

Legal Regulation of Euthanasia: Global Trends and Russian Practice

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ABSTRACT

The purpose of the article is to formulate the main development trends in regulating the issue of euthanasia, based on an analysis of the legislation and law enforcement practice in Russia and foreign countries, to determine the place of Russian law in the system of world national jurisdictions on the issue of euthanasia, to identify ways of possible further development of Russian legislation in this area. The study showed that in relation to the regulation of euthanasia, modern states can be divided into three main types. The first type is distinguished by a categorical prohibition of euthanasia. The second type includes countries in which society has actually come to recognize euthanasia, but the legislation has not had time to adapt to changing social relations. In countries of the third type, euthanasia is officially established as a legal procedure. Russia is usually classified as a country of the first type, however, recent judicial practice allows us to judge the reorientation of attitude to this issue towards the countries of the second type. Analysis of the prohibition of euthanasia from a legal perspective entails the need to qualify such a ban as restricting the human right to life. There are no legal obstacles to a legalization of euthanasia in Russia.

Keywords: right to life, euthanasia, restriction of rights and freedoms

1. INTRODUCTION

Acceleration of patient's death at his own request by action (inaction) or means, including life maintenance measures termination (euthanasia) is still subject to heated discussions in Russia and other countries where its legislative prohibition exists.

The most diverse points of view are expressed: from allegations of the need to legalize it to the condemnation of the very formulation of the question ("we don't even have the right to discuss euthanasia, it offends the doctor") [1]. The issue of maintaining the ban on euthanasia or the possibility of its legalization is being decided differently from moral, professional, medical, religious and other points of view. We will try to answer it, reasoning mainly in the mainstream of jurisprudence.

2. MATERIALS AND METHODS

The legislative regulation, practical and scientific approaches to the question of euthanasia existing in the world are analyzed. The question is whether the ban or legalization of euthanasia is a restriction of the human right to life. The scientific positions regarding legal

obstacles to the legalization of euthanasia in Russia are investigated.

The study is based on the comparative legal method, the method of system analysis, and the method of analysis of court decisions.

3. RESULTS

3.1. Euthanasia and the Right to Life

There is no doubt that the issue of legalizing or maintaining the ban on euthanasia must be considered within the scope of the human right to life – a fundamental right, which differs from others in that it is a prerequisite, a base of human dignity, guaranteeing inviolability of a person's physical existence [2].

When determining the content of human right to life, the constitutional law doctrines of those countries where euthanasia is prohibited, proceed from the inherent nature of this right and the inability to alienate it even by the holder [3]. Such a syllogism primarily lies at the basis of the legal position of the Russian legislator, as well. Solving the issue of (in)admissibility of euthanasia in the

legal plane requires an answer to the question of whether its prohibition is a restriction on the right to life or not. It is also necessary to understand whether euthanasia, as a voluntary act, violates the rights and freedoms of others and whether the ban on euthanasia has a socially and legally significant purpose. To answer these questions, we turn to the world practice of legal regulation of euthanasia, a comparison of the legal positions of legislators of different states and features of their formation.

3.2. Modern World Experience in Legal Regulation of Euthanasia

The issue of euthanasia in Europe is resolved unequally: members of the European Union disagree on whether this procedure should be legalized. As indicated by J. L. Pridgeon, 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the European Convention) can serve as a tool for the development of legal regulation, both universally prohibiting and universally legalizing the use of euthanasia within the EU [4]. The attitude of a state to euthanasia develops historically and is determined by a number of factors, primarily the degree of religious influence on the formation of public opinion and legal policy. In this regard, three main types of countries can be distinguished.

1) States of the first type are countries with a great influence of religion. Death is considered there as a kind of mystery, which by definition is inexplicable, is not a subject of science and is not connected with a biological state. Since death is holy as the moment a person approaches God, Christians consider both artificial reduction and extension of human life unethical. Accordingly, society responds to questions about the legalization of euthanasia, as happened, for example, in Greece, the development of which was largely influenced by orthodox Christianity. Paradoxically, the states of the first type are focused on individualism, human rights. However, on the issue of euthanasia, there is a gap between the legal system basic values as a whole and the values of the legal regulation of medicine and health. In this area, paternalism prevails, and the idea of a doctor's free actions "in the best interests" of the patient. The refusal to legalize euthanasia is argued by the fact that doctors may abuse their powers or incorrect assessment of the "best interests" of the patient. There is another direction in the development of public relations in the field of medicine - towards patient-managed healthcare [5]. We believe that the arguments about medical abuse will lose their significance, but a fundamental change in the doctor-patient relationships will turn out to be a relatively long process, since it is associated with the mass consciousness "reformatting".

