



UKRAINIAN EXPERIENCE ATTEMPTS TO LEGALIZE EUTHANASIA AND ORTHANASIA

Yana TRINEVA,

PhD, Professor of Criminal Law Department of the National Academy of Prosecution of Ukraine, junior counselor of justice

Summary

The purpose of this article is to introduce foreign colleagues' Ukrainian experience in the field of legalizing euthanasia and orthanasia. Author of this article was created by nongovernmental Bill «The human right to dignity death». The theoretical model of this project is provided in this article. This project regulates the procedure of deprivation of human life under certain conditions on her request, authorized person's request or legal representatives, performed only by a physician. The project is unique in the world because no precedents for storage in a similar act of the three types of procedures: euthanasia, orthanasia and physician assisted suicide. Also available linking this project to other national acts. The proposed example, yet the project Ukrainian law can be useful to a foreign legislator to establish their own regulations in this area.

Key words: euthanasia, orthanasia, physician assisted suicide, assisted suicide, life, suicide.

Аннотация

Целью этой статьи является ознакомление зарубежных коллег с украинским научным подходом в области легализации эвтаназии и ортаназии. Автором статьи создана концепция закона «О праве человека на достойную смерть». Теоретическая модель этого проекта представлена в статье. В проекте излагается порядок лишения жизни человека врачом при определенных условиях по просьбе первого или его законных представителей/уполномоченных лиц. Подобный проект закона – беспрецедентный шаг в законотворчестве в этой сфере, поскольку описывает проведение сразу трех процедур: эвтаназии, ортаназии и самоубийства, ассистируемого врачом. Демонстрируется взаимосвязь этого проекта закона с национальной системой законодательства. Представленная теоретическая модель закона может быть полезна зарубежным коллегам в решении актуальной проблемы правового обеспечения лишения жизни другого человека по просьбе.

Ключевые слова: эвтаназия, ортаназия, самоубийство, ассистируемое врачом, жизнь человека, право на смерть, порядок лишения жизни.

It is well known that every society is certain stages of its «life». One of the first category, which is sensitive to the dynamics of social processes is morality. Morality is variable category. It changes all the time, and its essence is always to go ahead of the law. When this happens, there is a latency of crime and other negative phenomena. According to sociological data in Ukraine [1], today our society is beginning to recognize the need to legalize euthanasia and orthanasia¹. This means that in the near future it will be able to pass a law. But today, in addition to the development of this legal act accordingly and other changes to legislation necessary to press as much as possible the information society on the issue of euthanasia, orthanasia, Physician Assisted suicide (hereinafter – PAS), and this information must be qualified.

Of course legalizing euthanasia and orthanasia entail appropriate amendments to certain national acts. Specifically Primary health care [2] and the Civil Code of Ukraine (p. 4 st. 281) [3], which prohibit the physician to participate in euthanasia. But in the Constitution of Ukraine, says

nothing about it, in fact, referring to st. 1, 3, 21, 22, 28, we can conclude that the right to death is one of unreduced in the Constitution of the rights and freedoms. This listed is not reduced, and that's why it can be a supplement (Article 22) [4].

So, we believe that euthanasia and orthanasia as a kind of professional medical practice, in perspective, will be subject of decriminalization and legalization.

Offering decriminalize causing easy death (euthanasia and orthanasia), we are aware of the presence of important problems in this way. The main problem – is stereotypes traditional thinking, based on erroneous assessment of the situation regarding deprivation of life by a doctor at the patient's request.

Since euthanasia and orthanasia is a one complex problem, that is why except for changes to the criminal law, we have to make changes and another («positive») legislation. So, we offer the following conceptual basis of the draft law of Ukraine «The human right to dignity death», which unites reason and conditions of euthanasia, orthanasia and PAS.

Addressing this issue I would like to

begin from history. In the early nineteenth century the famous Russian lawyer – Mr. Anatoly Koni formulated conditions of euthanasia, subject to which the person could be released from criminal liability:

1. Voluntarily expressed patient's wish to die.
2. Inability to easy patient's suffering known medication.
3. Precise and unequivocal evidence College (*consilium* – Y.T.) inability of doctors to save the life of the patient.
4. Notice of this fact prosecutor Attorney [5].

Now all of these aspects are present in the laws of different countries that legalized euthanasia. We also, to some extent, make use of its proposals at presentation of our concept of the draft law «The human right to dignity death».

