РОЗДІЛ І. ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ ТА ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ ТА ПРАВОВИХ УЧЕНЬ

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Inconsistency of the category "right to death" from the position of medical ethics

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The article is devoted to the study of the ethical and legal category of "right to die" or "euthanasia". The concept of euthanasia is revealed. Ukrainian legislation, as well as international legal acts and decisions of the European Court of Human Rights, are analyzed. The article examines the following questions: whether the status of a doctor can be extended from a "lifesaver" to a "death guide" and whether all this is consistent with the proclaimed human rights today. The article also analyzes foreign experience in the use of euthanasia: the conclusions of leading doctors, religious organizations, psychologists, lawyers and more. An analysis of international human rights law suggests that the category of "right to die" or "right to end one's life" does not exist. Similarly, in these documents, there is no category of "the right to a dignified death", which is embedded in the core of the plan of euthanasia by supporters of its legalization. The case-law of The European Court of Human Rights has shown that the assistance of a doctor in committing suicide is an immoral phenomenon, as the European legal community has repeatedly emphasized that the European Convention on Human Rights cannot be interpreted as distorting its content. the right of a person to death. In any case, the rule of law must not only refrain from actions that violate the right to human life, but also create all the conditions for maintaining and protecting the right to life of everyone. The article lists the threats to man and society posed by euthanasia, which leads to the conclusion that in the case of complete legalization of euthanasia, it will become, above all, a moral evil. The article concludes that the moral side of the application and legalization of the "right to die" or euthanasia is unacceptable, and a positive attitude towards euthanasia can be interesting only in a society that prioritizes the material and does not consider human life the highest value. The paper emphasizes that despite all current theses on the humanity of euthanasia, in the case of its legalization in Ukraine there will always be a possibility of evasion of the letter of the law, because there are fears that the doctor, in this case, becomes a judge, for what is the final word in the choice to stop unnecessary suffering and grant the right to die.

Суперечливість категорії «право на смерть» з позиції медичної етики

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Стаття присвячена дослідженню етично-правової категорії «право на смерть» або «евтаназії». Розкрито поняття евтаназії. Проаналізовано українське законодавство, а також міжнародно-правовові акти та рішення Європейського суду з прав людини. В статті досліджені такі питання: чи може бути розширено статус лікаря від «рятувальника життя» до «провідника смерті» та чи погоджується все це з проголошеними на цей час правами людини. В статті проаналізовано також зарубіжний досвід застосування евтаназії: висновки провідних лікарів, релігійних організацій, психологів, юристів тощо. Аналіз міжнародних правових актів, які стосуються прав людини, дає підстави стверджувати, що категоріїї «право на смерть» або категорії «право людини на закінчення власного життя» не існує. Так само у вказаних документах немає категорії «права на гідну смерть», яка фактично вкладається в серцевину замислу евтаназії прибічниками її легалізації. Доведено на прикладі практики рішень Європейского суду з прав людини положення про те, що допомога лікаря у здійсненні самогубства є аморальним явищем, адже Європейська правова спільнота неоднаразово наголошувала на тому, що Європейська конвенція з прав людини не може без спотворення її змісту бути витлумачена як надання права особі на смерть. Будь-яка правова держава повинна не лише утримуватися від дій, порушуючих право на життя людини, а й здійснювати всі умови для підтримання та захисту права на життя кожного. В статті наводиться перелік загроз для людини та суспільства, який несе евтаназія, що приводить до висновку, що в разі повної легалізації евтаназії вона стане передусім моральним злом. У статті робиться висновок, що моральний бік застосування та легалізації «права на смерть» або евтаназії є неприйнятним, а позитивне ставлення до евтаназії може бути цікавим лише у тому суспільстві, яке ставить пріоритетним матеріальне і не вважає життя людини вищою цінностю. У роботі наголошено на тому, що попри всі наявні сьогодні тези щодо гумінності ефтаназії, у разі її легалізації в Україні буде завжди існувати ймовірність ухилення від букви закону, адже є побоювання стосовно того, що лікар у такому разі перетворюється на суддю, за яким залишається остаточний вибір – зупинення непотрібних страждань та надання права на смерть.

Formulation of the problem. The problem of "easy death" or "euthanasia" is relevant and attracts the attention not only of the world medical community, psychologists but also lawyers. The problem of the moral and legal nature of euthanasia is gaining the most discussion. Euthanasia is considered as a humane way of medical solution to the problem of death, which is actualized under the influence, first, of scientific and technical achievements in medical practice; secondly, the general moral decline.

Analysis of recent research and publications. Scientists VK devoted their research to the problem of euthanasia. Gryshchuk, O.A. Miroshnichenko, Antonio G. Spagnolo, Willem Distillment, etc. The paper examines Ukrainian legislation as well as international legal acts, decisions of The European Court of Human Rights and the experience of leading European doctors.

