

## HUMAN RIGHT TO DEATH: PROBLEMATIC ASPECTS

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### INTRODUCTION

One of the elements of human rights to life is the right of free disposal of human's life<sup>1</sup>. Therefore, it is likely that patient's right of free disposal of ones life also includes truly willing right to pass away (in other words, to commit suicide) and the right to pass away with the help of other people. Due to the changes that are happening in the society such as impact on national legislation of international standarts in the sphere of human rights and recognition of natural and inalienable human right as supreme value of society and country, Ukraine's course on European integration, the rapid development of science, medical technologies that allow supporting life of fatally ill patients over a long time, the issue of legalization of euthanasia (assisted suicide) or the right to death in general. The question still arises, does person have a right of free disposal of ones life, if the right to life, which a person gains since the day of birth, is the most important right among natural and inalienable human rights? In other words, is it possible to discuss human right to death? If so, in which cases?

The issue of euthanasia (physician-assisted suicide) is the issue of decision (society's moral decision, doctor's professional and ethical decision, personal choices of individuals). This decision should be based on biological ethics. However, ethical standarts are not endowed with an effective mechanism of realization. The right as it is advocates as a measure of social compromise and mechanism of ensuring public security.

### **1. Euthanasia, physician-assisted suicide, mercy killing: theoretical and discussion questions**

In the scientific literature quite different definitions such as euthanasia, physician-assisted suicide, physician-assisted death, assisted suicide, mercy killing are used. So it is necessary to understand these concepts.

What is euthanasia? Euthanasia (from Greek εὖ, *eu*, 'well, good' + θάνατος, *thanatos*, 'death') is the cessation of human life in a fast and painless way. It is used by people that have incurable diseases and do not want to

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<sup>1</sup> Трубников В.М. Павленко, Т.А. Концепція кримінально-правової охорони права людини на життя в Україні : монографія. Х. : Харків юридичний, 2009. 288 с.

endure the pain anymore<sup>2</sup>. This term was used for the first time by Francis Bacon in the XVII century to determine the concept of ‘easy death’. However, in the modern world different approaches to defining the concept of ‘euthanasia’ as well as to singling out its types.

For instance, euthanasia is determined as an action or inaction of doctor, the goal and consequence of which is to deliver fatally ill person from suffering by causing painless death, in the presence of conscious desire of this person or relatives<sup>3</sup>. Yana Trynova highlights such concepts as ‘euthanasia’ and ‘orthonasia’, criterion of such distribution is patient’s or relatives’ desire. Thus, researcher defines euthanasia as a kind of deprivation of another person’s life upon request. At the same time, conscious desire should be expressed directly by incurable patient, who suffers from restless physical and/or moral pain. Euthanasia is only carried out by doctor, according to established by the legislation procedure. Orthonasia is defined as a kind of deprivation of another person’s life upon request. Request for deprivation of life evince established by law individuals. Orthonasia is only carried by doctor and only to unsustainable patient, according to established by the legislation procedure. The method of deprivation of life is provided for in the law<sup>4</sup>. It should be noted that distinguishing euthanasia and orthonasia to some extent coincide scientists’ approach to distinguishing types of euthanasia on purpose. Therefore, euthanasia might be conscious, that is done by the direct will of an ill person that is in a state of full awareness of his or her own actions and its consequences, and unconscious, when the decision to discontinue patients’ life is done by relatives, if the patient is unable to express the will, and forced, that is done against patient’s will<sup>5</sup>. As for the last (forced) type of euthanasia, it is believed, that such acts do not differ from premeditated murder. It is also emphasized that involuntary euthanasia is illegal around the world<sup>6</sup>. A similar approach to distinguish the types of euthanasia by will might be also highlighted. Two types of euthanasia are determined. Voluntary euthanasia, when an ill person asks doctor for help and doctor agrees. In other words, both sides act consciously. And involuntary euthanasia, when someone (a doctor)

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<sup>2</sup> Евтаназія. *Вікіпедія*. URL: <https://uk.wikipedia.org/wiki/%D0%95%D0%B2%D1%82%D0%B0%D0%BD%D0%B0%D0%B7%D1%96%D1%8F>.

<sup>3</sup> Трушкіна А. Д. Право на евтаназію: конституційно-правовий аспект. Одеса, 2019. С. 7.

<sup>4</sup> Евтаназія в Україні: de lege lata V de lege ferenda. *Юридичний вісник України*. 10.02.2021. URL: <https://lexinform.com.ua/dumka-eksperta/evtanaziya-v-ukrayini-de-lege-lata-v-de-lege-ferenda/>.

<sup>5</sup> Віткова В. С. Право на медичну допомогу та право на смерть (евтаназію). *Юридичний вісник*. 2014. № 6. С. 358.

