

PRACA ORYGINALNA  
ORIGINAL ARTICLE

## EUTHANASIA OR PALLIATIVE CARE: LEGAL PRINCIPLES OF THE IMPLEMENTATION IN THE CONTEXT OF THE REALIZATION OF HUMAN RIGHTS TO LIFE

Iryna V. Chekhovska<sup>1</sup>, Olha M. Balynska<sup>2</sup>, Roman I. Blahuta<sup>2</sup>, Valeriy V. Sereda<sup>2</sup>, Serhii O. Mosondz<sup>3</sup>

<sup>1</sup>UNIVERSITY OF THE STATE FISCAL SERVICE OF UKRAINE, IRPIN, UKRAINE

<sup>2</sup>LVIV STATE UNIVERSITY OF INTERNAL AFFAIRS, LVIV, UKRAINE

<sup>3</sup>UNIVERSITY OF MODERN KNOWLEDGE, KYIV, UKRAINE

### ABSTRACT

**Introduction:** The right to life – is natural inherent human right, the fundamental principle of the existence of mankind, recognized by all civilized countries. It is enshrined in numerous international and national legal acts as the most important benefit of a man. However, there are discussions about the use of euthanasia. Therefore, the problem of the legalization of euthanasia requires careful study.

**The aim:** The purpose of this article is to analyze and systematize existing problems of the legalization of euthanasia. The main objective of the article is to study the legal grounds for the introduction of euthanasia in the context of realizing the right to life, to study the content of palliative care, to distinguish the barriers to its development, and to formulate propositions for their elimination.

**Materials and methods:** Theoretical (analysis, synthesis, generalization, systematization, etc.) and empirical methods (observation, survey, classification, etc.) were used in the course of the research.

**Results:** The author has revealed the negative attitude of medical staff to the possibility of using different forms of euthanasia during the study. The reasons for the positive attitude of patients, who were in the terminal stage to the euthanasia, have been determined. It has been established that the correction of most causes leads to a significant reduction in the percentage of positive attitude to euthanasia. The arguments of opponents and supporters of the legalization of euthanasia procedure have been analyzed. On this basis the author has proved the objective absence of legal grounds for the legalization of euthanasia procedure and direct violation of human rights to life.

**Conclusions:** The author has proved the expediency of the development of palliative care as an alternative to euthanasia, has outlined the obstacles to its development, has offered to develop regulatory base for the legal regulation of the provision of palliative care, to establish the National Coordination Council on palliative and hospice care, to form the system of state control over the quality of provision of palliative care and observance of the rights of patients.

**KEY WORDS:** euthanasia, palliative care, the right to life, the rights of patients

Wiad Lek 2019, 72, 4, 677-681

### INTRODUCTION

The right to life – is natural inherent human right, the fundamental principle of the existence of mankind, recognized by all civilized countries. It is the greatest, the most important benefit and holds the key position in the system of human rights. It is enshrined in numerous international and national legal acts. Thus, the Art. 3 of the Universal Declaration of Human Rights states: “Everyone has the right to life, liberty and security of person” [1], the Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms states that the right to life is protected by law and no one can be deprived of it intentionally [2], the Art. 27 of the Constitution of Ukraine states: “Every person has the inalienable right to life. No one shall be arbitrarily deprived of life. Everyone has the right to protect his or her life and health, the lives and health of other persons against unlawful encroachments” [3]. The right to life is also guaranteed by the Art. 281 of

the Civil Code of Ukraine [4]. The laws of most countries provide protection for the right of their citizens to life. The right of citizens to stop or restrict their own or another’s life is not indicated anywhere. However, despite the above, as well as the position of the European Court of Human Rights on the inadmissibility of the euthanasia’s legalization in recent decades, there are discussions about its application have revived in many countries [5; 6; 7; 8]. We are talking about the practice of stopping a life of a person who has an incurable disease by a physician to meet his request in a painless or least painful form to stop the unbearable suffering. Of course, the increased interest in the issue of euthanasia can be attributed by the rapid progress in the development of technology and medicine, the introduction of robotics, methods of life support, etc. [5, p. 391]. However, the issues of the legalization of euthanasia require careful study. It should be noted that despite the liberal attitude of certain countries

to euthanasia, most scholars and practitioners perceive it negatively [9; 5; 8; 10; 11].