Combining the three types of the procedures deprivation of human life at the request in these legal act is an unprecedented step in the world legislative regulation of euthanasia, orthanasia and PAS. However, we believe that this approach is optimal, because it makes no sense to distinguish them in separate regulations that only complicate their use in practice. These three procedures combining one purpose – to end his or her life in a humane and dignified manner.

¹Orthanasia - deprivation of life incurable patient, which performed by a doctor at the request of other persons authorized by a patients.



At the begin of this act should define basic terms used therein, including such as «dignity death», «informed decision» etc.

Then this act shall include characteristics of patient which can be applied **euthanasia** and **PAS**. In our point of view the fact of citizenship of Ukraine is not necessary, because this approach reduces the patient's right. Also, the patient must be competent and informed. Decisions taken by the patient should be informed, including patient knowledge of their health (this information in an accessible form must provide by the attending physician).

Also we should articulate the reasons for euthanasia and PAS as they are possible only for capable patients. That reason, in our opinion, should be the sum of the following circumstances:

1. The patient with incurable and irreversible disease.
2. Diagnosis that the patient is suffering (physical and/or moral) from a terminal disease.
3. Informed decision by a qualified patient, to deprivation his or her life in a humane and dignified manner.

All other requirements with regard to euthanasia and PAS as defined in this Act; it is proposed to recognize the proper conditions for their implementation. These conditions will contain not one, but many articles of this law, but only the observance of all of them together should be regarded as compliance with the order of euthanasia and PAS.

First of all, prior to these procedures, the physician must consult with an independent physician-consultant: on patient's incurable disease; unable to quench the patient's pain by analgesics; offensive in a short time the patient's death and come to own conclusion that this all is true This consultant should not be a relative or loved/friend one patient and not be financially interested in the patient's death.

The attending physician responsibilities: to inform the patient about his diagnosis, all possible consequences and complications of his illness. Information provided includes:

- a) his or her medical diagnosis;
- b) estimates of the disease in the future;
- c) the potential risk in the use of drugs (death) to be prescribed by a doctor (with PAS);

d) possible complications in the use of drugs (with PAS);

e) possible alternatives, which include, but are not limited medical care, keeping in hospice, pain control.

Inform the patient that he or she has an opportunity to rescind the request at any time and in any form. The physician must verify that the patient is making an informed decision.

Consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is capable, is acting voluntarily and has made an informed decision. Consulting physician turns to a psychiatrist to confirm that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment. No medication to end a patient's life in a humane and dignified manner shall be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

No person shall receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately prior to writing a prescription for medication, the attending physician shall verify that the patient is making an informed decision. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

Requests for euthanasia or PAS submitted in writing to the physician. If the patient is not able to write this request, it can trust it to another adult person at the physician presence. Between the writing of such a request and procedure of euthanasia or PAS must elapse at least a month. The patient may rescind his or her request at any time and in any way, including tacit action. Consent to termination of life, according to this draft law, shall be made in strict accordance with the form prescribed by this project. This act must be signed and dated by the patient and least two witnesses. Witnesses with their signatures confirm

that the patient has on their own and make decisions.

There is some limitations status of witnesses to protect patients from abuse and other interested persons in the patient's death. So none of the witnesses must be:

- a) relative of the patient;
- b) person who after the death of a patient has the right to inheritance or other patient property right;
- c) any other person who took care of the patient;
- d) the patient's attending physician;
- d) if the patient is on long-term care, one of the witnesses appointed by the National Commission of morality (hereinafter – the Commission).

Also, the person has the right (in the case of euthanasia) to write request, which will be valid for five years. Such document should include the presence of two witnesses who can not be relatives, potential heirs to the patient, or persons who are attendant hospital where the patient had a treatment before and the patient's attending physician. The relevant document is intended for cases where the patient due to certain circumstances, he can not express his will. After the course of the term of this request, the person may renew it for another five years.

In the draft law also useful to define the list of required documents that should be included in history, namely:

- a) all oral statements patient to terminate his or her life;
- b) all written statements;
- c) the diagnosis of attending physician and his predictions about the disease and determine the patient's capacity, which makes informed and voluntary decision;
- d) confirmation consultant physician about the diagnosis, the patient's condition as a viable, one that adopted informed and voluntary decision;
- e) the offer attending physician for patient to rescind his or her request at any time and in any manner without regard to his or her mental state and others.

This provision shall protect a physician. Because in case collisions usually studied anamnesis. All collected patient's request, along with other listed documents are a kind of alibi for the physician.