<sup>6</sup> Angela Morrow What Is Euthanasia? *Verywellhealth*. Updated on May 02, 2023. URL: <https://www.verywellhealth.com/what-is-euthanasia-1132209>.

causes the death of a fatally ill person without the permission of patient<sup>7</sup>. It should be noted that under conditions of involuntary euthanasia, firstly, at least a request of other authorized person is a must have, and secondly, the list of such persons and grounds (conditions) of expressed request on deprivation of human life (patient's life) by doctor should be clearly defined at the legislative level. However, in general, the issue about the procedure of such kind of euthanasia is highly debated.

In scientific literature depending on the nature of doctor's actions active and passive types of euthanasia are also distinguished. Active euthanasia occurs when medical personnel intentionally do something that causes the death of patient. Passive euthanasia occurs when patient dies because of medical personnel doing nothing necessary to keep the patient alive or when they stop doing something that supports patient's life. For instance, turning off life support apparatus, disconnection of tube pickup, not conducting the operation in order to prolong life, not delivering medicines that prolong life<sup>8</sup>. There is some controversy regarding passive euthanasia. Thus, some scientists do not agree with term 'passive euthanasia', noting that to qualify the act of it this term is 'empty', meaningless, and prove that the subject of desire to deprive of life is important to qualify the act of euthanasia. As theory of violence in committing the crime is based on this aspect. In other words, violence is committing actions against victim (patient, life carrier). If person as life carrier expresses a desire to deprive of life and asks other people to help, actions of others that are aimed at deprivation this person of life are not considered as violent, these actions comply with life carrier's will. Therefore, the method of deprivation of life is administration of lethal drug (so-called active euthanasia) or disconnecting from life supporting apparatus (passive euthanasia), which is not really important for qualification of the act<sup>9</sup>. For legal assessment the will of person that expressed the desire to deprive of life is definitely of paramount importance, and to qualify the action of person, that euthanasia was done by, this fact is crucial. However, in the case of distinguishing active and passive types of euthanasia, it is about a separate criterion of qualification, namely the nature of doctor's actions. So such distribution may take place.

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<sup>7</sup> Angela Morrow What Is Euthanasia? *Verywellhealth*. Updated on May 02, 2023. URL: <https://www.verywellhealth.com/what-is-euthanasia-1132209>.

<sup>8</sup> Active and passive euthanasia. The moral distinction between active and passive euthanasia, or between "killing" and "letting die". Is there a real difference? *BBC*. 2014. URL: [https://www.bbc.co.uk/ethics/euthanasia/overview/activepassive\\_1.shtml](https://www.bbc.co.uk/ethics/euthanasia/overview/activepassive_1.shtml).

<sup>9</sup> Евтаназія в Україні: de lege lata V de lege ferenda. *Юридичний вісник України*. 10.02.2021. URL: <https://lexinform.com.ua/dumka-eksperta/evtanaziya-v-ukrayini-de-lege-lata-v-de-lege-ferenda/>.

Two more points of view regarding relation to active and passive euthanasia might be distinguished<sup>10</sup>. Thus, supporters of the first type note that it is acceptable to refuse treatment and let patient die, however, it is never acceptable to intentionally murder the patient. Some medics support this idea. They believe that it allows them to provide the patient with desired death without the need to deal with difficult moral issues, with which they could face in conditions of intentional active actions. Supporters of the second point of view emphasize an unreasonableness of the first type, because discontinuation of treatment is intentional act as well as the decision not to carry out some treatment. Because to turn off the respirator, someone has to press the switch. If the patient is dying as a result of the fact that doctor turned off the respirator, then it is true that patient is dying from incurable disease and it is also true that direct reason of patient's death is the shutdown of breathing apparatus. For active euthanasia doctor takes action with the intention to cause patient's death, for passive euthanasia doctor lets patient die. Pay attention to the fact that when doctor lets someone die, he takes action (or inaction takes place) with the intention to cause patient's death. In addition, active and passive euthanasia both have the same final result – the death of patient on humanitarian grounds. Therefore, there is no significant difference between passive and active euthanasia.

Interesting fact is that some scientists (mostly philosophers) believe that euthanasia is better from the perspective of moral grounds, because it can be faster, less painful for patient<sup>11</sup>. On humanitarian grounds it is possible for this viewpoint to take place on condition of patient expressing steady will to deprive of life.

Montgomery J. also classifies euthanasia by purpose, distinguishing between its direct and indirect forms. When doing direct euthanasia, the intention to hasten patient's life takes place, and when doing indirect euthanasia, the time of death is medication side effect that were prescribed in order to relieve the suffering<sup>12</sup>. Thus, in other forms of euthanasia, apparently, it is about palliative sedation.

What is palliative sedation? Palliative sedation is purposive pharmacological shutdown of consciousness or preservation of patient's condition that is dealing with chronically progressive disease in the final stage of life, when it fails to relieve annoying symptoms and reduce patient's suffering by using other known and available methods of symptomatic

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<sup>10</sup> Active and passive euthanasia. The moral distinction between active and passive euthanasia, or between "killing" and "letting die". Is there a real difference? *BBC*. 2014. URL: [https://www.bbc.co.uk/ethics/euthanasia/overview/activepassive\\_1.shtml](https://www.bbc.co.uk/ethics/euthanasia/overview/activepassive_1.shtml).

