

Anna Slavko,
PhD in Law, teaching assistant
Department of International, European and Comparative Law
Sumy State University (Ukraine)

Arina Holokha,
student
Sumy State University (Ukraine)

LEGAL QUALIFICATION OF EUTHANASIA WORLDWIDE

Дискусії щодо легалізації евтаназії вже багато років поспіль тривають як в юридичній науці, так і в практиці. Вирішення питання легалізації чи заборони евтаназії лежить на перетині кількох сфер, таких як медицина, право та етика. Ось чому досить складно вирішити, чи прийнятна евтаназія в сучасному цивілізованому суспільстві.

Кожна країна світу має свій підхід до цього питання. Багато держав забороняють евтаназію, проголошуючи важливість права на життя. Деякі інші держави вважають гуманізм і позбавлення людини страждань більш важливою цінністю, дозволяючи евтаназію. Деякі дослідники сподіваються на науково-технічний прогрес, підкреслюючи, що багато захворювань, які раніше не лікували, вже виліковні. Відтак, на їхню думку, хворобу, невиліковну сьогодні, можна вилікувати завтра. При цьому евтаназія позбавить людину не тільки страждань, а й надії стати здоровою в майбутньому.

Парламентська асамблея Ради Європи називає евтаназію порушенням права людини на життя. Натомість Європейський суд з прав людини стверджує, що в Європі ще немає консенсусу з цього приводу. Відповідно кожна держава може вирішувати, легалізувати чи ні евтаназію.

У статті проаналізовано законодавство низки країн щодо евтаназії та право Ради Європи (резолюції ПАРЄ та практику Європейського суду з прав людини). Зроблено висновок про чотири типи держав за ставленням до евтаназії: 1) держави, які дозволяють як активну, так і пасивну евтаназію; 2) держави, які дозволяють лише пасивну евтаназію; 3) держави, які забороняють як активну, так і пасивну евтаназію; 4) держави, які не регулюють у своєму законодавстві питання евтаназії. Також зроблено висновок про бажаність формування загальноєвропейського стандарту ставлення до евтаназії.

Ключові слова: *право на життя, евтаназія, право Ради Європи, практика Європейського суду з прав людини.*

Formulation of the problem. Researchers emphasize that the issue of euthanasia in international law in recent years remains very relevant, primarily due to the growing interest in it in the legal doctrine and practice of some states. However, to discuss the formation of a particular universal or regional standard for euthanasia, it is necessary to study the national legislation of different states in this area. Despite the active

study of this issue, the final decision on the legalization of euthanasia in Ukraine has not taken place. Euthanasia is primarily discussed in the context of civil or constitutional law. However, we think it is necessary to conduct a brief comparative legal study.

Presenting main material. Researchers emphasize that the relationship between life and death has recently become relevant in modern European countries. Priority is given to the philosophy of inviolability of human rights and fundamental freedoms and the inviolability of his life [7]. Given this, many countries worldwide either explicitly ban euthanasia or do not distinguish it from premeditated murder. In fact, Ukraine belongs to such states. Instead, euthanasia is allowed in Albania, Belgium, Luxembourg, the Netherlands, Switzerland (Zurich only), Sweden, Germany and some US states. In general, our analysis suggests that there are four types of countries, depending on how they address euthanasia in their legislation:

- 1) States that prohibit both active and passive euthanasia;
- 2) States that allow both active and passive euthanasia;
- 3) States that allow only passive euthanasia;
- 4) States that do not regulate the issue of euthanasia in their legislation.

We offer a brief analysis of foreign experience in resolving the issue of euthanasia. For example, the Netherlands was one of the first to legalize the right to retire from seriously ill people voluntarily. The first precedent in this area was in 1973 when a court sentenced a doctor who killed his sick mother to a week in prison. Based on this case, in 1984, the Supreme Court of the Netherlands declared voluntary euthanasia acceptable. The Netherlands Act on Termination of Life on Demand and Suicide Assistance, which entered into force in 2002, legalized euthanasia. According to Article 2 of the law, a doctor is obliged to perform euthanasia:

- be sure that the patient has made a voluntary and carefully considered request [about euthanasia];
- be sure that the patient's suffering is unbearable and that there is no prospect of improvement;
- inform the patient about his condition and prospects;
- together with the patient conclude that there is no reasonable alternative given the patient's situation;
- consult with at least one other independent doctor who should examine the patient and provide a written opinion on the criteria for proper care; and
- terminate the patient's life or provide suicide assistance with appropriate medical care and attention [18].

Similarly, in 2002, euthanasia was legalized by Belgium. According to Article 2 of the Belgian Act on Euthanasia, euthanasia is defined as intentionally terminating life by someone other than the person concerned, at the latter's request.