2) The second type includes countries in which society, under the influence of a patient-driven healthcare tendency, has come to recognize euthanasia as an important aspect of the principle of human dignity. Sociological polls in such countries show the willingness

of citizens to approve the legalization of euthanasia, and cases of euthanasia out of compassion for the patient are often found in legal practice. However, due to lack of mobility, the legal regulation in these states has not yet managed to adapt to the changing social relations and criminalizes the use of euthanasia. An example is the United Kingdom. Here "euthanasia is unlawful and criminally punishable, like any murder, without any exception for a murder committed out of compassion. The only exception may be the fact that in the case when euthanasia was performed by a relative of the patient, his act may be qualified by the court as unintentional murder instead of intentional" [4]. Nevertheless, in the United Kingdom, at least two problems associated with euthanasia are recognized. The first arises from the competition of two fundamental human rights. All competent patients have the right to make decisions on issues related to their treatment. The right to self-determination stipulated the appearance of the "doctrine of consent" in the common law, when any procedures are carried out with the consent of the patient. At the same time, it turns out that a person cannot agree to end his own life. The second problem is that prohibition of euthanasia by law does not correspond actual legal practice. R. Lynn points out "the general reluctance of the jury to convict family members or doctors accused of murder in cases of "murder on request" out of sympathy for both the accused and the "victim"" [6], which complicates the prosecution procedure. Prosecutors have to indict attempted murder or manslaughter in order to avoid jury acquittal. As a result, it is felt that if you are caught accelerating death at the request of the patient, then despite a violation of objective law, you will not be held liable [4]. It was expected that after the UK ratified the European Convention, the European Court of Human Rights would resolve the conflict between the right to self-determination in medicine in general and its absence in the issue of euthanasia towards a broader interpretation of the right to self-determination. However, in a decision of April 29, 2002 in the case of Diane Pretty v. Great Britain, the ECHR expressed its position regarding euthanasia, according to which article 2 of the European Convention "does not entail the right to die either by the hand of a third person, or with the assistance of public authority". It was stated that the right to life cannot create such a right to self-determination that would imply a person's choice of death rather than life. However, later decisions of the ECHR demonstrate that it is inclined to recognize the legitimacy of euthanasia. So, in the decision of July 7, 2006 in the case of "L. Burke v. The United Kingdom" The ECHR upheld the position of the High Court of England, quashing the court ruling on guarantees to continue medical care for the applicant in the event of a terminal stage of his illness [7]. Although the decision stated that English law favors extending life where possible, in fact, the cancellation of guarantees to maintain the patient's life in the terminal stage means the legalization of passive euthanasia.

3) The countries of the third type are characterized by the recognition of the legitimacy of euthanasia by society legal

regulation (Netherlands, Belgium, and others). In these states, euthanasia is decriminalized, a number of requirements have been developed for the termination of human life: legalized euthanasia will be a feature of the inalienable constitutional right to dignity and life only when its application is fully regulated by really working procedural rules, the observance of which allows us to distinguish euthanasia from a crime. In addition to countries in which the issue of euthanasia finds a positive legal solution, states that do not recognize euthanasia as a wrongful act can also be classified as the third type. These include Switzerland, Germany, Sweden, Finland. Of course, the legalization of euthanasia is accompanied by legal problems and conflicts that need to be resolved. So, the issue of euthanasia in relation to persons suffering from mental illness, dementia, etc., entailing high-profile criminal cases (in Netherlands, for instance) is relevant [8]. Public opinion surveys show that a society that tends to support the idea of euthanasia as such, to a lesser extent, justifies its application to people with mental illness [9,10]. Another problem of the “third-type countries”, which is the reverse side of liberalization of this issue, is the use of euthanasia as a business idea, when such a procedure is performed *en masse*, which, of course, can affect patient rights [11].

