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EUTHANASIA IN THE CONTEXT OF THE HUMAN SOMATIC RIGHT TO A DIGNIFIED DEATH: EXPERIENCE ABROAD FOR UKRAINE

The right to life occupies a fundamental place in the system of human rights and is under special protection by the state. According to Article 3 of the Constitution of Ukraine, a person, their life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine, and Article 27 of the Basic Law enshrines the prohibition of arbitrary deprivation of life and the state's duty to protect human life [3]. Similar provisions are reflected in the constitutional acts of many states, as well as in a number of international documents. However, the significant number of human deaths accompanied by prolonged suffering has necessitated a reconsideration of the content of the right to life in the context of its correlation with the right to death. This has led to the legalization of euthanasia in certain countries as a means for a person experiencing severe pain and having no chance of recovery to exercise their final will. Despite the urgent social need, which has become more acute in the context of the full-scale war, Ukrainian lawmakers have yet to reach a consensus on the ethics of euthanasia and the legal mechanism for its implementation. This highlights the necessity of studying the experience of European countries and the possibility of its implementation in Ukraine.

Various aspects of euthanasia as a component of human somatic rights have been researched by Bulesta S.B., Gaydaytsuk I.V., Kozinets O.G., Merlyk A.M., Myalovytska N.A., Ostapenko V.M., Popovych T.P., Terzi O.O., Trushkina A.D., Falkovsky A.O., and others. Despite the increasing attention this issue receives from

scholars, it remains highly relevant and requires further analysis, particularly in a comparative legal context.

The aim of the article is to summarize the experience of European countries regarding the legal regulation of euthanasia in the context of the human somatic right to a dignified death and to develop proposals based on this for adapting this experience to the current conditions in Ukraine.

The term "euthanasia" comes from the Greek words "eu" (easy) and "thanatos" (death), and it translates to "easy, happy, painless death." It refers to the practice of intentionally ending a life to relieve pain and suffering. The term was first used by the English philosopher Francis Bacon in the 16th century, who emphasized that "the duty of the physician is not only to restore health, but also to alleviate pain and suffering caused by diseases ... even when there is no hope of recovery, and it is only possible to make death itself easier and more peaceful, because this euthanasia ... in itself is a considerable happiness" [7, p. 23].

In medical practice, euthanasia is classified based on various criteria. The most common classification is by the method of implementation: active and passive. Active euthanasia involves actions aimed at accelerating the death of a terminally ill patient in the final phase of their illness. Active euthanasia can be direct (when a doctor, observing the suffering of a terminally ill patient, administers a large dose of pain medication, resulting in the patient's desired death) or indirect (when the patient independently takes a drug or activates a device that leads to a quick and painless death). Passive euthanasia involves the refusal to use measures or perform

medical procedures that temporarily sustained the life of a seriously ill patient [7, p. 24].

Euthanasia is also classified based on the form of consent: voluntary and non-voluntary. Voluntary euthanasia occurs at the request of the patient or with their prior consent. Non-voluntary euthanasia takes place without the patient's consent, as they are usually unconscious.

Additionally, E. Zgreccia, A.G. Spagnolo, and M.L. Pietro distinguish euthanasia based on the subjects involved: "terminal euthanasia (applied to 'hopelessly ill' patients), neonatal euthanasia (applied in cases of severe pathologies in newborns), and social euthanasia (applied to patients whose pathologies last a long time and are very costly to society)" [1, p. 565]. In the legal dimension, euthanasia is considered through the prism of somatic human rights, which belong to the fourth generation of human rights. The foundation of the concept of somatic human rights is the right to dispose of one's body and life, meaning that a person has the right to independently decide on euthanasia. However, as T.P. Popovich and A.P. Shavarin rightly point out, "the content of this right contradicts moral and religious canons. Moreover, if this right is included in the legal status of a person, the state must establish a clear set of criteria for the application of the right to euthanasia and ensure an effective mechanism for controlling the proper procedure of their observance" [6, pp. 267-268].