The physician who performs euthanasia commits no criminal offence when he / she ensures that:

- the patient has attained the age of majority or is an emancipated minor, and is legally competent and conscious at the moment of making the request;
- the request is voluntary, well-considered and repeated, and is not the result of any external pressure;
- the patient is in a medically futile condition of constant and unbearable physical or mental suffering that can not be alleviated, resulting from a serious and incurable disorder caused by illness or accident; and
- when he / she has respected the conditions and procedures as provided in this Act [20].

In the United States, each state decides for itself whether to legalize or criminalize euthanasia. For example, in 1977 in California, after a lengthy discussion, the law On the right to die was passed, according to which terminally ill people were given the right to issue a document of their desire to turn off resuscitation equipment under certain conditions [14]. However, due to sabotage by the American Psychiatric Association and the American Medical Association, this act was virtually inapplicable. A new act on this issue was adopted in 2015. Paragraph 443.2 of the End of Life Option Act provides that a person who is an adult, capable of making medical decisions and suffering from an incurable disease may apply for a prescription for drugs that help to die if all of the following conditions:

- the person's doctor diagnosed the person with an incurable disease;
- an individual voluntarily expressed a desire to obtain a prescription for a drug that helps to die;
- an individual is a resident of California;
- an individual documents his / her application under the requirements of the mentioned law;
- a person is physically and mentally able to self-administer a drug that helps to die [1].

Today, euthanasia is also allowed in Oregon, Missouri, New Jersey, Vermont, Washington, Montana, and Georgia.

In France, certain health care issues are governed by the Public Health Code. According to Article L. 1110-5 of this act, everyone has the right to have a dignified end of life accompanied by the best possible alleviation of suffering [9]. Health professionals use all the means at their disposal to ensure that this right is respected. Accordingly, active euthanasia is prohibited in this state, but the so-called «passive euthanasia» is practised, which consists in terminating the work of life support systems.

Instead, Australia has strictly banned euthanasia on its territory. In particular, in 1997 it was adopted Euthanasia Laws Act. This Act stated: «subject to this section the

power of the Legislative Assembly conferred by section 6 in relation to the making of laws does not extend to the making of laws which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life».

According to this Act, the Legislative Assembly does have power to make laws with respect to:

- a) the withdrawal or withholding of medical or surgical measures for prolonging the life of a patient but not so as to permit the intentional killing of the patient;
- b) medical treatment in the provision of palliative care to a dying patient, but not so as to permit the intentional killing of the patient; and
- c) the appointment of an agent by a patient who is authorised to make decisions about the withdrawal or withholding of treatment; and
- d) the repealing of legal sanctions against attempted suicide [12].

Euthanasia is also prohibited in Turkey. Article 84 of the Turkish Criminal Code provides: «Any person who solicits, encourages a person to commit suicide, or supports the decision of a person for suicide or helps the suicide action in any manner whatsoever, is punished with imprisonment from two years to five years.

In case of commission of suicide, the person who is involved in such act is sentenced to imprisonment from four years to ten years.

Any person who openly encourages others to commit suicide is punished with imprisonment from three years to eight years.

Persons who encourage others, lack of ability to understand the meaning and consequences of the executed act, to commit suicide, or force a person to commit suicide under threat, are convicted of felonious homicide» [11].

It is obvious that the Council of Europe could not ignore the legalization of euthanasia. In particular, the Council of Europe Committee on Bioethics conducted a study on the problem of euthanasia in European countries and presented its results in the document «Questions and Answers on Euthanasia» on January 20, 2003. The report noted that in countries that have already legalized euthanasia, there are not even clear criteria for defining this concept, let alone distinguishing between euthanasia by type [16].

On January 25, 2012, the PACE adopted Resolution (1859), «Protecting human rights and dignity by taking into account previously expressed wishes of patients», which states that «euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited» [17]. Earlier, the PACE, in its recommendation (1418) «Protection of the human rights and dignity of the terminally ill and the dying» insisted on the prohibition of intentional deprivation of life of a terminally ill or dying person. Thus, the

authors of the recommendation stated that the states should «by upholding the prohibition against intentionally taking the life of terminally ill or dying persons while recognizing that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death» [15].

The Convention on Human Rights and Biomedicine (Oviedo Convention) also addresses euthanasia to some extent. For example, Article 9 of this document obliges doctors to consider a person's previous wishes for treatment [10]. The Council of Europe's Committee on Bioethics also discussed some aspects of ending life. That is why he developed a Guide on the decision-making process regarding medical treatment in end-of-life situations.