It is customary to classify the Russian Federation as a “first-type country”, where euthanasia, like any other form of causing death, is punishable by criminal law as murder. However, the law enforcement practice of recent years indicates a change in attitude towards this issue. So, in February 2020, a young man who, during the investigation, confessed to having killed his great-grandmother out of compassion, was released in the hall of the Krasnoyarsk Regional Court (case 2-2/2020). According to the jury’s verdict, the defendant’s guilt of murder has not been proven. This example may indicate a reorientation of the approach to cases of euthanasia in Russia towards the countries of the second type.

3.3. Legalization of Euthanasia: Pro et Contra in the Legal Aspect

The provisions given by various lawyers in favor of banning euthanasia can be divided into rational and irrational. The irrational provisions are not among the actual legal arguments, and they can hardly be considered scientific ones, too: they appeal to values of morality or religion that are accepted on faith. One can also face directly opposing values: suicides of the samurai, ritual sacrificial suicides etc. We believe that supporting moral and religious principles should be left to appropriate social institutions (church and others).

The state, legalizing euthanasia through law and establishing legal procedures for its implementation, does not undermine the religious and moral prohibitions on disposing of one’s own life, leaves a reasonable person the right to choose a moral, religious or other option (if there is a legal option). As recent studies show, a person’s

decision about euthanasia, as a rule, is itself based on their (person’s) religious beliefs, faith in an infinite afterlife, etc. [12], thus individual morality remains on this issue even with the legalization of euthanasia.

It is naive to consider the arguments sometimes sounding seriously in the media that permission of euthanasia will lead to its massive use by people. Law as a universal regulator of citizens’ behavior, regardless of their religious and moral principles, should be guided primarily by legal values and arguments, and should not blindly integrate the norms of individual religious trends and the “mosaic” of moral ideas.

Rational legal arguments in favor of the ban on euthanasia indicate the impossibility of a person managing his life since one can only have the right to something external. G. Hegel also wrote: “I, as this individual, am not the master of my life, for the all-encompassing totality of activity, life, is not something external to the personality, which itself is this totality itself” [13]. G. Hegel also argued that if “they talk about the right that a person has for his life, then this is a contradiction, because it would mean that the person has a right to himself” [13].

However, if we develop this statement, we can come either to a denial of the right to life in general, or to a strange legal construction of a “subjectless law” – a personal right to life without belonging to any subject (in wartime, we can talk about the state’s right to life, but in peaceful periods such a statement of the question is absurd). According to this logic, voluntarily giving tissues, organs to save the life of their own child is also unlawful.

According to some scholars, the legalization of euthanasia will inevitably cause competition of rights. Thus, J. Isensee, while not denying the probability of the consequence of the right to die from the right to life, points to the impossibility of securing such a right by the state, since this would contradict the function of protection exercised by the state and the state constitutional obligation to protect [2]. However, disposing of one’s own life in the form of causing death to oneself is one of those situations that is outside the scope of state legal regulation itself, since there is no social relation, no social interaction, there is an actual unilateral voluntary, conscious (to one degree or another) act of human behavior.

The wording “the right to death”, “the right to suicide” are themselves devoid of legal content, as well as the “prohibition of suicide”; the implementation of a particular model of behavior cannot be ensured by the legal sanctions applied to the subject of law (actions prescribed by various traditions for the body of a suicide victim are not related to the subject itself). It turns out that in any situation a healthy person has the opportunity to take his own life and no one, including the state, has the legal means to exclude this option. It is another matter when a seriously ill patient, not having his own resources to carry out such an act, turns to others for help - here social relations arise and, accordingly, their legal regulation. A negative answer should be given to the question of whether euthanasia as a person’s free will violates the rights and freedoms of others. The ban on euthanasia does not pursue any internal

goal of the right to life and does not hesitate the meaning of this right, that state is called to provide - freedom from unlawful encroachment on a person's life from any side.

It seems that there is every reason to believe that the ban on euthanasia is a restriction of the human right to life. Considering the condition of people to whom euthanasia can be applied (a serious illness), and the fact that, being in a normal state of the psyche, they freely expressed their will to exercise it, the prohibition of euthanasia is an interference with the autonomy of the individual in the exercise of the right to life. In addition, the prohibition of euthanasia pursues an objective external to the right to life, which in the states of the first and partly of the second type in its most general form can be formulated as "protection of morality", that is satisfaction of the religious and moral ideas of people (sometimes the majority, sometimes the political elite, which determines the strategy of legal development) about the inadmissibility of voluntary parting with life. And while in many countries this goal is recognized as socially and legally significant and sufficient for such a restriction, in other countries it receives the opposite assessment.