Currently, euthanasia is prohibited in Ukraine and is considered a criminal offense under Article 52 of the Fundamentals of Health Legislation of Ukraine [5], Article 281 of the Civil Code of Ukraine [8], and Article 115 of the Criminal Code of Ukraine [4]. This practice is typical for most European countries, but there are certain exceptions. Let's examine them in more detail. The Netherlands was the first country in the world to legalize active euthanasia, officially allowing the practice since 1985, with a temporary law in 1994 and a full euthanasia law in 2002. After a pause in the early 2000s, the number of euthanasia cases has been steadily increasing since 2006. Despite this, euthanasia

in the Netherlands is not decriminalized but allowed under specific circumstances. According to the Law "On Termination of Life on Request and Assisted Suicide," doctors performing euthanasia must adhere to five "due care criteria": 1) the patient's request for euthanasia must be voluntary and well-considered. The consent of a patient who can no longer express themselves can be considered if they have previously made a written statement and are at least 16 years old; 2) the patient's suffering must be considered unbearable with no prospect of improvement; 3) the patient must be fully informed about their condition, prospects, and options; 4) both the doctor and the patient must conclude that there is no reasonable alternative; 5) there must be consultation with at least one other independent doctor who must provide written confirmation of the aforementioned conditions. If the request for euthanasia is made by a mentally ill patient, consultation with two independent doctors, including at least one psychiatrist, is required. The law also applies to minors: it stipulates that a doctor can accept a request from a minor if their parents participate in the decision-making process (when the minor is between 16 and 18 years old) or give parental consent (if they are between 12 and 15 years old). Additionally, since 2005, the protocol known as the "Groningen Protocol" outlines the necessary conditions and steps to be followed in end-of-life decisions for young children, particularly newborns. It is noteworthy that Dutch legislation in this area continues to expand. In particular, in the spring of 2023, active legislative work began to expand euthanasia rules to include the possibility for doctors to assist in the death of terminally ill children aged one to twelve [9].

The next European country that legislatively established the possibility of active euthanasia is Belgium. In May 2002, the "Euthanasia Act" was adopted, allowing euthanasia for adults experiencing continuous and unbearable physical or mental suffering that cannot be alleviated. Initially, euthanasia was applied only to adults, but over time, its scope expanded to

include children. The idea that a terminally ill child might want to end their life and be able to do so met strong resistance due to religious, moral, emotional, and cognitive factors. Despite this, in 2014, Belgium adopted an amendment to the existing law, becoming the first country in the world to legalize this practice for children without specifying a minimum age. To perform euthanasia in Belgium, patients must meet the eligibility criteria outlined in the aforementioned act, including: 1) the patient must be mentally competent to make the decision; 2) the patient must submit a reasoned, repeated, and voluntary written request for euthanasia twice; 3) the patient must suffer from the effects of an incurable illness or mental disorder, and all treatment options must be exhausted; 4) the patient must experience unbearable suffering from the illness or other physical or psychological distress. The medical community must ensure that all these criteria are met and confirm the absence of pressure on the patient from family or others. In addition to the patient's doctor, another independent doctor must approve the request. In the case of a mental illness, a psychiatrist must also approve. The Belgian legal framework for euthanasia was supported by the European Court of Human Rights in the first euthanasia case, "Mortier v. Belgium" (2022). Among other things, the Court emphasized the importance of additional safeguards for individuals suffering from mental disorders [10]. Luxembourg is the third European country to legalize active euthanasia, adopting the "Euthanasia and Assisted Suicide Act" in 2008. The provisions of this act also include due care criteria for lawful euthanasia and assisted suicide. In particular, a doctor performing euthanasia or assisting in suicide must ensure that: 1) the patient is competent at the time of the request; 2) the patient has parental or legal guardian consent if they are between 16 and 18 years old; 3) the request is voluntary, well-considered, repeated, and not the result of external pressure; 4) the patient suffers from an incurable condition and experiences

constant unbearable physical or mental pain; 5) the patient adheres to all the conditions and procedures provided by law.

The doctor is also obliged to inform the patient about their health condition and expected lifespan, and discuss all other available therapeutic options and their consequences, including palliative care. Additionally, the doctor must consult with another physician to confirm that the patient's condition is incurable, conclude that there is no other solution in the patient's eyes, and ensure that the physical or psychological suffering is constant and the desire for death is permanent. The request for death is set out in writing, including in a will. If the patient is permanently physically unable to write and sign the request (for example, due to paralysis), it can be written by an adult person of the patient's choice in the presence of the patient's general practitioner, whose name must be in the document. The person chosen by the patient must state in the document that the patient is permanently physically unable to write the request themselves, specify the reason for this inability, and sign and date the request. The document does not need to be officially certified. The patient can withdraw their request at any time. In this case, it will be removed from their medical record and returned to the patient. The law also provides for the possibility for any adult with full legal capacity, anticipating a situation where they can no longer express their will, to specify in writing in advance the circumstances and conditions under which they wish to undergo euthanasia – so-called "End-of-Life Measures." Patients residing abroad who have a general practitioner in Luxembourg can arrange for end-of-life measures and record them in their medical record. There are no residency or citizenship requirements associated with recording such information in the medical record or any other fundamental and formal conditions. However, the relevant general practitioner must have been the patient's doctor for a sufficiently long continuous period. Unlike the experience of other countries, Luxembourg has established a National Control and Evaluation Commission,