This document identifies three main principles in the field of end of life:

- respect for autonomy begins with recognition of the legitimate right and the capacity of a person to make personal choices;
- the principles of beneficence and non-maleficence refer to the doctor's dual obligation to seek to maximise the potential benefit and to limit as much as possible any harm that might arise from a medical intervention;
- equity means first and foremost the absence of discrimination, with the requirement for each individual to be able to obtain, in practice, the care available. This principle implies that available resources should be distributed as fairly as possible [13].

There is no single position on euthanasia in the case-law of the European Court of Human Rights. Mainly the court notes the lack of a pan-European consensus on this issue. However, in the case *Pretty v. the United Kingdom* the Court underlines that article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life. The Court accordingly finds that no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention [6]. In the case of *Glass v. the United Kingdom*, the applicants complained under Article 2 of the Convention that a potentially lethal dose of diamorphine had been administered to their son, without their consent, by doctors in the hospital where he was being treated. The ECtHR noted that the doctors had not deliberately sought to kill the child or to hasten his death, and examined the parents' complaints from the standpoint of the authorities' positive obligations. In this case the Court unanimously held that there has been a violation of Article 8 of the Convention [3].

Instead, in *Lambert and Others v. the French court* the court stressed the need to distinguish directly between euthanasia and disconnection from a life support system a person in a vegetative state [4]. In this case, the Court turned to an analysis of the

concept of «unreasonable obstinacy» developed by the French legislator. The Court notes that the Conseil d'État (Council of the State) established two important safeguards in that judgment. Firstly, it stated that «the sole fact that a person is in an irreversible state of unconsciousness or, a fortiori, has lost his or her autonomy irreversibly and is thus dependent on such a form of nutrition and hydration, does not by itself amount to a situation in which the continuation of treatment would appear unjustified on grounds of unreasonable obstinacy». Secondly, it stressed that where a patient's wishes were not known, they could not be assumed to consist in a refusal to be kept alive. In *Burke v. the United Kingdom*, the applicant suffered from an incurable degenerative brain condition and feared that the guidance applicable in the United Kingdom could lead in due course to the withdrawal of his artificial nutrition and hydration. The Court declared his application, lodged under Articles 2, 3 and 8 of the Convention, inadmissible as being manifestly ill-founded [5].

In case *Afiri and Biddarri v. France* the applicants complain of the lack of an effective remedy in domestic law against the decision to stop the treatment of their minor child. In conclusion, the Court is of the opinion that, considered as a whole, French law has permitted a judicial remedy in accordance with the requirements of Article 2 [2].

In general, analyzing the case-law of the European Court of Human Rights on euthanasia, researchers talk about two main trends: procedural review and personal autonomy [19].

The term «euthanasia» is not used in the legislation of Ukraine at all. It indicates only the prohibition of granting a request of an individual to terminate his life without the use of the term itself (Part 4 of Article 281 of the Civil Code of Ukraine) [8]. In law enforcement practice, euthanasia is usually classified as premeditated murder. However, it should also be borne in mind that such acts are characterized by a high level of latency. In addition, the practice of palliative care is poorly developed in Ukraine, which leads to the constant actualization of euthanasia's discussions. Periodically, lawmakers are proposing bills to legalize euthanasia, but none has been passed to date.

Conclusions. Thus, we can conclude that the legal qualifications of euthanasia in different countries are different. These differences in views on euthanasia have many reasons: the dominant religion, the state of the economy, political circumstances, etc. In Ukraine, the problems with palliative care are constantly relevant discussions about the legalization of euthanasia. In general, we concluded that according to the attitude to euthanasia, there are four types of states:

- 1) States that prohibit both active and passive euthanasia (Turkey, Australia);
- 2) States that allow both active and passive euthanasia (Belgium, the Netherlands);

- 3) States that allow only passive euthanasia (France);
- 4) States that do not regulate euthanasia in their legislation.

An analysis of the European Court of Human Rights case law shows that the legalization of euthanasia can be permissible if two basic principles are observed: procedural review and personal autonomy.