Euthanasia in most world countries is either not foreseen by law or prohibited by law [10; 5]. However, there are countries that have recognized the human right to death at the legislative level and do not consider euthanasia as a criminal offense (Netherlands, Belgium, Luxembourg, Federal Republic of Germany, Finland, Switzerland, Sweden, the states of Oregon, Missouri, New Jersey, Vermont, Washington, Montana, Georgia of the USA) [5; 10], and in this regard prompted a new wave of discussions on the legalization of euthanasia.

## THE AIM

The purpose of this article is to analyze and systematize existing problems of the legalization of euthanasia. The main objective of the article is to study the legal grounds for the introduction of euthanasia in the context of realizing the right to life, to study the content of palliative care, to distinguish the barriers to its development, and to formulate propositions for their elimination.

## MATERIALS AND METHODS

In October-November 2018, a survey was conducted, where 36 people at the age of 47 years and older were interviewed through a formal interview. Besides, based on the analysis of international standards, current national and international legislation, journalism, analytical materials, and sociological surveys, one systematized approaches of supporters and opponents of the legalization of euthanasia. The lack of legal grounds for legalizing the euthanasia procedure and a direct violation of the right of a person to life was also systematized. The scope of the rights for palliative patients was defined by the method of legal analysis. The comparative and legal method allowed to reveal the shortcomings of national legislation on the legal regulation of the provision of palliative care and to develop propositions for their elimination. The author of the article also used methods of statistical, comparative analysis, dialectic, extrapolation, etc.

## RESULTS AND DISCUSSION

“Declaration on euthanasia”, which stated that the deliberate deprivation of the patient’s life at his request or at the request of his relatives should be considered unethical [12], was adopted in October 1987 by the 39th World Medical Assembly (Madrid, Spain). The official position of the medical community in the United States, expressed by the American Medical Association, also rejects euthanasia: “It is incompatible with the prohibition of using medical devices to cause the death to a patient”. The American Medical Association by forbidding its members to participate in euthanasia put forward the following slogan: “Physicians should not be executioners” [13, p. 213].

The attitude of medical staff to the possibility of using different forms of euthanasia can be demonstrated by an example of a conducted in 2014 survey of doctors in Chernivtsi (Ukraine). 46% of respondents were against euthanasia, and 17% of respondents refused to answer. 45% of the respondents expressed extremely negative attitude towards the use of any types and forms of euthanasia. Almost 64% of physicians were not personally ready to realize the request of a patient to go away from life. Consequently, every second respondent, in case of the adoption of the relevant law on euthanasia, is not ready for moral and legal liability for the possible consequences of the application of such a law. The vast majority of physicians do not at all imagine the circumstances and methods of implementing active euthanasia in their activities, considering it as dehumanised phenomenon. Even the formal permission of active euthanasia, according to physicians, can lead to a paralysis of the process of modernization in the health care sector [14, p. 151].

A study conducted in the Netherlands revealed the causes of the positive attitude of patients to euthanasia who were in the terminal stage. The data is presented in Fig. 1

Pain as the main reason for a favorable attitude to euthanasia was named by 56% of patients in Ivano-Frankivsk Regional Clinical Center for Palliative Care (a survey was conducted in October-November 2018, where 36 persons were interviewed by the method of formal interviewing at the age of 47 and older).

Palliative care, which in the modern sense is considered as a complex system of measures of medical, social, spiritual and psychological nature aimed at the comprehensive support of a patient, in case if the disease can not be treated, can be solved by the problems facing by incurable dying patients and their families. That is, palliative care is a legitimate alternative to euthanasia and one of the ways to realize the right of citizens to life and to receive adequate medical care in any illness or condition.

Unlike specialized medical intervention aimed at curing a disease, palliative care is aimed at alleviating the physical condition of a patient (overcoming the pain and eliminating other negative manifestations of the disease), maintaining his spiritual and emotional condition, as well as improving the living conditions of a patient and his environment.