Concluding the presentation of the legal argument on the issue, we cannot fail to dwell on another aspect of the problem.

3.4. Prohibition and Legalization of Euthanasia and the Principle of Legal Equality

The preamble to the Universal Declaration of Human Rights states that "recognition of the dignity inherent in all members of the human family and their equal and inalienable rights is the foundation of freedom, justice and universal peace". It is stipulated in article 1 that "all people are born free and equal in dignity and rights", including the right to life (as a human right, not the right of a citizen citizen).

The equality of all people before the law and the right without any discrimination to equal protection by law is also enshrined in article 26 of the International Covenant on Civil and Political Rights. Comparing the content of the legal status of citizens of countries belonging to the three described types, we clearly see the difference in the volume of the right to life: there is a decrease in the volume of possible behavior associated with the exercise of the right to life of citizens of one group of states compared with that of citizens of another group. Consequently, the prohibition of euthanasia conflicts with the general principle of equality of human rights.

4. CONCLUSION

Summarizing the above, we note that the ban on euthanasia is a restriction on the right to life; the resolution of the issue of maintaining the ban on euthanasia, i.e., recognizing such a restriction of the right to life as legitimate (necessary and proportionate to achieve socially

and legally significant goals), or legalizing euthanasia depends on legal, religious, moral and other ideas, attitudes and traditions of society, living in a particular state; there are no obstacles to legalize euthanasia in Russia from the point of view of the legal nature of the right to life and its international ruling.

REFERENCES

- [1] G. Onishchenko, Blasphemous reasoning about euthanasia offends the doctor, *Rossiyskaya Gazeta*, 2007. Retrieved from: <https://rg.ru/2007/05/18/evtanaziya.html>
- [2] B.N. Topornin (Ed.), *German State Law*, vol. 2, 1994, Moscow, 320 p.
- [3] B. Mathieu, *The right to Life*, Council of Europe Publishing, 2006, 124 p.
- [4] J.L. Pridgeon, Euthanasia Legislation in the European Union: is a Universal Law Possible? *Hanse Law Review* 2 (2006) 45-62.
- [5] R.E. Herzlinger, *Consumer-Driven Healthcare: Implications for Providers, Payer and Policymakers*, San Francisco, 2004, 978 p.
- [6] A. Grubb (Ed.), *Principles of Medical Law*, Oxford University Press, 2004, 1280 p.
- [7] M.V. Shugurov, Protection of human rights in the context of modern scientific and technological progress, practice of the European Court of Human Rights, *International public and private law* (2011) 4-7.
- [8] E.C.A. Asscher, S. Van De Vathorst, First prosecution of a Dutch doctor since the Euthanasia Act of 2002: What does the verdict mean? *Journal of Medical Ethics* 2(2) (2020) 71-75. DOI: 10.1136/medethics-2019-105877.
- [9] K. Levin, G.L. Bradley, A. Duffy, Attitudes Toward Euthanasia for Patients Who Suffer From Physical or Mental Illness, *Omega (United States)* 80(4) (2020) 592-614. DOI: 10.1177/0030222818754667.
- [10] I. Tuffrey-Wijne, L. Curfs, I. Finlay, S. Hollins, "Because of His Intellectual Disability, He Couldn't Cope." Is Euthanasia the Answer? *Journal of Policy and Practice in Intellectual Disabilities* 16(2) (2019) 113-116. DOI: 10.1111/jppi.12307.
- [11] T. Von Solodkoff, Routine suicide assistance – reflections on the recent debate in Germany, *Medicine and Law* 38(3) (2019) 505-514.

[12] A. Greenland, D. Proulx, D.A. Savage, Dying for the cause: The rationality of martyrs, suicide bombers and self-immolators, *Rationality and Society* 32(1) (2020) 93-115. DOI: 10.1177/1043463119900327.

[13] G. Hegel, *Philosophy of Law*, Moscow, 1990, 524 p.