

## DISPOSAL OF THE LIFE AS A COMPONENT OF THE RIGHT TO LIFE

*The paper investigates some of the problems of legal regulation of the constitutional right to life, but the last is viewed not only as a form of biological existence, but also as a way of self-identity in the context of the possibility to dispose of own life. Based on the analysis suggested the possibility of introducing the right to voluntary euthanasia, as a manifestation of the right to life.*

**Key words:** human rights, the right to life, humanity, dignity, terminal patients, voluntary euthanasia.

### **Н. В. Малярчук**

*Розпорядження життям як складова реалізації права на життя*

*У статті досліджуються деякі проблеми правового регулювання конституційного права на життя, але останнє розглядається не лише як форма біологічного існування, але і як спосіб самореалізації конкретної особистості в контексті можливості розпоряджатися своїм життям. На основі проведеного аналізу запропоновано можливість введення права на добровільну еутаназію, як одного з проявів реалізації права на життя.*

**Ключові слова:** права людини, право на життя, гуманність, гідність, термінальні хворі, добровільна еутаназія.

### **Н. В. Малярчук**

*Распоряжение жизнью как составляющая реализации права на жизнь*

*В статье исследуются некоторые проблемы правового регулирования конституционного права на жизнь, но последнее рассматривается не только как форма биологического существования, но и как способ самореализации личности в контексте возможности распоряжаться своей жизнью. На основе проведенного анализа предложено возможность введения права на добровольную эвтаназию, как одно из проявлений реализации права на жизнь.*

**Ключевые слова:** права человека, право на жизнь, гуманность, достоинство, терминальные больные, добровольная эвтаназия.

**Problem definition.** The Constitution of Ukraine in Article 3 says the human being, his or her life and health, honour and dignity, inviolability and security are established in Ukraine as the highest social value [1].

According to the article 22 of the Constitution of Ukraine human rights and freedoms and their guarantees determine the essence and orientation of the state. The state is responsible to the people for their activities. To affirm and ensure human rights and freedoms is the main duty of the state. Rights and freedoms of human and citizen are not exhaustive.

The natural right to life is inviolable, so why can't we talk about the other opposite side of this

right, namely the right to a dignified death, as one aspect of the right to life is the ability to dispose of it, to decide on its termination.

**Analysis of the latest research and publications.** Various aspects of the right to euthanasia in Ukraine covered in the scientific works of A. Solovyov, S. Stetsenko, T. Abolina, S. Borodin, A. Kotuha, A. Dombrowska etc. Russian scientists: N. Matuzov, M. Maleyina, A. Malko, A. Kapinus, Y. Dmitriev, Y. Shleneva etc.

The purpose of article is to make an analysis of legislation in the context of a possible consolidation of the rights of citizens of Ukraine on voluntary euthanasia by amending the relevant regulations.

Statement of the base material. We should note that a legal doctrine supported the idea that carry out euthanasia for terminal patients comes from the right to life (A. Horses, N. Makleyin, E. Te G. Romanovsky, M. Maleyina). Under this legal doctrine logically right to life implies the right to die because the right to die is a component of the right to life. So without this right – right to life becomes a duty, since from it you can't refuse, which apparently is typical for duty, not for the right [2, p. 201]. The same opinion was supported by Russian researchers of euthanasia Y. Dmitriev and Y. Shleneva, which also concluded that «the establishment of a constitutional right to life means logically legal consolidation of the rights of death» [3, p. 52-59]. The author of the essay «Life» Hal Borland considered a right to life which fixed in American Constitution as a right, not only like a form of biological existence, but also as a way to self-realization of a particular individual.

In literature, A. Solovyov gives a fairly apt definition of the right to life. It is fixed by international legal acts and domestic legislation the norms of a human possible behavior, aimed at ensuring the inviolability of their lives with other persons and freedom of disposition [4].

However, we should say that there is an opposite opinion about existence of the right to euthanasia. The followers of this opinion are: S. Stetsenko, N. Matuzov, A. Malko, S. Borodin, A. Kapinus and others. In most cases, their position is based on the fact that legalization of euthanasia will slow down scientific progress in medicine, or criminalizing medicine or various abuses in the relevant area, the disappearance of palliative care.