Back in 1989, the WHO Committee of Experts stated in its official report: “With the development of modern methods of palliative treatment, the legalization of voluntary euthanasia is not mandatory. Today, when there is an alternative to death accompanied by a pain, it is necessary to focus on the implementation of the program of palliative care, but not to admire the struggle for the legalization of euthanasia” [15, 55-56].

The conducted studies allow us to make assumptions about the expediency of palliative care development as an alternative to euthanasia. Palliative medicine has a real opportunity to demonstrate the effectiveness of measures to minimize the pain, to correct the psychological state of both a patient and his family members. It should also be noted that medical technology today allows us to actively fight against pathological conditions, the treatment of which was quite problematic 10-15 years ago. It should also be noted that palliative medicine is not able to completely overcome suffering yet, but the correction of

## Reasons of patients' positive attitude to euthanasia

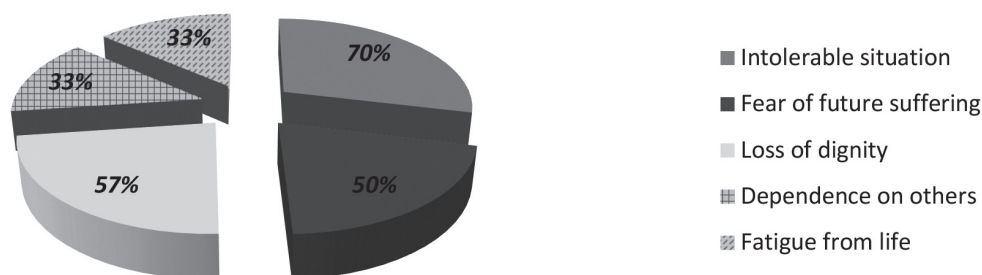


Fig. 1. Results of the patients survey

most causes leads to a significant reduction in the percentage of positive attitude to euthanasia.

In the context of the above, we consider it appropriate to systematize the positions of opponents to the legalization of euthanasia procedure. Arguments of supporters to the legalization of euthanasia are provided in previous works of scholars [5; 16], however, the arguments of opponents of the legalization of euthanasia procedure have not been practically revealed by them. So, why the majority opposes:

1. Through religious beliefs, which are the first inhibiting factors. Despite the difference in denominations in the world, virtually all of them prohibit intentional murder, suicide, arguing that "God gave life, and he disposes it" [17].
2. Permanent fight against fatal diseases allows medicine forge ahead, to develop, to seek new drugs and methods of treatment, and the introduction of euthanasia can greatly slow down this process.
3. Possible problems with physically disabled people, which are a "burden" for others. Their defects can serve as an occasion for social pressure and coercion for "light death".
4. Euthanasia can easily become one of the methods of killing, and also lead to abuse of official position, bribing of medical personnel, deliberate harm, etc.
5. It is extremely difficult to understand when a patient really wants to die. Stress, prolonged depression, public pressure or threats can all be the reason for applying for the procedure's permission. However, it is difficult to predict whether a person will refuse to go from life and will decide to continue it even in suffering, at the last moment of the procedure of euthanasia.
6. The cases of miraculous healing are completely excluded. Medicine counts hundreds of cases when a doomed patient suddenly got on his hind legs after a severe form of cancer or awoke after 20 years of coma: health returned when nobody had any hope.
7. It is worth saying that the murder of a patient is completely contrary to the Oath of Hippocrates, which says that a physician should not give a deadly mean and show the ways to achieve death. It is this factor that causes a lot of controversy in making decisions among physicians.

8. Relatives of persons, who are in a difficult situation, in case of the legalization of euthanasia, may abuse their rights for the purpose of property enrichment.

9. A formal permit for euthanasia may promote unfairness in the provision of medical care to such patients.

10. The decision about euthanasia can be done hastily and not balanced under the influence of the desire to get rid of suffering not so much yourself, but the people around you, first of all, their loved ones.

11. The criterion of incurability is difficult to determine, then one can expect from the science the healing from serious illness and reducing the suffering of patients.

12. One of the most serious arguments against euthanasia is the risk of misuse of medical personnel and neglect of their duties, as well as a particularly dangerous possibility of a diagnostic medical error.