which sets registration forms that doctors must complete each time they perform euthanasia, in order to review and verify that the euthanasia was carried out in accordance with the conditions and procedures provided by law [11].

Another European country that has legalized euthanasia is Spain. In June 2021, the “Euthanasia Regulation Act” came into force, allowing medical personnel to perform actions that actively and directly cause a person’s death, by administering a lethal injection or prescribing it in such a way that the person can self-administer it in a medical center or at home. To request euthanasia in Spain, five requirements must be met: 1) have Spanish citizenship or legal residency in Spain, be of legal age, and be competent at the time of the application; 2) have written information about the medical diagnosis, different alternatives and possible actions, including access to palliative care; 3) make two requests voluntarily and in writing with an interval of at least fifteen calendar days between them. If the responsible doctor believes that the person’s death or loss of ability to give informed consent is imminent, they may agree to any shorter period they deem appropriate based on accompanying clinical circumstances, which they must record in the patient’s medical history; 4) suffer from a serious and incurable disease or a severe, chronic condition that leads to disability; 5) give informed consent before the euthanasia procedure. Another important aspect of Spanish euthanasia law is the possibility for the medical professional handling the case to suspend the process if they conclude that the patient lacks the understanding or autonomy to make the decision about euthanasia. Additionally, Spanish law recognizes the individual right of medical professionals to refuse to perform euthanasia based on conscientious objection [12]. In January 2022, euthanasia was also legalized in Austria. The “Euthanasia Act” allows adult individuals who are terminally ill or have a permanent, debilitating condition to make the decision for assisted death. However, active

direct euthanasia remains illegal in Austria, as does euthanasia for minors or individuals with mental illnesses.

Each case of euthanasia in Austria is evaluated by two doctors, one of whom must be an expert in palliative medicine. Individuals wishing to end their life in this way must have a documented medical diagnosis and demonstrate their decision-making capacity. After obtaining approval from two doctors, patients must wait 12 weeks to reconsider their decision – or two weeks if they have a terminal illness. If they still wish to proceed after this waiting period, they must make their “death will” (advance directives) with a notary or attorney. This document can designate individuals who have the right to assist the person in ending their life, including by actively administering the lethal poison if the person loses the ability to make decisions. This makes Austria the first country to legalize the involvement of non-professionals, including family members, in the euthanasia process for individuals who cannot self-administer the lethal poison or have lost decision-making capacity. Subsequently, patients can obtain the lethal medication from a pharmacy after notifying a lawyer or notary. To prevent abuse, the names of pharmacies that sell these medications are only disclosed to lawyers and notaries and are not advertised publicly [13]. In May 2023, Portugal joined the group of European countries that recently legalized euthanasia. Overcoming the president’s veto, the country’s parliament passed the “Euthanasia Act,” allowing competent adults to choose euthanasia in cases of terminal illness or unbearable suffering. After initiating the procedure, patients wait for two months before it is carried out and receive mandatory psychological support. The law applies exclusively to citizens and legal residents of Portugal and does not extend to people who come to the country for suicide tourism [14].

A somewhat different experience of regulating euthanasia is reflected in Swiss legislation. In 1942, the Swiss Criminal Code defined that assisting suicide is not a crime if there are no selfish motives, such as the desire to inherit.