Ortanasia terms similar to the exercise of euthanasia and PAS. Separate section of this draft law should



include position of ortanasia. Ortanasia is possible to incapacitated patients (infants with pathology incompatible with life, etc.) at the request of their legal representatives, and in their absence – by the court. In these cases, an application for termination of life constitutes the legitimate representatives of the person. As for the baby, which was born with pathology incompatible with subsequent life, the existence of such a disease should be confirmed by physician's consilium.

In the case of **incompetent patients**, the fact that such patients have physical and/or moral suffering, must also be confirmed by physician's consilium. Cases about these patients should be particularly monitored by the Commission and the prosecution.

To ensure compliance with procedures euthanasia should be formed corresponding structure (division) of the National morality Commission, which will consist of experts in the field of medicine, law and representatives of organizations dealing with the rights of incurable patients. This structure is created for a specified period, with the following rotation of its members.

In carrying out euthanasia procedures, ortanasia and PAS physician should be formed appropriate medical card, which indicates how sensitive data physician, and all conditions, the indications for these procedures patient after appropriate treatments, this card is sent to the Commission which should check this card for compliance with the observance of the law. If the Commission finds a violation of the procedure, information must be sent to the prosecutor.

After some time the Commission shall publish a report on its activities and report on «The human right to a dignified death act».

Separately, the law should be determined guarantees physicians who participate in the above procedure and their responsibilities. This section is declared position that no person may be attracted to the civil, disciplinary or criminal responsibility for participation in the acts stipulated by this law. No organization or association shall not be denied licenses, privileges, membership or found guilty of participation or refusal to participate in the acts stipulated by this law.

By adopting this position we encouraged precedent with California law «On the right to a dignified death» (1970) [6]. The effect of this law was made impossible the restrictions that were imposed on doctors – potential participants euthanasia by trade union organizations. Doctors and psychiatrists who participated in euthanasia, denied licenses and membership in trade unions; through the specialist, once taking part in euthanasia actually became unemployed. Naturally, the noble intentions of the doctor to relieve the patient from suffering replace desire to stay at work and not ruin his career.

It should also provide that the physician has the right to refuse to perform euthanasia, ortanasia or assistance suicide, if it is contrary to its principles. In this case, it should recommend another physician for these procedures and, with the consent of the latter on this, give him the medical history of the patient.

The law should stipulate that violations of the conditions of implementation of euthanasia, ortanasia and PAS by physician entails legal, including criminal penalties.

As an annex to the draft law provides such sample documents: «Consent to termination of life» and «Request for ortanasia in a future».

It should be noted that the relevant amendments to the national legislation of Ukraine entail certain amendments to the Civil Code of Ukraine and the Basic Law of Ukraine on healthcare, as well as the Criminal Code of Ukraine. Necessary to improving curricula of medical schools, to introduction such discipline as «Bioethics», one of the tasks which will train future health professionals caring up for dying patients, teach the culture of death and so on.

In order to ensure compliance of the human right to a dignified death, and thereby safeguard society from abuses in this area, in the criminal legislation of Ukraine proposed responsibility for its violation. To this end, we propose to Title II of the Special Part of the Criminal Code («Crimes against life and health»), the relevant article as follows: «...Violation of euthanasia and ortanasia. Conduct euthanasia or ortanasia by physician without compliance prescribed by law for their implementation – punished...»

In compliance with the statutory medical procedure for euthanasia or ortanasia we propose to understand their conduct in accordance with the conditions determined by law. For example, presence during the euthanasia people whom it is forbidden by law and so on. Definition of this term is possible to give in a reference to article. But in fact this method interpretation of legislative provisions is not popular in the Ukrainian criminal law, the definition of this concept can be the subject of doctrinal interpretation, the results of which will be reflected in scientific conference and Textbook's comments.

List of reference links:

1. Кияни не проти евтаназії // [Електронний ресурс]. – Режим доступу : <http://www.risu.org.ua/freedom/news/article%3b526/>.
2. Основи законодавства України про охорону здоров'я від 19.11.92 // Відомості Верховної Ради України. – 1993. – № 4. – Ст. 19.
3. Цивільний кодекс України // Відомості Верховної Ради України. – 2003. – № 40-44. – Ст. 356. – (Зі змінами та доповненнями станом на 17.01.2006 р).
4. Конституція України від 28.06.1996 // Відомості Верховної Ради України. – 1996. – № 3. – Ст. 141.
5. Кони А.Ф. Самоубийство в законі и жизни / А.Ф. Кони // Собрание сочинений. – Т. 4. – М. : Юридическая литература, 1967. – 542 с.
6. Assisted suicide laws around the world // [Электронный ресурс]. – Режим доступа : http://www.Assistedsuicide.org/suicide_laws.html.