<sup>11</sup> *Ibid*.

<sup>12</sup> Montgomery J. *Health Care Law*. Oxford University Press. 1998. P. 128.

treatment. Such sedation is ethically acceptable method that is used in recent days and hours of life, and it is the procedure of last choice, when patient informs that his suffering is unbearable, and medical personnel exhausted the possibilities of its elimination by all available means<sup>13</sup>. Thus, palliative sedation is only used to reduce grievous ineffable sufferings, and it is only used, when patient is already close to death, and for the sole purpose of reducing patient's sufferings.

Palliative sedation might be used for a short time in order to reduce sedation to assess patient's comfort, or it can be used to maintain the level of sedation before death. Patient or individual, that makes decision on healthcare, decides how much and how long the patient should be using sedation. For palliative sedation the permission of patient or individual, that makes decision on healthcare, if patient can not make decisions by himself anymore, is always needed. Medicine is usually injected in the form of infusion or suppositories, that often cause instant sedative effect, making it impossible for patient to independently inject a proper dose. That is why sedatives may only be used by doctor, nurse or medical personnel that looks after patient<sup>14</sup>. It is emphasized that death may occur sometime after sedation, but often it is unclear if incurable disease or sedative caused the death.

Thus, considering that the aim of palliative sedation is not causing death of patient or its speed up by any means, palliative sedation can not be recognized as a form of euthanasia. In addition, palliative sedation is not a form of physician-assisted suicide, which is discussed further.

What is assistance in suicide? It takes place, when seriously or fatally ill person ends self-living with the assistance of a second person. There are many methods, by which a person might help another person withdraw from life.

As for the assistance in suicide, following characteristics are typically distinguished: a person that expressed the wish to pass away, asks for help; this person realizes that this request will lead to the death; assisting person realizes what he or she is doing; assistance is conscious and intentional; assisting person provides the patient, that wants to end life by committing suicide, with medications (drugs); person, that wants to die, takes medications (drugs) by him or herself<sup>15</sup>.

Regarding physician-assisted suicide, that is also called physician-assisted dying or medical aid in dying, that is an act done by doctor that prescribes a

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<sup>13</sup> Седация при паліативній допомозі. *Empendiu*. URL: <https://empendium.com/ua/chapter/B27.II.22.3>.

<sup>14</sup> Angela Morrow Is Palliative Sedation a Form of Euthanasia? *Verywellhealth*. Updated on May 02, 2023. URL: <https://www.verywellhealth.com/does-palliative-sedation-cause-death-1132043>.

<sup>15</sup> Angela Morrow What Is Euthanasia? *Verywellhealth*. Updated on May 02, 2023. URL: <https://www.verywellhealth.com/what-is-euthanasia-1132209>.

lethal dose of medications, that patient takes independently, consciously and voluntarily.

In general, physician-assisted suicide may be considered as voluntary termination of someone's own life by injecting lethal dose of medications with direct or secondary assistance of doctor<sup>16</sup>. In other words, in physician-assisted suicides doctor only provides a means of it, and patient performs actions by him or herself unlike euthanasia, when doctor does some intervening (or does nothing to save patient's life).

There are many subtleties and discussion points regarding moral aspect of physician-assisted suicide today. Therefore, there are arguments for and against such kind of suicide.

Opponents of physician-assisted suicide insist that it is necessary to improve access to hospice and palliative care. It is about implementing the idea by which fatally ill person may receive such kind palliative assistance or access to high-quality hospice care, that a person would not look for ways to die prematurely. Palliative-hospice care is not on such advanced level today. For instance, in the United States of America there are more than 4000 hospice agencies, but because of limited funding and brutality of Medicare Hospice Benefit programme, that requires patients to have a life expectancy of 6 or less months, millions of people in the United States of America do not have any access to it<sup>17</sup>. The situation in Ukraine is far worse, as Ukraine has small number of institutions in providing palliative-hospice care, unlike European countries and rest of the world. The first ones began to be founded in the 90s of the last century on the initiative of foreign charity organizations and some churches. In Ukraine only a fraction of patients are being provided with inpatient and outpatient palliative care. The result is hundreds of thousands patients in ed-stage of oncological and many chronic incurable diseases, that require palliative and hospice care, die alone at home suffering from pain, depression, other symptoms of the disease, because of the lack of professional care, social and psychological support. At the same time, current palliative and hospice departments of therapeutic and prophylactic institutions in Ukraine are very limited in resources and do not have an opportunity to provide patients even with necessities. Due to the lack of funds material and technical base of current hospices and departments of palliative care still does not meet the standarts, and conditions of patient's stay are unsatisfactory in this institutions, that can be

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<sup>16</sup> Angela Morrow, Overview of Physician Assisted Suicide Arguments. *Verywellhealth*. Updated on January 02, 2021. URL: <https://www.verywellhealth.com/opposition-to-physician-assisted-suicide-1132377>.