"I am a handicapped person and I do not support the right to die for one very important reason" – this is the title of the article published in "The Independent". The author, James Moore, suffers from severe physical disabilities and drug and medical interventions in order to "live" and to make him pain-controlled. Despite this, he opposes the notion of so-called "right to death" [7]. The event, entitled "Deep End of Life in Europe", has been recently held in the European Parliament (EP). It was arranged by Hilda Wutmanns, a member of the Belgian Parliament and a member of the Alliance's Parliamentary Assembly (Alliance for Liberals and Democrats of Europe). Mrs. Wutmanns advocates euthanasia, namely the idea of "a decent end to life as the fundamental human right". According to her, countries that have legalized this right "more love their citizens", which leads to a more "positive approach" to death [7]. The question is how this love is expressed? Common sense says that loving someone means to be on his or her side, to take care, to support. People need more love when they are weak and vulnerable. How can one say that someone under the influence of this vulnerability knows that it is better to pass away, is it the so-called "act of love"?

Here is another argument that was used to justify euthanasia; it was associated with the idea of dying with dignity. Dr. Dieter Birnbacher, President of the German organization promoting euthanasia, emphasized the fact

that we should take into account personal feelings of human dignity while popularizing euthanasia. In other words, if a person feels that in any way something affects his human dignity, he must have the opportunity to freely choose the path of euthanasia [18]. But how such an important decision as the end of life can be based on subjective feelings?

The Wutmans supporters and representatives of pro-euthanasia organizations emphasize the fact that “right to death” should be regarded as “human right”, which must be respected. However, this idea of having the “right to die” as the fundamental human right contradicts to international law [1; 2; 5] and can not be used as a basis for legalizing the procedure of euthanasia.

Thus, the above suggests that there is an objective lack of legal grounds for legitimizing the euthanasia procedure and a direct violation of the right of a person to life, instead confirms the thesis on the expediency of further development of palliative care as an alternative to euthanasia.

Palliative care as an independent area of activity has been officially recognized at international level after the report of WHO experts “Cancer Pain Relief and Palliative Movement” in 1990 [16, p. 185]. An active process for the establishment of national unions and associations of hospice and palliative care has begun: the US National Hospice and Palliative Care Organization (NHPCO), the International Association for Hospice and Palliative Care (IAHPC), the EAPC (Italy), Help The Hospices (Great Britain ) and others. In 2002, national standards for the provision of palliative care were established in 8 countries of the world, and in 2003 the basic principles of palliative care were approved [16, p. 186]. However, there is currently no normative document that would specify a list of the rights of palliative patients. Carrying out the analysis of special international and legal standards in the field of palliative care (the Venice Declaration on the incurable diseases (1983), the Regulations on the care of patients with severe chronic pain in incurable diseases (1990), the Recommendations of the Committee of Ministers of the Council of Europe “On the organization of palliative care” (2003), I.Ya. Seniuta distinguishes such possibilities of palliative patients, as the right to: relieve of the symptoms of the disease, suffering; psychological, spiritual and emotional support; his family; the availability of palliative care regardless of the type of disease, geographical location, socio-economic status or any other characteristics; qualified palliative care provided with proper equipment and a multifunctional team of specialists; consideration of the patient’s needs at his own discretion, but with an advantage in the context of providing better palliative care; respect for his rights; priority of his interests and their protection; a wide range of services in the field of palliative care, in particular to provide this type of aid in various forms, taking into account the needs and wishes of a patient; timeliness of receiving palliative care; availability of opium and other narcotic drugs for medical purposes; medical information provided in the light of the situation, in which a patient appeared, his needs, his emotional state and desire; medical

secrecy; refraining from treatment with his consent as the method of relieving suffering from an incurable disease; obtaining necessary medicines to relieve the suffering from an incurable disease; obtaining extraordinary remedies only if there is evidence that they are beneficial to a patient; treatment that allows him to live last days with dignity and honor, which is a part of the care of the incurably ill patient with severe chronic pain [19, p. 235-236].

The analysis of these rights of palliative patients allows us to conclude that it is necessary to focus efforts on the development of palliative care, to identify the rights of palliative patients at the legislative level, to ensure the guarantees of the realization of such rights, and to inform the public about palliative care.