Since the 1980s, right-to-die organizations have interpreted these provisions as legal permission for organizations to support people wishing to receive assistance in suicide, including non-residents. In 2006, the Federal Court of Switzerland extended the law to those with mental disorders and introduced standardized procedural rules that require increased documentation and reporting from organizations providing assisted suicide. Thus, active direct euthanasia is illegal in Switzerland (performed by a third party), but providing means for death is legal (assistance in suicide) if the action that directly causes death is performed by the person wishing to die. Moreover, euthanasia in Switzerland is carried out without any special law, jurisdiction, or state regulations on the subject. Unlike other countries, euthanasia in Switzerland is performed not by medical professionals but by specialized non-medical institutions such as the Association for Humane Death. Workers in these institutions, usually volunteers, must meet the necessary conditions for performing this complex task and attend regular meetings and training required to comply with quality standards. Studies of Swiss legislation show the absence of clearly defined criteria for euthanasia. However, an analysis of the activities of specialized non-medical institutions indicates that euthanasia requires meeting two main criteria: a poor medical prognosis, unbearable pain or persistent suffering, and full discretion (mental competence) of the person wishing to exercise their final will. It is also noteworthy that Switzerland is known for its innovative methods of euthanasia. Recently, the company “Exit International” developed a special euthanasia capsule called “Sarco” and received approval for its use. The use of this capsule allows a person undergoing euthanasia to feel a slight euphoria before losing consciousness and then die peacefully without panic or the feeling of suffocation due to a lack of oxygen and carbon dioxide [2].

Another significant difference in Swiss legislation in the field of euthanasia is the absence of a ban on its practice for foreigners. Every year,

hundreds of people come to Switzerland for the purpose of “suicide tourism,” and this number is gradually increasing. The fact that citizens of one country decide to die in another country, far from home and family, has a powerful impact on the public. This is a compelling proof of the determination and suffering of these individuals and also shows that there are other possibilities for regulating assistance in dying. However, assistance in dying is still prohibited in many countries, including France, Germany, Poland, and Ukraine, and it is criticized for four main reasons. Firstly, since the prognosis regarding life expectancy and available treatment methods is uncertain, patients may receive support that helps them stay alive and even improve their condition. Secondly, if assistance in dying is allowed, palliative care may become less prioritized and available for those who want to die “naturally” without self-intervention. Thirdly, the practice of providing assistance in dying violates biomedical and bioethical principles of respect for life, putting doctors in the unacceptable position of indirectly ending their patients’ lives, for example, by prescribing lethal doses. Fourthly, euthanasia may create opportunities for abuse by relatives who do not wish to care for suffering individuals or are tired of waiting for an inheritance.

Despite the compelling arguments, we share the view of euthanasia supporters who assert that, when choosing between dying from a prolonged and painful illness in a hospital surrounded by strangers, many would prefer a quick and painless transition to the other world in a home setting. For many who have decided on euthanasia, it is also important that they not only relieve themselves of suffering but also spare their loved ones the burden of caregiving. Given this, we support the views of scholars on the necessity of legalizing euthanasia in Ukraine through the adoption of a specialized legal act “On Euthanasia,” which combines the experience of European countries with consideration of Ukrainian realities and national moral and ethical principles. In particular, we consider it appropriate to enshrine indirect

active and passive euthanasia, allowing it for adult competent citizens of Ukraine who suffer unbearable pain from illness or other physical or psychological suffering and have exhausted all treatment options. The patient must submit a reasoned, repeated, and voluntary written request for euthanasia twice to a specialized institution. To confirm compliance with the outlined criteria and the absence of pressure on the patient, another independent doctor, in addition to the patient's doctor, must approve the request, and in the case of mental illness – additionally, a psychiatrist. After obtaining approval, the patient must wait 12 weeks to reconsider their decision – or two weeks if the illness is actively progressing and causing particularly severe suffering. If after this period the person still wishes to end their life this way, the patient or their authorized representative performs euthanasia using means for a peaceful death within a specialized institution or outside it. It is also advisable to establish a National Control and Evaluation Commission to ensure the legality of this process. This will provide the opportunity to legally and humanely implement euthanasia as a component of somatic rights and help Ukrainians who suffer unbearable pain.

