanasia based on the current criminal law. Disabling resuscitation measures in the case of total brain death leads immediately to the termination of all life processes in the body, supported by artificial ventilation and the use of cardiovascular medicines. Is it possible to say that the termination of special measures is a crime? Formally, such an act falls under the signs of the composition of two crimes: or failure to help a sick person by the medical personnel (P. Ll article 139 Criminal Code of Ukraine) if non-provision of help leads to severe results; or murder, the main motive of which is compassion for the torment of the patient, the senselessness of further assistance. However, in this case, there is no crime at all in the inaction of persons, because there is no person whose life should be protected by law. There is also no state of agony, which refers to the last stage of dying, characterized by the rise of compensatory mechanisms (Erimia, 2016). Resuscitation is done for resuscitation, not for the sake of saving lives. The legality of the termination of resuscitation is determined, in our view, by the performance of professional medical functions. This decision cannot be swayed by the lack of consent of the victim or his legal representatives.

Now let's look at the case when resuscitation leads to the development of persistent decorating and vegetative state. How to consider the termination of resuscitation in this case? Is it not helping a sick person by medical staff or murder? It should be noted that in this case there is agony, and the fact of death is not yet present. In such a situation, the patient is a living being with appropriate legal guarantees. The patient needs to be assisted. But let's recall, the consequences are already irreversible. Polish experts believe that in agony it is impractical to prolong the act of dying (Köneke, 2014), that the doctor should not prolong a purely vegetative life in the face of the inevitable loss of consciousness and a complete lack of hope for the improvement of the patient's condition (Köneke, 2014).

One can agree with the opinion expressed. Appropriate assistance to the dying person should be provided until brain death. By the way, G. Maslinska herself believes that «reducing the life of a dying person is a murder in the legal sense» (Maslinska, 1985). Thus, the actions of those responsible in such a situation should be qualified either as murder by consent or as failure to assist the sick person by medical personnel under the right conditions.

It should be noted that in the Criminal Code of the USSR of 1922 (note to article 143) stipulates that the murder committed at the insistence of the murdered out of compassion is not punished. In other words, the victim's consent to causing death was a circumstance that preclude criminal liability. But in November 1922,

the drug justice V.N. Krylenko gave a speech, criticizing the note to Art. 143 Criminal Code of the USSR. At the 4th session of the Central Executive Committee of the All-Russian Congress of Soviets IX, which discussed the issue, the note was deleted. Undoubtedly, this historical fact has also influenced the attitude of our legislation to the consent of the victim as a circumstance that excludes criminal responsibility. Nevertheless, in the Soviet theory of criminal law, this circumstance was recognized as worthy of attention and in some cases is taken into account by judicial practice (Krasikov, 1976).

The Criminal Code of the USSR of 1927 no longer contains such a note. As A. Jihilenko rightly pointed out at the time, «the Criminal Code fell to the opposite extreme – ordinary murder, which does not entail mandatory mitigation of repression (Zhizhilenko, 1927)». Murder at the urging of the victim, out of compassion, should be regarded as a special kind of privileged murder (Zhizhilenko, 1927). Thus, Polish law provides responsibility to the person who kills the person at his or her request and under the influence of sympathy for him. Current Ukrainian law considers this type of murder as simple without aggravating and mitigating circumstances. In our view, murder out of compassion should be seen as a separate type of crime against life. Murder at the request of the victim is also not a circumstance that excludes responsibility, however, it is a matter of extenuating circumstances.

In modern life, the use of both violent and non-violent methods of euthanasia is unacceptable. Human life must be maintained in all cases until the natural end. Medical science and practice are not guaranteed for diagnostic errors. Legalization of euthanasia can harm health practices, will contribute to abuses, and therefore increase public distrust of the quality of health care, the health system as a whole. Individual cases of negative euthanasia are permissible because of the futility of healing and the severity of the patient's condition and subject to the unanimous decision by a group of competent specialists, as well as with the consent of the patient or his legal representatives. To strengthen the rule of law and strengthen criminal and legal guarantees of human rights to health and life, a special rule is required in the Criminal Code to be applied.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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СОЦІОЛОГІЧНО-ПРАВОВІ АСПЕКТИ ЕВТАНАЗІЇ

Анотація. Євроінтеграційний політичний курс України зобов'язує представників її влади враховувати міжнародний досвід у сфері поширення легалізації евтаназії і готуватися до практичного вирішення цього питання. При цьому, складність даного питання проявляється в тому, що на сьогоднішній день відсутній єдиний підхід до розуміння як українськими, так і зарубіжними вченими, а також громадськістю термінології, що вживається в межах зазначеної теми. У свою чергу, це призводить до неадекватного відображення дійсності, пов'язаної з питаннями евтаназії і, як наслідок, обумовлює певний страх суспільства перед нею. Отже, метою даної статті є короткий огляд напрацювань загального філософського і медико-юридичного понятійного апарату для проведення подальших теоретичних досліджень, а також здійснення відповідної правотворчої і просвітницької діяльності. Для досягнення поставленої мети було проведено соціологічне опитування серед лікарів – слухачів Національного університету охорони здоров'я імені П. Л. Шупика, що сформувало емпіричну базу дослідження у зазначеній сфері. Науково-теоретичним підґрунтям стали праці вітчизняних і зарубіжних вчених в галузі медицини, кримінального права, медичного права, психології, соціології, філософії тощо.

Ключові слова: *право на смерть, злочин проти життя, активна евтаназія, пасивна евтаназія, вбивство з милосердя*

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