By the way, the low level of awareness in Ukraine (only 3% of the population understand the concept of “palliative care” [16, p. 190]) is the reason for the low activity of non-governmental organizations and philanthropists regarding participation in the realization of the tasks of palliative care, education, provision of psychological and social support to patients and their relatives.

Nowadays, the directed state policy that would be in line with international approaches in this field is almost absent in Ukraine, but the existing regulatory base does not yet define the principles and legal relations that would provide patients with the appropriate access to palliative care at the thermal stage. All this, as well as the extremely weak logistics of the existing several specialized departments of palliative care and undeveloped network of hospices for the dying people – in general, their complete absence in some regions, even for cancer patients – are the reasons that most patients of the specified category with severe chronic diseases in the thermal stage did not receive and still do not receive any care. Besides, the rigorous system of control over the circulation of opioid analgesics operating today in Ukraine makes it impossible to ensure the normal, civilized access to absolutely necessary painkillers for people suffering from unbearable pain. In addition, there are no institutional and human resources to establish a network of facilities and services for palliative care, methodological basis, standards and medical minutes, and there is no system of training and advanced training of medical and social employees who will provide palliative care [20]. The subdivision of health care and social protection establishments complicates the formation of a set of necessary medical and social measures that is involved by palliative care, and therefore the system of palliative care in general.

The above mentioned points to the need for state support, regulation and adequate financing of palliative care programs in order to achieve uniform accessibility for people with different types of diseases, if necessary, in different regions, at different levels of health care.

## CONCLUSIONS

Deprivation of life (murder, suicide) is a criminal offense and any discussion on the legalization of euthanasia is deprived of legal grounds. Life is not the subject matter

to legal regulation. It is the object that must be protected both by legal and medical means aimed at respecting each person's life.

Instead, palliative care with its "right-minded" ideology, which goal is to achieve the best quality of life for patients and their families, is an alternative to euthanasia. Therefore, it is necessary to develop, approve and finance the State Programs for the Development of Palliative and Hospice Care, to establish the National Coordination Council on Palliative and Hospice Care, to form regulatory base for the legal regulation of the provision of palliative care, to form the system of state control over the quality of the provision of palliative care and observance of the rights of patients in the process of providing palliative care through accreditation and licensing of institutions providing palliative care.