Summary

The article summarizes the experience of foreign countries regarding the legal regulation of euthanasia in the context of the somatic human right to a dignified death, and also suggests ways of adapting this experience to modern Ukrainian realities. The author of the article considers euthanasia as a practice of intentional termination of life to eliminate physical and psychological pain and suffering, analyzing its main types according to various classification criteria. The meaning of euthanasia in the context of the somatic right to a dignified death is determined and the peculiarities of its regulatory regulation in Ukraine are considered. To achieve the goal of the article, the experience of legal regulation and practical implementation of euthanasia in such countries as the Netherlands, Belgium, Luxembourg, Spain, Austria, Portugal and Switzerland was studied. Based on the research, the author proposes to legalize euthanasia in Ukraine through the adoption of a special regulatory act «On euthanasia», which should provide for indirect active and passive euthanasia for adult citizens of Ukraine who are capable of acting, who are experiencing unbearable suffering due to illness or other physical or psychological problems and have exhausted all possibilities for treatment. It appears that to carry out this process, the patient must make a valid, repeated and voluntary written request for euthanasia to the specialized institution twice. In order to confirm compliance with the outlined criteria, as well as the absence of pressure on the patient, in addition to the patient's doctor, another independent doctor must approve the request, and in the case of mental illness - additionally a psychiatrist. After receiving approval, the patient must wait 12 weeks to consider their decision - or

Conclusion. This article summarized the experience of foreign countries regarding the legal regulation of euthanasia in the context of the human somatic right to a dignified death and proposed ways to adapt this experience to current Ukrainian realities. It was found that these countries have both similar and unique aspects in their legislation that can be useful for developing Ukrainian legislation in this area.

Despite ethical and moral challenges, the legalization of euthanasia is an important step in ensuring the human right to a dignified death, especially for those suffering from incurable diseases and unbearable suffering. Considering European experience and Ukrainian realities, it is advisable to develop a specialized legal act that would regulate the procedure for euthanasia, including clear criteria and control mechanisms.

Thus, the legalization of euthanasia in Ukraine can become an important step in the development of the healthcare system, ensuring humanity and respect for each person's choice regarding the end of their life in cases where other methods of treatment and support have been exhausted. This will provide dignified living and dying conditions for Ukrainians facing the most difficult challenges in their lives.

two weeks if the disease is actively progressing and causing particularly severe suffering. If, after the specified period, the person still wishes to end life in this way, the patient or a person authorized by him performs euthanasia with the help of means of easy death within or outside the specialized institution. It is also advisable to create a National Medical Control and Evaluation Commission to ensure legality during the implementation of this process.

Key words: euthanasia, somatic human rights, right to life, right to a dignified death, European experience, National Medical Control and Evaluation Commission on Euthanasia

Хажинський Р.М. Евтаназія в контексті соматичного права людини на гідну смерть: закордонний досвід для України

Анотація

У статті узагальнено досвід зарубіжних країн щодо правового регулювання евтаназії в контексті соматичного права людини на гідну смерть, а також запропоновано шляхи адаптації цього досвіду до сучасних українських реалій. Автор статті розглядає евтаназію як практику навмисного припинення життя для усунення фізичного та психологічного болю та страждань, аналізуючи її основні види за різними класифікаційними критеріями. Визначено значення евтаназії в контексті соматичного права на гідну смерть та розглянуто особливості її нормативного регулювання в Україні. Для досягнення мети статті досліджено досвід правового регулювання та практичної реалізації евтаназії в таких країнах, як Нідерланди, Бельгія, Люксембург, Іспанія, Австрія, Португалія та Швейцарія. На основі дослідження автор пропонує легалізувати евтаназію в Україні шляхом прийняття спеціального нормативного акту «Про евтаназію», який має передбачати непрямую активну та пасивну евтаназію для повнолітніх дієздатних громадян України, які зазнають нестерпних страждань через хворобу або інші фізичні чи психологічні проблеми та вичерпали всі можливості для лікування. Видається, що для здійснення цього процесу пацієнт має звертатися з обґрунтованим, повторним і добровільним письмовим запитом на евтаназію до спеціалізованого закладу двічі. Для підтвердження дотримання окреслених критеріїв, а також відсутності тиску на пацієнта, окрім лікаря пацієнта, інший незалежний лікар має схвалити запит, а у випадку психічного захворювання – додатково психіатр. Після отримання схвалення пацієнт повинен чекати 12 тижнів для осмислення свого рішення – або два тижні, якщо хвороба активно прогресує та завдає особливо тяжких страждань. Якщо після зазначеного періоду людина все ще бажає таким чином завершити життя, пацієнт або уповноважена ним особа здійснює евтаназію за допомогою засобів для легкої смерті в межах спеціалізованого закладу або поза ним. Також доцільно створити Національну лікарську контрольну-оцінну комісію для забезпечення законності під час здійснення цього процесу.

Ключові слова: евтаназія, соматичні права людини, право на життя, право на гідну смерть, європейський досвід, Національну лікарську контрольну-оцінну комісію з питань евтаназії.

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