Список використаних джерел:

1. Закон про додавання та скасування частини 1.85 (починаючи з розділу 443) Розділу 1 Кодексу охорони здоров'я та безпеки, що стосується закінчення життя (Закон про можливість закінчення життя) (2015 р.) / Каліфорнія. Законодавча інформація. URL: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520162AB15
2. Справа Афірі та Бідаррі проти Франції (2018) / Європейський суд з прав людини HUDOC. URL: <https://hudoc.echr.coe.int/eng?i=001-180588>
3. Справа Glass v. the United Kingdom (2004) / Європейський суд з прав людини HUDOC. URL: <https://hudoc.echr.coe.int/eng?i=001-61663>
4. Справа Lambert та інші проти Франції (2015) / Європейський суд з прав людини HUDOC. URL: <https://hudoc.echr.coe.int/eng?i=001-155352>
5. Справа Олівер Леслі Берк проти Сполученого Королівства (2006) / Європейський суд з прав людини HUDOC. URL: <https://hudoc.echr.coe.int/eng?i=001-76785>
6. Справа Pretty проти Сполученого Королівства (2002) / Європейський суд з прав людини HUDOC. URL: <https://hudoc.echr.coe.int/eng?i=001-60448>
7. Чеховська І. В., Білоусюк В. В. Правове регулювання евтаназії: міжнародний досвід. *Міжнародний юридичний вісник: актуальні проблеми сучасності (теорія та практика)*. 2019. № 14. С. 23–33 (укр.)
8. Цивільний кодекс України від 16.01.2003 № 435-IV / *Законодавство України*. URL: <https://zakon.rada.gov.ua/laws/show/435-15>
9. Code de la santé publique / *Legifrance*. URL: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072665/LEGISCTA000006170991/?anchor=LEGIARTI000031971164#LEGIARTI000031971164
10. Конвенція про захист прав людини та гідності людини щодо застосування біології та медицини: Конвенція про права людини та біомедицину / *Рада Європи*. URL: <https://rm.coe.int/168007cf98>
11. Кримінальний кодекс Туреччини (2004 р.) / *BOIB*. URL: <https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>
12. Закон Австралії про закони про евтаназію (1997 р.) / *Законодавство Австралії*. URL: <https://www.legislation.gov.au/Details/C2004A05118>
13. Керівництво щодо процесу прийняття рішень щодо медичної допомоги в ситуаціях наприкінці життя / *Рада Європи*. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168039e8c5>
14. Мірошніченко О. А. Евтаназія та право людини на життя у міжнародному та національному праві. (Евтаназія і право людини на життя в міжнародному та національному праві). *Форум права*. 2012. № 3. С. 459–464 (укр.)
15. Рекомендація 1418 (1999) Захист прав людини та гідності невиліковно хворих і вмираючих / *Парламентська асамблея*. URL: <https://pace.coe.int/en/files/16722/html>

16. Доповідь «Евтаназія» (Дос. 9898), (2003) / *Парламентська асамблея*. URL: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10255&lang=EN>
17. Резолюція 1859 (2012) Захист прав і гідності людини шляхом врахування раніше висловлених побажань пацієнтів / *Парламентська асамблея*. URL: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18064&lang=en>
18. Перегляд процедур щодо припинення життя на вимогу та допомоги в самогубстві та внесення змін до Кримінального кодексу та Закону про поховання та кремації (Закон про припинення життя за клопотанням та допомогу в самогубстві (процедури перегляду)) (2002) / *l'Institut Européen de Bioethique*. <https://www.ieb-eib.org/ancien-site/pdf/loi-euthanasie-pays-bas-en-eng.pdf>
19. Сарторі Д. Проблеми закінчення життя та Європейський суд з прав людини. Значення особистої автономії в рамках «процедуризованого» огляду / *Питання міжнародного права*. URL: <http://www.qil-qdi.org/end-life-issues-european-court-human-rights-value-personal-autonomy-within-proceduralized-review/>
20. Бельгійський закон про евтаназію (2002 р.) / *Закон про закінчення життя та політика в Канаді*. URL: <http://eol.law.dal.ca/wp-content/uploads/2015/06/Euthanasia-Act.pdf>

References:

1. An act to add and repeal Part 1.85 (commencing with Section 443) of Division 1 of the Health and Safety Code, relating to end of life (End of Life Option Act) (2015) / *California. Legislative Information*. URL: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520162AB15
2. Case of Afiri and Biddarri v. France (2018) / *European Court of Human Rights HUDOC*. URL: <https://hudoc.echr.coe.int/eng?i=001-180588>
3. Case of Glass v. the United Kingdom (2004) / *European Court of Human Rights HUDOC*. URL: <https://hudoc.echr.coe.int/eng?i=001-61663>
4. Case of Lambert and Others v. France (2015) / *European Court of Human Rights HUDOC*. URL: <https://hudoc.echr.coe.int/eng?i=001-155352>
5. Case of Oliver Leslie Burke v. the United Kingdom (2006) / *European Court of Human Rights HUDOC*. URL: <https://hudoc.echr.coe.int/eng?i=001-76785>
6. Case of Pretty v. the United Kingdom (2002) / *European Court of Human Rights HUDOC*. URL: <https://hudoc.echr.coe.int/eng?i=001-60448>
7. Chekhovska I. V., Bilousiuk V. V. Pravove rehulivannia evtanazii: mizhnarodnyi dosvid (Legal regulation of euthanasia: international experience). *Mizhnarodnyi yurydychnyi visnyk: aktualni problemy suchasnosti (teoriia ta praktyka)*. 2019. № 14. P. 23–33 (in Ukrainian).
8. Civil Code of Ukraine from 16.01.2003 № 435-IV (in Ukrainian) / *Legislation of Ukraine*. URL: <https://zakon.rada.gov.ua/laws/show/435-15>
9. Code de la santé publique / *Legifrance*. URL: https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006072665/LEGISCTA000006170991/?anchor=LEGIARTI000031971164#LEGIARTI000031971164
10. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine / *Council of Europe*. URL: <https://rm.coe.int/168007cf98>
11. Criminal Code Law of Turkey (2004) / *WIPO*. URL: <https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