With this position to refuse legalization of euthanasia we can't agree for many reasons:

– the person has the right to have a choice for the serious circumstances (severe incurable disease) to choose by itself as the best in the future to dispose of his/her life in a decent way. We should say that is a rather cynical attitude to prohibit of euthanasia only based on the moral and ethical issues. Who can know how best for the person who is ill with cancer last stage, which flows from the unbearable pain? So it seems that in this case the answer should be clearly in favor of the terminal ill.

Only the terminal patients can know how best to her/his in this way.

We also agree with the opinion of M. N. Maleyina, she had noted that the highest value is the real human welfare. Not everyone has the strength to lie paralyzed, do something without assistance, feel constant and unbearable pain; not every person has the same idea about qualitative life parameters [5, p. 52].

– we can't agree with the opinion that legalization of euthanasia will reduce scientific progress in medicine. Medicine aims to treat patients, not to achieve results through tests and mistakes on the same patients. Especially if euthanasia is legalized the procedure would have clear limitations, instructions, indications and reasons for use. English philosopher Francis Bacon said: «The duty of a doctor is not only to restore health, but in fact to relieve pain and anguish that caused the disease, and if found incurable diseases, the physician must provide the patient and easy peaceful death»;

– another argument that is the right to dispose of own life (including the right to die) is the same natural rights as much right to life which is fixed in the Constitution of Ukraine.

However, we should say that the realization of the right to death by the person can be only in the presence of free will and in the case when she/he is ill an incurable disease that can't be cured with the use of modern medicine. At the same time observe that the right of the person for the artificial termination of life (through a procedure of euthanasia) is its protest and rejection of heavy patience, degrading suffering which generated by unbearable pain, which isn't given any opportunity to removal. Man's life, honor, health and dignity are the highest social value, so then the implementation of the above mentioned right is still one of the areas of the state activity. Our country ensuring human rights and freedoms as its main duty of the state. So then if society needs the existence of a legal mechanism for implementation of the right to dignified death, it should provide it.

The Constitution of Ukraine in the article 28 says that everyone has the right to respect of his or her dignity.

Thus, according to the modern vocabulary of ethics dignity should be understood as special moral attitude of a person to him or herself that appears in his/her awareness of his/her intrinsic value and moral equality with others; attitude of a person to other people, in which his/her absolute value is recognized [6, p. 94-95].

So in this case we should talk that in our society and the state, not everyone has the right to respect for his/her dignity because citizens who are seriously and terminally ill are limited in their right to respect for their dignity because they have the time that they left to live in heavy, degrading suffering and agony of unbearable pain without the possibility of realization of their right to dignified death. We should remember that any right set for people and for their interests (*omne jus hominum causa constitutum est*). Logically we can ask the question of equality rights of people. Ukrainian Constitution in the article 21 says that all people are free and equal in their dignity and rights. So why in certain countries the implementation of the right to dignified death takes place with well-established procedure but in our country do not while there are specific reasons for this. Where is this equality? The answer is simple this equality has to be *de jure* and *de facto*. Democratic countries should respect the right of everyone to self-affirmation not only in the economic spheres, religious beliefs, sexual preferences but also to enable her/his right to choose to live or die with dignity if certain serious health conditions.

What is euthanasia under national law? According to the article 52 of the Law of Ukraine «Fundamentals of Ukraine on Health Care» (hereinafter – the Law) euthanasia is deliberately accelerating death or killing the terminally ill to end his suffering.

There are following types of euthanasia: passive, active, voluntary, forced, positive negative (S. Stetsenko, T. Abolina, A. Kotuha, G. Hubenko, A. Dombrowski, A. Grishchenko and others).

The Law doesn't allow under the article 52 a right to use of euthanasia in any form, but according to the article 43 of the same Act a patient who came into full civil capacity and understands the significance of his actions and could control

them, has the right to refuse from medical care. If the patient refuses from medical care and if it can lead to serious consequences for him, the doctor is required to explain it [7]. If after that the patient refuses from medical care anyway, the doctor has the right for written confirmation from him, and when it is impossible to obtain – to certify the refusal act in the presence of witnesses. Based on the content of the article it quite logically follows that such a right of the patient actually contains elements of passive euthanasia.