Part of the general problem has not been solved previously. Even though euthanasia is prohibited in Ukrainian legislation, and the obligation of doctors to save the patient's life in any case, the problem of "for" and "against" euthanasia remains relevant in connection with the latest advances in medicine and significant social decline, often called euthanasia a way to "solve the problem of death". This issue

requires a detailed analysis, as the possibility of euthanasia is on the verge of moral and legal.

Formulating the goals of the articles an analysis of the moral and legal problem of euthanasia today.

Presentation of the main research material. The word "euthanasia" (from the ancient Greek – "good death") was used to denote the valiant death for the fatherland on the battlefield and was directly borrowed by the philosopher Francis Bacon (1561–1626), who used it in his work "On the dignity and multiplication of science" (1623) as a medical term, the meaning of which was the intention to alleviate the unbearable pain and suffering of incurable people, indicating that euthanasia is already happiness for them. In the universe, today the word "euthanasia" is known as the intentional cessation of life of a person suffering from an incurable disease that causes him excruciating pain with painless medication. Euthanasia was recognized as a "crime against life" by the Congregation for the Doctrine of the Faith in the "Declaration on Euthanasia" of May 5, 1980, which states that that euthanasia is "charity killing" to put an end to extreme suffering. Euthanasia in this document also recognizes "an act or omission, as in itself or intentionally leads to death, to eliminate all suffering" [1]. A very similar definition of euthanasia is contained in Ukrainian legislation, where euthanasia is the deliberate acceleration of death or death of a terminally ill patient in order to end his suffering (Article 52 of the Law of Ukraine "Fundamentals of Ukrainian legislation on health care") [2].

In legal terms, euthanasia is considered murder in Ukraine, although no article of the Criminal Code of Ukraine explicitly classifies such an act, but the request or consent of the victim to deprive him of his life does not release the perpetrator from criminal liability for premeditated murder (Article 115 of the Criminal Code of Ukraine) [3], and therefore the legislator automatically classifies euthanasia as an immoral act. In accordance with Part 4 of Art. 281 of the Civil code of Ukraine the right to life is confirmed by a prohibition in satisfaction of persuasions of the patient about the termination of his life [4]. According to Art. 52 Fundamentals of the legislation of Ukraine on health care euthanasia is prohibited in Ukraine and medical workers are obliged to provide full medical care to a patient who is in a critical condition for life [2]. Which is fully consistent with the moral principles of ancient physicians, because everyone knows the oath of Hippocrates "do not give anyone a mortal at his request" and "do not show anyone the way to such a plan" [5]. However, today, in some countries, euthanasia is legalized, for example, the Netherlands and Belgium (since 2002), Switzerland, four US states, Luxembourg (since 2009), Canada and others. And according to researchers, such laws have caused a significant increase in the number of cases of "voluntary death" in the Netherlands, calling the situation "out of control" [6]. In addition, the public is aware of a letter from Dr Willem Distillment, who headed the state commission on euthanasia in Belgium, in which he assures that that doctors and nurses have great doubts and fears about providing adequate medication and dosing it to alleviate the patient's suffering, which can be misinterpreted as an attempt to speed up the process of dying. In addition, according to his observations, often relatives of incurable people want euthanasia, rather than terminally ill [7]. Also known as the speech of Dutch academician Theo Boer, who acknowledged the erroneous introduction of euthanasia in medical activities warns countries where euthanasia is not yet legalized: "do not make our mistake! When a genius comes out of a bottle, it is impossible to return it" [8, p. 932]. Also known as the speech of Dutch academician Theo Boer, who acknowledged the erroneous introduction of euthanasia in medical activities warns countries where euthanasia is not yet legalized: "do not make our mistake! When a genius comes out of a bottle, it is impossible to return it" [8, p. 932]. Also known as the speech of Dutch academician Theo Boer, who acknowledged the erroneous introduction of euthanasia in medical activities warns countries where euthanasia is not yet legalized: "do not make our mistake! When a genius comes out of a bottle, it is impossible to return it" [8, p. 932].

The statement of scientists, according to which the purpose of doctors is to serve man in the sense of treatment, to support life and not to sow death, because "death has never been a medical act" [9, p. 53] is seen as appropriate.

The position of the supporters of the legalization of euthanasia is clear, but under the seeming humane cover of "alleviating suffering" are materialist views on life, the belief that human existence should be assessed based on general usefulness and ability to work. This position leads to the logical conclusion that a worthy person is only a healthy and efficient person, and that society should consist of such "worthy people" After all, it is the term "worthy of death" is made at the heart of the plan of euthanasia. We fully support scholars in this regard, who believe that the reference to the term "dignity" in relation to euthanasia is incorrect, because to say that you lose your dignity in a state of great vulnerability is a deception of terms, as well as semantic theft. Dignity can never be lost because it is the intrinsic value of every human being, no matter how humble and fragile she was at the end of her life" [8, p. 930]. Thus, the position of proponents of euthanasia coincides with the perception of man as a set of cells that work harmoniously with each other, like a perfect

mechanism, which in case of failure is repaired and, after a cycle of work, neutralized.