12. Euthanasia Laws Act of Australia (1997) / *Legislation of Australia*. URL: <https://www.legislation.gov.au/Details/C2004A05118>
13. Guide on the decision-making process regarding medical treatment in end-of-life situations / *Council of Europe*. URL: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168039e8c5>
14. Miroshnychenko O. A. Evtanaziia ta pravo liudyny na zhyttia u mizhnarodnomu ta natsionalnomu pravi. (Euthanasia and the human right to life in international and national law). *Forum prava*. 2012. № 3. P. 459–464 (in Ukrainian).
15. Recommendation 1418 (1999) Protection of the human rights and dignity of the terminally ill and the dying / *Parliamentary Assembly*. URL: <https://pace.coe.int/en/files/16722/html>
16. Report «Euthanasia» (Doc. 9898), (2003) / *Parliamentary Assembly*. URL: <https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10255&lang=EN>
17. Resolution 1859 (2012) Protecting human rights and dignity by taking into account previously expressed wishes of patients / *Parliamentary Assembly*. URL: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=18064&lang=en>
18. Review procedures for the termination of life on request and assisted suicide and amendment of the Criminal Code and the Burial and Cremation Act (Termination of Life on Request and Assisted Suicide (Review Procedures) Act) (2002) / *l'Institut Européen de Bioéthique*. <https://www.ieb-eib.org/ancien-site/pdf/loi-euthanasie-pays-bas-en-eng.pdf>
19. Sartori D. End-of-life issues and the European Court of Human Rights. The value of personal autonomy within a 'proceduralized' review / *Questions of International Law*. URL: <http://www.qil-qdi.org/end-life-issues-european-court-human-rights-value-personal-autonomy-within-proceduralized-review/>
20. The Belgian Act on Euthanasia (2002) / *End-of-Life Law and Policy in Canada*. URL: <http://eol.law.dal.ca/wp-content/uploads/2015/06/Euthanasia-Act.pdf>

Anna Slavko PhD in Law, teaching assistant Department of International, European and Comparative Law Sumy State University (Ukraine), Arina Holokha, student. Sumy State University (Ukraine). *Euthanasia has been a topical issue in both legal science and practice for several years now. Addressing the legalization or prohibition of euthanasia lies at the intersection of several areas, such as medicine, law and ethics. That is why it is pretty challenging to decide whether euthanasia is acceptable in a modern civilized society.*

Every country in the world has its own approach to this area. Many states prohibit euthanasia, proclaiming the importance of the right to live. Some other states consider humanism and the deprivation of human suffering to be a more important value, allowing euthanasia. Some researchers hope for scientific and technological progress, emphasizing that many diseases that have not been treated before are curable. Therefore, in their opinion, the disease incurable today, can be cured tomorrow. At the same time, euthanasia deprives a person not only of suffering, but also of hope to become healthy in the future.

The Parliamentary Assembly of the Council of Europe calls euthanasia a violation of the human right to life. Instead, the European Court of Human Rights argues that there is no consensus in Europe yet. Accordingly, each state can decide whether to legalize or not euthanasia.

The paper analyzes the legislation of several countries on euthanasia and the law of the Council of Europe (PACE resolutions and the case-law of the European Court of Human Rights). It is concluded that there are four types of states in terms of their attitude to euthanasia: 1) allow both active and passive euthanasia; 2) allow only passive euthanasia; 3) prohibit both active and passive euthanasia; 4) do not regulate the issue of euthanasia in their legislation. It is also concluded that the formation of a pan-European standard of attitude to euthanasia is desirable.

Keywords: *the right to life, euthanasia, Council of Europe law, the case-law of the European Court of Human Rights.*