<sup>17</sup> Ibid.

seen as violation of the rights of a patient<sup>18</sup>. So, indeed, the current situation with implementation of palliative-hospice care, especially in Ukraine, would motivate patient to make a decision to pass away rather than vice versa.

At the same time, given counterarguments can not be ignored. As even with improved access to high-quality care, anyway, there will be rare cases of constant and unbearable suffering, which person would like to prematurely terminate. Such cases may also take place in countries with quite developed system of departments of palliative-hospice care. For example, the statistics of 2019 in Oregon, where physician-assisted suicide is legal, shows that 90% of patients that had decided to pass away this way, were in hospice<sup>19</sup>.

One more argument against physician-assisted suicide is that such actions of doctor violate Hippocratic oath – *primum non nocere* – first do not harm. In condition of committing physician-assisted suicide the death of patient occurs with the assistance of doctor, that should be considered as harm. Of course, there is seed of truth. Besides, every patient is unique, so the approach to each patient should be individual. So the opinion on necessity of interpretation and change of Hippocratic oath in accordance with situation and needs of each individual patient has been suggested.

One more argument against physician-assisted suicide is that it threatens the society by reducing the importance of human life. In fact, this argument is also widely used by opponents of euthanasia. However, the doctor that patient contacted with a request to provide with methods, by which the patient can commit suicide, have the right to refuse, for instance, due to personal convictions. In other words, in conditions of compliance with all the requirements, that should be stipulated on legislative level, physician-assisted suicide will not turn into a ‘routine’ and will not become a mass phenomenon.

Opponents of physician-assisted suicide argue that there are lawful and moral and ethical alternatives to assisted suicide. Patients may abandon further treatment (including medications), that can hasten death. Or, for example, patient may refuse food and drinks, which causes death in 1–3 weeks<sup>20</sup>. It is believed, that it can not be considered as humane alternative to physician-assisted suicide or active euthanasia. Because during these 1–3 weeks (in conditions of abandoning treatment or not maintaining life-support system,

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<sup>18</sup> Савка Г.В. Стан, проблеми і перспективи впровадження паліативної та хоспісної допомоги в Україні. *Медсестринство*. 2019. № 2. С. 27–28. DOI 10.11603/2411-1597.2019.2.10195.

<sup>19</sup> Oregon Health Authority. Oregon Death with Dignity Act 2019 Data Summary. 2020.

<sup>20</sup> Angela Morrow, Overview of Physician Assisted Suicide Arguments. *Verywellhealth*. Updated on January 02, 2021. URL: <https://www.verywellhealth.com/opposition-to-physician-assisted-suicide-1132377>.

the process of dying might take more time) patient will suffer, moreover, these sufferings can be quite intensive, therefore, needless to say anything about humanism and painlessness.

So discussions on feasibility, humanism, legality of physician-assisted suicide are ongoing and, apparently, there is no best solution to this problem.

As for the deprivation of another person's life on a request out of compassion, it is a non-violent deprivation of another person's life. It is noted, that the absence of violence is due to person's desire to cause death. Legislative systems of some countries, including Ukraine, consider deprivation of person's life on a request as a murder. It is noted, that murder on victim's request relatively to a person, that expresses the wish to do so, is beneficial effect or at least conditionally useful (it denies suffering) and expedient, however, the character of orientation is specific – not socially useful and such that removes the threat for existing social relationships. Besides, intentional deprivation of ill people's life does not only stimulate useful activities, but to some extent may also become a reason of degradation of medical science and significant increase of the number of murders not just out of compassion.

At the present stage of development of Ukrainian society both at the level of theory of criminal law and lawmaking there are still disputes over the fact if there is or there is no request from a victim to deprive of life by the circumstance that excludes or softens criminal liability. People should be aware that by recognizing euthanasia or depriving other person of life upon request as a crime against life and by qualifying such actions under Part 1 of Article 115 of the Criminal Code, it must not be forgotten that in case of such formulation of question all range of fundamentally different actions, that are aimed at depriving of life both out of compassion and for the reason of revenge, personal dislike etc., in fact juridically are recognized as the same. Intentional murder committed out of compassion to a victim, and revenge murder, murder of jealousy, personal dislike can not be equal in degree of social danger. A person that committed murder out of compassion, at the time of the crime is driven by motives that deserve leniency, which indicates relatively small degree of social danger.

## **2. The right to die: international aspect and experience of Europe, the USA and some other counties**

Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention for the Protection of Human Rights and Fundamental Freedoms reinforce the positions that human right to life is fundamental and inviolable. As for the right to death, thus euthanasia, physician-assisted suicide, there is no answer from international legal acts to that.