Despite all the current theses "for" and "against" the legality and humanity of euthanasia, in this case, there will always be a possibility of evasion of the letter of the law, because the doctor, in this case, becomes a judge, according to which the final word in choosing the least evil".

As for international standards in the field of human rights to life, the construction of "the right to end one's life" or the right to a "dignified death" does not exist. Thus, any state governed by the rule of law must not only refrain from actions that violate the right to human life, but also create all the conditions for maintaining and protecting the right to life of everyone.

With regard to the identification of the right to life and the right to end it, the European Court of Human Rights has repeatedly emphasized in its judgments that the European Convention on Human Rights in matters of the right to life "cannot, without distortion, be construed as a diametrically opposite right. to live - the right to die. And the right to life, according to the European Court of Human Rights, also "does not create the right in the sense of giving a person the right to choose death over life". In those countries where euthanasia is now legalized, its use is not without its problems, which the Human Rights Committee has expressed concern, calling the use of euthanasia as an aid to suicide and called for "reviewing this legislation in the light of the Covenant on the Right to Life" [10]. By the way, Art. 6 of the International Covenant on Civil and Political Rights defines only the right to life as an inalienable right of everyone, protected by law and emphasizes that no one can be arbitrarily deprived of life [11]. The inalienable right to life is also asserted in Article 6 of the Convention on the Rights of the Child [12], Art. 10 of the Convention for the Protection of the Rights of Persons with Disabilities [13] and nowhere in these documents is the right to die mentioned. Thus, instead of recognizing the "right to die" UN treaties indirectly reject the notion, including strong protections for the sick, disabled, and the elderly, who most often suffer from the legalization of euthanasia and suicide. For example, Article 23 of the Convention on the Rights of the Child recognizes that "a mentally or physically ill child must live a full and dignified life, in conditions which ensure his or her dignity, promote independence and promote active participation in the community" [12]. There is not even a hint of the "right to die" in any of the international legal acts, such as the Universal Declaration of Human Rights (1948), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Covenant on Civil and Political Rights. Law (1966), Charter of Fundamental Rights of the European Slime (2000), International Covenant on Economic, Social and Cultural Rights, American Convention on Human Rights, African Charter on Human and Peoples' Rights, Convention on the Rights of the Child, Framework Convention for the Protection of National Minorities, European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities,

Fully supporting the recognition of human dignity and privacy, the Parliamentary Assembly of the Council of Europe recommends that States "respect and protect the dignity of the terminally ill or dying in all respects", supporting the prohibition of the intentional taking of the life of the terminally ill or dying. In the case of Sanles Sanles v. Spain, The Court considers it important to note from the outset that there is no need to rule on the existence or absence of the right to a dignified death in the Convention [14]. In the case of case of gross v. Switzerland "The Parliamentary Assembly of the Council of Europe recommended" respecting and protecting the dignity of the terminally ill or dying in all respects "and recommended support for a ban on the deliberate taking of the life of a terminally ill or dying person, and the Assembly stated: "euthanasia, in the sense of premeditated murder as an act or omission of a dependent person or in the case of an alleged benefit should always be prohibited" [15]. The Parliamentary Assembly of the Council of Europe "Recommendations 14/8 (1999)" On the protection of the human rights and dignity of terminally ill and dying "emphasizes that deprivation of life of incurable people is like execution" [16, p. 57]. After all, medical care for terminally ill patients should be improved and refined from diagnosis to the death of the patient. Such care should be adapted to human needs, including, in addition to medical care, psychological and spiritual services, as already stated by the World Health Organization [17]. The Parliamentary Assembly of the Council of Europe "Recommendations 14/8 (1999)" On the protection of the human rights and dignity of terminally ill and dying "emphasizes that deprivation of life of incurable people is like execution" [16, p. 57]. After all, medical care for terminally ill patients should be improved and refined from diagnosis to the death of the patient. Such care should be adapted to human needs, including, in addition to medical care, psychological and spiritual services, as already stated by the World Health Organization [17]. The Parliamentary Assembly of the Council of Europe "Recommendations 14/8 (1999)" On the protection of the human rights and dignity of terminally ill and dying "emphasizes that deprivation of life of incurable people is like execution" [16, p. 57]. After all, medical care for terminally ill patients should be improved and refined from diagnosis to

the death of the patient. Such care should be adapted to human needs, including, in addition to medical care, psychological and spiritual services, as already stated by the World Health Organization [17].