## REFERENCES

1. Universal Declaration of Human Rights. United Nations. Available from: <http://www.un.org/en/universal-declaration-human-rights/>.
2. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14. Council of Europe. European Treaty Series No. 5. Available from: <https://rm.coe.int/1680063765>.
3. Konstytutsiia Ukrainy [The Constitution of Ukraine]: zakon Ukrainy vid 28.06.1996 No. 254к/96-ВР. Available from: <http://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> (In Ukrainian).
4. Tsyvilnyi kodeks Ukrainy (Civil Code of Ukraine) Zakon Ukrainy vid 16.01.2003 № 435-IV. Available from: <http://zakon.rada.gov.ua/laws/show/435-15> (In Ukrainian).
5. Stefanchuk R.O., Yanchuk A.O., Stefanchuk M.M., Stefanchuk M.O., Blazhivska N.Ye. Pravo na evtanaziiu: za chy proty? [The right to euthanasia: for or against?] Patolohiia. 2018;15(3):390-395. doi: 10.14739/2310-1237.2018.3.151873 (In Ukrainian).
6. Quill TE, Lo B, Brock DW. Palliative options of last resort: comparison of voluntarily stopping eating and drinking, terminal sedation, physician assisted suicide, and voluntary active euthanasia. JAMA. 1997;278(23):2099-104.
7. Bishop J.P. Euthanasia, efficiency, and the historical distinction between killing a patient and allowing a patient to die. Journal of Medical Ethics. 2006; 32(4):220–224, doi: 10.1136/jme.2005.013839.
8. Antonov S. Zabezpechennia prava patsiienta na hidnu ta bezbolisnu smert: pravovi ta etychni pytannia [Ensuring the right of a patient to dignified and painless death: legal and ethical issues]. Medychne pravo. 2011;7(1);7-13 (In Ukrainian).
9. Alpers A, Lo B. Does it make clinical sense to equate terminally ill patients who require life sustaining interventions with those who do not? JAMA. 1997;277(21):1705-8.
10. Sereda S.V. Evtanaziia: dosvid pravovoho rehuliuвання v inozemnykh krainakh ta dotsilnist dozvolu v Ukraini [Euthanasia: experience of legal regulation in foreign countries and expediency of its permission in Ukraine]. Medychne pravo Ukrainy: problemy paliatyvnoi dopomohy ta medyko-sotsialnoho obsluhovuvannia naseleennia: Materialy IV Vseukrainskoi naukovo-praktychnoi konferentsii z medychnoho prava; 2010; Lviv: LOBF "Medytsyna i pravo", s. 196-200 (In Ukrainian).
11. Streltsov Ye. Evtanaziia: dukhovni, moralni ta pravovi skladovi [Euthanasia: spiritual, moral and legal components]. Yurydychnyi visnyk Ukrainy. 2009;16:4 (In Ukrainian).
12. E.E.Chernikov, M.M.Zaretskiy, N.M.Chernikova. Pravo likaria na evtanaziiu: problemy, sudzhennia, poshuk alternatyvy [Uthanasia: problems, judgements, search for alternative]. Ukrainskyi zhurnal ekstremalnoi medytsyny imeni H.O. Mozhaieva. 2008; 9(3):14-19 (In Ukrainian).
13. Annas G. Some Choice: Law, Medicine, and the Market. Oxford – New York, 1998.
14. Bezarov O.T. Evtanaziia v konteksti medychnoi praktyky (za rezultatyami sotsiolohichnoho opytuvannia, provedenoho v m. Chernivtsi) [Euthanasia in the context of medical practice (according to the results of sociological survey conducted in Chernivtsi City)]. Bukovynskyi medychnyi visnyk. 2005;9(1):149-154.
15. Obezbolivanie pri rake i paliativnoe lechenie: доклад Komiteta ekspertov VOZ [Cancer Anaesthesia and Palliative Care: Report of the WHO Expert Committee]. Seriya tekhnicheskikh dokladov VOZ; 804 Zheneva, 1992. 77 s.
16. Lavrynenko O.O., Rohova O.H., Panasiuk S.A. Komentar medychnoho zakonodavstva Ukrainy [Review of medical legislation of Ukraine]. Kyiv: Vydavnychi dim "Profesional", 2017. 360 c. (In Ukrainian).
17. Janssens L. Ontic Evil, Moral Evil, in: Curran, C., McCormick, R.A. (eds.), Reading in Moral Theology: Moral Norms in the Catholic Tradition. No. 1. New York: Paulist Press; 1979. p. 40–93.
18. MacIntyre, Alasdair C. After virtue: a study of moral theory. Notre Dame, IN: Notre Dame Press. Available from: <https://epistemh.pbworks.com/f/4.+Macintyre.pdf>.
19. Seniuta I.Ya. Pravove rehuliuвання nadannia paliatyvnoi dopomohy v Ukraini: deiaki aspekty [Legal regulation of providing palliative care in Ukraine: some aspects]. Medychne pravo Ukrainy: problemy paliatyvnoi dopomohy ta medyko-sotsialnoho obsluhovuvannia naseleennia: Materialy IV Vseukrainskoi naukovo-praktychnoi konferentsii z medychnoho prava; 2010; Lviv: LOBF "Medytsyna i pravo", s. 234-237 (In Ukrainian).
20. Proekt Kontseptsii Derzhavnoi prohramy rozvytku paliatyvnoi ta khospisnoi dopomohy v Ukraini na 2010–2014 rr. [Draft Concept of the State program for the development of palliative and hospice care in Ukraine for 2010-2014] Available from: <https://novitsky.livejournal.com/110991.html> (In Ukrainian).

### Authors' contributions:

*According to the order of the Authorship.*

### Conflict of interest:

*The Authors declare no conflict of interest.*

---

## CORRESPONDING AUTHOR

**Iryna V. Chekhovska**

University of the State Fiscal Service of Ukraine  
31, Universitetskaya str., Kyiv region, Irpin, 08201, Ukraine  
chekhovska\_i@ukr.net

**Received:** 11.02.2019

**Accepted:** 03.04.2019