According to Declaration of Venice on terminal illness, which was adopted by 35<sup>th</sup> World Health Assembly (WHA) in October 1983, in the course of treatment doctor is supposed, if possible, relieve patient's suffering, always being guided by the interests of ill person. At the same time, it is believed, that doctor is not prolonging the suffering of dying person by stopping the treatment, that may delay death, upon request, and if patient is unconscious, upon request of relatives. In addition, according to Declaration of 1983, refusal of treatment does not release from the obligation to help dying person by prescribing medications that alleviate suffering<sup>21</sup>.

Declaration of Euthanasia, that was adopted in October 1987 in Madrid by 39<sup>th</sup> WHA, determines that euthanasia as an act of intentional deprivation of patient's life, even upon request of patient or based on a similar request of patient's relatives, is unethical. It does not exclude the necessity of doctor's respectful attitude to ill person's request to not interfere with the course of the natural process of dying in the end-phase of the disease<sup>22</sup>.

Provision of Physician-Assisted Suicide, that was adopted by 44<sup>th</sup> WHA on September 1992, defines that physician-assisted suicide, thus doctor's assistance that is intentionally aimed at providing the individual with opportunity to commit suicide, is unethical and shall be sentenced by medics, however, the right to abandon treatment is fundamental right of patient and doctor does not act unethical even when implementing this desire causes death<sup>23</sup>.

In Declaration on Euthanasia and Physician-Assisted Suicide, that was adopted on October 2019 in Tbilisi by 70<sup>th</sup> WHA, it is determined that euthanasia as an act of intentional deprivation of patient's life, even upon request of patient or based on a similar request of patient's relatives, is unethical. It does not exclude the necessity of doctor's respectful attitude to ill person's request to not interfere with the course of the natural process of dying in the end-phase of the disease. WHA reaffirms its commitment to principles of medical ethics and maximum respect to human life should be followed. So WHA is strongly against euthanasia and physician-assisted suicide. However, doctor that respects fundamental right of patient to abandon the treatment does not act unethical in refusal

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<sup>21</sup> Declaration of Venice on terminal illness : Adopted by the 35<sup>th</sup> World Medical Assembly, Venice, Italy, October 1983 and revised by the 57<sup>th</sup> WMA General Assembly, Pilanesberg, South Africa, October 2006. URL: <https://www.wma.net/policies-post/wma-declaration-of-venice-on-terminal-illness/>.

<sup>22</sup> Декларація про евтаназію, прийнята 39-ю Всесвітньою медичною асоціацією, Мадрид, Іспанія, жовтень 1987 р. URL: <http://zakon2.rada.gov.ua>.

<sup>23</sup> Положенням про самогубство за допомогою лікаря. Міжнародний документ від 01.09.1992 р. № 990\_048. URL: [https://zakononline.com.ua/documents/show/151633\\_\\_151633](https://zakononline.com.ua/documents/show/151633__151633).

or refusal to undesirable assistance, even if the respect of such desire causes patient's death<sup>24</sup>.

Therefore, Declaration of Venice on terminal illness (1983), Declaration of Euthanasia of Madrid by WHA (1987), Declaration on Euthanasia and Physician-Assisted Suicide (2019) and Provision of Physician-Assisted Suicide (1992) allow passive form of euthanasia, in particular doctor does not any measures to prolong the life of patient, but only prescribes medications that relieves the condition of patient.

As for the experience of European Court of Human Rights (ECHR) as an international body that protects fundamental rights and freedoms of human, it is noted that in cases with connection to euthanasia and physician-assisted suicide, ECHR has repeatedly emphasized that Council of Europe member states did not reach a consensus on human right to choose when and which way to pass away. All Council of Europe member state pays different attention to protection of human right to life and death.

However, ECHR attempted to make some clarification about this question. Therefore, by the decision in the case "Case of Pretty v. The United Kingdom" (29<sup>th</sup> of April 2002) ECHR pointed out that Part 2 of Convention should not be construed as such that provides person with an opportunity to pass away or to cause self-death with an assistance of secondary person. Nevertheless, ECHR did not recognize euthanasia as violation of the right to life and avoided commentary on legalization of euthanasia in a number of European countries by indirectly recognizing the opportunity of each country to regulate the issue at the level of national legislation<sup>25</sup>. In the case "Sanles Sanles v. Spain" (26<sup>th</sup> of October 2000) on granting the right to worthy life and death, and also one's privacy because of prohibition of physician-assisted suicide, the court made the decision on unacceptability of set requirements<sup>26</sup>. Such sequence of ECHR was initiated in case "Gross v. Switzerland" (30<sup>th</sup> of September 2014), in which the Court by a majority of votes held that Part 8 of European Convention was violated<sup>27</sup>. However, in the case "Afiri and Biddarri v.

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<sup>24</sup> WMA Declaration on Euthanasia and Physician-Assisted Suicide: Adopted by the 70<sup>th</sup> WMA General Assembly, Tbilisi, Georgia, October 2019. Available at: <https://www.wma.net/policies-post/declaration-on-euthanasia-and-physician-assisted-suicide/>.