Condemnation of euthanasia is also observed in the Declaration on Euthanasia, adopted at the 39th session of the World Medical Assembly in 1978, which states that euthanasia is not ethical even at the request of the patient or his relatives [18]. The condemnation of suicide by a doctor in 1992 was duplicated in the 1992 Regulation on Suicide by a Doctor, adopted by the 44th World Medical Assembly in Spain [19]. Members of the Parliamentary Assembly also criticized the approach to legalizing euthanasia as violating one of the fundamental rights and values - the right to life and expressed deep concern about the consequences of legalizing euthanasia as "opening the door to practices that pose a serious danger. for the fundamental protection of life". The document further states the following: "as parliamentarians of the Council of Europe, responsible for the protection of the universal system of human rights protection, we must strongly protest against when a state party seriously violates fundamental rights and values and undermines the European Convention on Human Rights [20]. For example, in the decision in the case "Case of Pretty v. the United Kingdom" The European Court of Human Rights speaks of the rejection of the concept of active euthanasia and recalls the obligation to protect human life [21]. In this way, The European Court of Human Rights guards the values for which it was created, values that have been considered moral for centuries and without which the world is transformed from a human society into a collection of living beings. when a State party seriously violates fundamental rights and values and undermines the European Convention on Human Rights [20]. For example, in the decision in the case "Case of Pretty v. the United Kingdom" The European Court of Human Rights speaks of the rejection of the concept of active euthanasia and recalls the obligation to protect human life [21]. In this way, The European Court of Human Rights guards the values for which it was created, values that have been considered moral for centuries and without which the world is transformed from a human society into a collection of living beings. when a State party seriously violates fundamental rights and values and undermines the European Convention on Human Rights [20]. For example, in the decision in the case "Case of Pretty v. the United Kingdom", The European Court of Human Rights speaks of the rejection of the concept of active euthanasia and recalls the obligation to protect human life [21]. In this way, The European Court of Human Rights guards the values for which it was created, values that have been considered moral for centuries and without which the world is transformed from a human society into a collection of living beings. language to protect human life [21]. In this way, The European Court of Human Rights guards the values for which it was created, values that have been considered moral for centuries and without which the world is transformed from a human society into a collection of living beings. language to protect human life [21]. In this way, The European Court of Human Rights guards the values for which it was created, values that have been considered moral for centuries and without which the world is transformed from a human society into a collection of living beings.

It should also be noted that on October 28, 2019, in the Vatican, representatives of monotheistic Abrahamic religions (common name for Judaism, Christianity and Islam) signed a joint declaration "On the End of Life", which states that euthanasia and suicide are morally and religiously erroneous. and should be prohibited without exception. No healthcare worker should be coerced or pressured to participate directly or indirectly in the voluntary and intentional death of a patient [22]. Therefore, the moral side of the use and legalization of euthanasia is unacceptable. A positive attitude towards euthanasia applies only to a society that is fully material and does not consider human life to be of the highest value, because material life is inextricably linked only with external beauty, physical health and economic well-being. After all, all the existing reasons called for trying to legalize euthanasia are the "moral faces" of modern society: physical pain, despair, fear of becoming a burden to loved ones, contempt for medical staff, dislike and indifference of relatives and friends. Proponents of euthanasia, who emphasize the humanity of "relieving pain" of the patient, primarily aim to relieve suffering from themselves, because it is always harder for a person to tolerate the patient in his suffering than to decide on his death.

Also, euthanasia carries a list of threats:

– poor treatment, anaesthesia and care for the patient;

– indifference of scientists to further research and inventions in the field of life extension and treatment of incurable diseases;

– difficulty (in certain cases) in obtaining a real desire of the patient to die;

– the spread of illegal actions of doctors, descendants and outsiders aimed at benefiting from the death of the patient.

It should be emphasized that this study does not address the issue of legalization of the right of patients and their relatives to refuse or consent to a particular medical intervention.

Conclusions. The phenomenon of the right to life in medical ethics follows from the moral and legal principles of the modern world. There is no category of "right to die" in any legal act and it cannot be deduced from any legal document. The purpose of the doctor's activity is to protect life, which is referred to in all legal

acts of the European Community and other developed countries. Thus, international human rights standards cannot be interpreted as guaranteeing the "right to die". In our opinion, euthanasia is premeditated murder in order to stop unnecessary suffering. Although euthanasia is often justified as a "dignified death", it is, in fact, an aid to suicide. It is a combination of murder and suicide.

In our opinion, in the case of complete legalization of euthanasia, it will become, above all, a moral evil. After all, there is also a great danger of abuse. For example, in the conditions of our state with the poverty of medicine and the decline of moral qualities of modern society, euthanasia can become a means of killing lonely old people, children with disabilities, people suffering from cancer and AIDS. Recognition of euthanasia by law may also deprive the state of an incentive to fund research to find effective treatments.

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