<sup>25</sup> Case of Pretty v. the United Kingdom (Application no. 2346/02). European Court of Human Rights. 29 April 2002. URL: <http://hudoc.echr.coe.int/eng?i=001-60448>.

<sup>26</sup> Case of Sanles Sanles v. Spain. (Application no. 48335/99). European Court of Human Rights. 26 October 2000. URL: <https://hudoc.echr.coe.int/fre?i=001-22151>.

<sup>27</sup> Case of Gross v. Switzerland (Application no. 67810/10). European Court of Human Rights. 30 September 2014. URL: <https://hudoc.echr.coe.int/eng?i=001-146780>.

France” (23<sup>rd</sup> of January 2018) on refusal of life-supporting of 14-year-oldish girl that was in vegetative state after acute cardio-respiratory deficiency, ECHR recognized parents’ requirements as unreasonable, noting that current national legislation of France comply with Part 2 of Convention<sup>28</sup>.

In other words, ECHR came to the conclusion that states must have wide freedom to make decisions about this question and decide by themselves and fix or not the right to life at the legislative level.

If we turn to the experience of foreign countries, then it is important to note that many of them widely discuss the matter of legalizing euthanasia and physician-assisted suicide. It may be emphasized that passive euthanasia is common all over the world, when active euthanasia is prohibited in most countries and is recognized as criminal offence.

The Netherlands was the first country to legalize euthanasia, despite the maturity and extreme caution of juridical formulations. Of course, this decision has its own good reasons. It was preceded by long-standing heated debate (around 20 years) in society and political institutions in the Netherlands. Before 1998, according to researching of Erasmus University in Rotterdam, voluntary euthanasia was supported by 92% of the population of the Netherlands and, despite the religious arguments, in favor of possible deprivation of patient’s life upon request believers were set to it, including 96% of Catholic believers. It should be emphasized that opinions about pre-term cessation of elderly people’s life in this country can not appear from despair and inaccessibility of treatment. The Netherlands are known by its high level of medicine, careful attitude to elderly and people with disabilities, its extensive system of different houses, hospices and boarding houses for these people. Regardless of above, a year before adoption of the law on legalization of euthanasia Dutch medics were approached by more than 2000 people diagnosed with cancer, AIDS, nervous and cardiovascular diseases with a request for help. If a patient asked doctor to deprive him or her of life, then doctor appeal to special commission that consisted of specialists in the field of medicine, jurisprudence, ethic, and they dealt with personal matter of the patient and made a decision. Such cases were happening more frequently<sup>29</sup>.

In 2000 a national referendum was held. The overwhelming majority of Dutch said ‘yes’ to euthanasia. On 10<sup>th</sup> of April 2011 upper house of Parliament consolidated this decision as a law that came into force on 1<sup>st</sup> of January 2002. To claim the right to death on a request, the patient should be incurably ill and at the same time experience unbearable sufferings. Besides,

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<sup>28</sup> Case of Afiri and Biddarri v. France. European Court of Human Rights. 23 January 2018. URL: <https://hudoc.echr.coe.int/fre?i=003-5984825-7658817>.

<sup>29</sup> Ларін М. Право на гідну смерть. *Юридичний вісник України*. 2003. № 41 (11–17 жовт.). С.11.

euthanasia has age limit – children under 12 years can not get a permission for euthanasia. However, for children ranging in age from 12 to 16 years their own desire is not enough. The government requires mandatory agreement of parents of underage patient<sup>30</sup>. It is interesting that, according to regional auditing commissions, in 2022 there was only one case of euthanasia of underage children ranging in age from 12 to 16 years<sup>31</sup>. 16-year old and 17-year-old children do not need a permission from parents, but their parents are supposed to be involved in the process of making a decision. Starting from 18 years young people have the right to demand euthanasia without their parents' involvement<sup>32</sup>. At the same time, euthanasia might be carried out to ill infants before their first birthday<sup>33</sup>.

It is interesting that as of 2023 the Netherlands are planning to expand their rules on euthanasia by including an opportunity for incurably ill children ranging in age from 1 to 12 years to be provided with the assistance of doctor. New rules concern from 5 to 10 children per year that are suffering from their disease, have no hope to get better and for whose palliative care can not bring relief. Government representative of the Netherlands notices that the end of the life for this group of people is the only smart alternative to unbearable and hopeless sufferings of child<sup>34</sup>.

Besides, Belgium is the second country in the world to allow euthanasia for fatally ill people that reached 18 years (2002) and was the first country to fully remove age limits for euthanasia (2014).

The parliament of Belgium voted to expand the law on euthanasia to fatally ill children. The relevant draft law was supported by 86 deputies of the House of Representatives, 44 were against, 12 of them abstained. According to the correspondent of BBC Duncan Crawford, at the time of adoption such changes had broad support in society<sup>35</sup>.

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<sup>30</sup> Government of the Netherlands. Euthanasia. URL: <https://www.government.nl/topics/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request>.

<sup>31</sup> Netherlands to broaden euthanasia rules to cover children of all ages. *The Guardian*. Fri 14 Apr 2023. URL: <https://www.theguardian.com/society/2023/apr/14/netherlands-to-broaden-euthanasia-rules-to-cover-children-of-all-ages>.

<sup>32</sup> Government of the Netherlands. *Euthanasia*. URL: <https://www.government.nl/topics/euthanasia/euthanasia-assisted-suicide-and-non-resuscitation-on-request>.

<sup>33</sup> Netherlands to broaden euthanasia rules to cover children of all ages. *The Guardian*. Fri 14 Apr 2023. URL: <https://www.theguardian.com/society/2023/apr/14/netherlands-to-broaden-euthanasia-rules-to-cover-children-of-all-ages>.

<sup>34</sup> Ibid.

<sup>35</sup> У Бельгії дозволили евтаназію для дітей. *BBC News Україна*. 13 лютого 2014 р. URL: [https://www.bbc.com/ukrainian/health/2014/02/140213\\_belgium\\_euthanasia\\_vote\\_or](https://www.bbc.com/ukrainian/health/2014/02/140213_belgium_euthanasia_vote_or).

As of 2021, euthanasia in a certain form is officially allowed in such countries as Belgium, Luxembourg, the Netherlands, Portugal, Switzerland, Germany, Canada, Columbia, some part of Australia, some states of the USA. Also the parliament of Spain voted for legalization of euthanasia on 17<sup>th</sup> of December 2020<sup>36</sup>. Some countries as an alternative to euthanasia identified dedicated allowance – “privileged” murder. Thus, the analysis of legislation on criminal liability of European countries gives grounds for the conclusion that for quite big number of countries agreement or request of victim is recognized as a circumstance to soften the responsibility. Criminal codes of Austria, Switzerland, Poland, France, Lithuania are based on the principle of a murder on a request being attributed to a murder committed in softened circumstances<sup>37</sup>.

As for physician-assisted suicide, it is legal in some states of the USA (California, Washington, Oregon, Montana, Colorado, New Mexico, Hawaii, Maine, New Jersey, Vermont) and Washington, D.C.<sup>38</sup>. This way to pass away is used only when patient has terminal diagnosis, suffers and wants to control when and how he dies. The most fundamental aspect of physician-assisted suicide is that lethal dose is injected by patient himself. It is prohibited by law to give medications to doctor, friend, family member or any other person as it is recognized as euthanasia.

It is noted that the majority of Americans support laws that allow physician-assisted suicide. During the survey of 1024 Americans 72% of them said that doctors should have the opportunity to help incurably ill person to end his or her life, if this person expressed same desire. Quite interesting is the research of Gallup, who starting from 1996 has been assessing American’s viewpoints about physician-assisted suicide, and for many years the support of him was slightly below than the support of euthanasia, but never reached 51% and lower. Currently 65% of Americans believe that doctors should be allowed to assist patients that commit suicide. The explanation for Americans being more willing to support euthanasia than physician-assisted suicide in current survey is that the question of physician-assisted suicide consists of a phrase “to commit suicide” and the question of euthanasia uses the formulation “end the patient’s life by some painless means”, which might sound not as cruel as suicide. The fact that the support of physician-assisted suicides differentiates to a lesser extent depending on the subgroup than the support of euthanasia is

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<sup>36</sup> Евтаназія. *Вікіпедія*. URL: <https://uk.wikipedia.org/wiki/%D0%95%D0%B2%D1%82%D0%B0%D0%BD%D0%B0%D0%B7%D1%96%D1%8F>.

<sup>37</sup> Tetiana A. Pavlenko, Tetiana Ye. Dunaieva, Marina Yu. Valuiska *Wiad Lek.* 2020;73(10): 2293. DOI:10.36740/WLek202010135.

<sup>38</sup> Angela Morrow What Is Euthanasia? *Verywellhealth*. Updated on May 02, 2023. URL: <https://www.verywellhealth.com/what-is-euthanasia-1132209>.

also important. The most noticeable differences of subgroups for physician-assisted suicides are in its ideology and frequency of visiting church<sup>39</sup>.

Physician-assisted suicide is also legal in the Netherlands, Belgium, The Great Britain, Columbia, Canada and Japan.

It should be emphasized that in our world there are functioning organizations that support human right to worthy death. As of today 37 of such organizations are functioning in 23 countries. They are connected by World Association of Organizations in Support of the Human Right to a Dignified Death. Moreover, this number is quite dynamic, because some countries enter and exit this organization. The number of organizations themselves change as well. When naming some specific of them, then one of the most famous is Swiss “Dignitas” that was founded in 1946, “Exit” and also American organization “Compassion & Choices”.

In general, in modern world there is a tendency to gradual legalization euthanasia by even bigger number of countries. In all of jurisdictions the safety measures of euthanasia’s processes and physician-assisted suicide, preventing abusing the right to death etc. were taken. Some criterion and procedures are general to all of jurisdictions, another are different in various countries.

In Ukraine euthanasia is strictly prohibited by law in whatever form it is done. It is fixed by Article 52 of Fundamentals of the Legislation of Ukraine on Healthcare<sup>40</sup>. Medical personnel is restricted to carry out euthanasia that is recognized as intentional accelerating of death or mortification of incurably ill patient in order to stop the suffering. So the person that carries out euthanasia will be held criminally responsible.

It is noted that in Ukraine there were attempts to legalize passive euthanasia at the legislation level. Thus, passive euthanasia was suggested to be fixed in preparations of one of the editions of Civil Code of Ukraine. However, this idea was not supported and in Part 4 of Article 281 of Civil Code of Ukraine<sup>41</sup> it is fixed that it is restricted to satisfy the request of a person to deprive him or her of life.

In the Concept of Updating the Civil Code of Ukraine only conceptual provisions are noted (“§2.9. Possible legalization of euthanasia and physician-assisted suicide. It is suggested to reconsider the opportunity to legalize passive euthanasia and physician-assisted suicide, taking into account the

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<sup>39</sup> Megan Brenan Americans’ strong support for euthanasia persists. *Gallup*. May 31, 2018. URL: <https://news.gallup.com/poll/235145/americans-strong-support-euthanasia-persists.aspx>.

<sup>40</sup> Закон України «Основи законодавства України про охорону здоров’я» від 19 листопада 1992 року № 2801-XII. URL: <https://zakon.rada.gov.ua/laws/show/2801-12#Text>.

<sup>41</sup> Цивільний кодекс України. 16 січня 2003 року № 435-IV. URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text>.

experience of ECHR with amendments of Criminal Code of Ukraine at the same time<sup>42</sup>). In this case, the authors of Provision refer to the judgements of the cases *Pretty v. The United Kingdom*, No 2346/02, 29.04.2002; *Haas v. Switzerland*, No 31322/07, 20.01.2011, *Lambert and Others v. France*, No 46043/14, 05.06.2014 etc. to support such position.

## CONCLUSIONS

Taking into account the provisions of international legal acts (Article 3 of Universal Declaration of Human Rights, Article 6 of International Covenant on Public and Political Rights, Article 2 of European Convention for the Protection of Human Rights and Fundamental Freedoms) that guarantee not the life, but the right to life, and determine that no one shall arbitrarily be deprived of his life, it can be concluded that the legalization of euthanasia, and especially physician-assisted suicide, does not contradict international documents. Thus, euthanasia shall not be recognized as arbitrarily deprivation of human life, because the person his or herself expressed the desire (approval given) to such attitude.

After the analysis of the experience of ECHR it can be concluded that the Court adhere to the position of letting countries freely deal with the question of legalizing euthanasia.

Without denying euthanasia in general as a phenomenon of nature human right to dispose life, it shall be emphasized that the legalization of euthanasia is possible only in a social rule of law, in which the issue of palliative-hospice care is set at the proper level and it provides lethally ill people with high-quality life and family members with psychological support. In Ukraine on its present stage of development the legalization of euthanasia is premature, as, firstly, it may lead to abuses against ill and elderly people. Besides, the right to dispose ones life shall be only used by the carrier of life, in the case of carrying out euthanasia (active) this right is used by another person, and this is restricted, as the right to life can not be transferred.

The issue of legalizing physician-assisted suicide remains open. Again, without denying that it is one of the methods for lethally ill person to painlessly pass away, stopping the suffering, we shall be aware that in Ukraine, where palliative-hospice care is on an extremely low level, such opportunity might lead to abuses from medical personnel, family members of such patient.

At the same time, it is believed that considering the deprivation of human life out of compassion as a simple murder is unacceptable.

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<sup>42</sup> Концепція оновлення Цивільного кодексу України. Київ : Видавничий дім «АртЕк», 2020. С. 17.

## SUMMARY

The issue of the right to death, in particular in such forms as euthanasia, physician-assisted suicide is the issue of moral, ethic, professional, social and individual choice. Such choice is based on the rules of biological ethic. Besides, without legal settlement the solution of such complicated issues is impossible. The overwhelming majority of international legal acts do not answer the question about legal regulation of euthanasia and physician-assisted suicide. At the same time, according to the provision of Declaration of Venice (1983), Declaration of Madrid by WHA (1987), Declaration on Euthanasia and Physician-Assisted Suicide (2019) and Provision of Physician-Assisted Suicide (1992), passive euthanasia is allowed. According to the conclusions of European Court of Human Rights, countries are supposed to freely make decisions on the right to death and freely decide to fix or not to fix such right at the legislation level. In the modern world there is a tendency of gradual legalization of euthanasia by an increasing number of countries. Ukraine is a country, in which euthanasia is prohibited by law, regardless of the form of it, the same way as physician-assisted suicide. It is noted that today deprivation of human life out of compassion, mercy killing is recognized as usual murder, which is unacceptable.

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