Voluntary euthanasia is applied to terminally ill medicinal or other means, which leads to easy and peaceful death at the request of a patient who understands the significance of his actions and could control them [8].

It is important to note that in 2009 some forms of voluntary euthanasia were officially allowed in Belgium, Luxembourg, the Netherlands, Switzerland and some US states. Belgium is the second country after the Netherlands, which allowed euthanasia in 2002. In 2009 the permission to conduct euthanasia became possible in Luxembourg, in 2015 it was given in Colombia and Canada.

In Switzerland assisted suicide was allowed in 1942 (the difference between assisted suicide and euthanasia consists of doctor's action: in the first case, the doctor advises the patient and can prescribe for lethal medication, and in the second way the doctor by himself conducts the procedure).

We should also note that in the USA in 1997 the Supreme Court refused to accept the constitutional right to die, but the court left the right to take the decision about it by the US states. Under these conditions in a few months the state of Oregon, Washington, Montana, and Vermont allowed to conduct voluntary euthanasia. In this case doctors have the right to prescribe lethal drugs to patients who remained to live less than six months [9, p. 9].

In Belgium is considered «Death with dignity» as a feature of progress and of the principle of humanism. In Belgium public schools pupils are divided into religious and secular. The last one study «non-confessional ethics». This course teaches autonomy in decision-making; ability asks questions of freedom, democracy and ethics, based

on the findings and science without considering religion.

It should also be noted that the decision to hold Belgian euthanasia is reviewed by the Federal Commission for the purpose of control over that doctors didn't break the law in this case. Confirmation of incurable disease in terminal patients is conducted involving two doctors; in other cases the participation of three doctors is required. It should be noted that during consultations with patients by doctors including psychiatrists' significant number of patients refuses euthanasia and choose life. Psychiatrist at the University of Leuven Joris Vandenberg thinks that appropriate procedure allows patients to have at first the conversation with the doctor about their feelings and thoughts [9, p. 9].

Euthanasia is permitted in the Swiss canton of 1941. Switzerland euthanasia allowed even for tourists (The Suicide Tourist), those non-residents of the state who may come to Zürich with one purpose to die. Swiss citizens haven't needed to pay of the relevant procedures. Dignitas is a non-profit Swiss organization. It was created in 1998. Dignitas was founded in 1998 by Ludwig Minelli, a Swiss lawyer. It is helping those with terminal illness and severe physical and mental illnesses to die, assisted by qualified doctors and nurses.

Since Swiss law allows assisted suicide, but not euthanasia (the difference being that the person who wants to die must actively take the dose himself), the act of voluntarily drinking the drug, mixed with 60ml of water, and the subsequent death is videoed by the Dignitas companions, who stay behind to deal with the police and the undertakers in the hours that follow. For those unable to lift the glass to their lips, there is a machine that will administer it, once they press a button [10].

Ludwig Minelli believes the right to choose to die is a fundamental human right and, in theory, he is willing to help anyone.

Swiss Criminal Code in the article 115 says that anyone who acts on selfish motives to assist someone to kill themselves can be punished with up to five years in jail [11].

The law has been interpreted by Dignitas and other assisted suicide organisations as meaning that assisted suicide is not illegal as long as there is no selfish intent (such as helping an aunt to die in order to get her inheritance).

Responsibility in Ukraine for conducting of the euthanasia will qualify according to article 115 of the Criminal Code of Ukraine [12], as the intentional killing.

We should say that in theory is the idea that the object of the crime against life committing murder is personality as a set of social relations [13, p. 18].

We think that quite reasonable opinion that the law on criminal liability protects a person, not only as a living biological creature, but mainly as a person in her social sense, as a set of social relations. The concept «person» is not in its meaning to the concept «object of the crime». It is why the law on criminal liability of the concept «person» within the meaning of the object of the crime isn't used. Section II of the Criminal Code of Ukraine called: «Crimes against life and health of people». Any encroachment on the human body in the sense of a particular biological substance is recognized only in criminal cases if encroachment violates existing social relations on the protection of the human person. In all other cases, such attacks are not considered a crime [14].

Voluntary euthanasia is valid in some US states. Washington for example adopted the law «The Washington death with dignity act» which establishes the right of the patient to address a request for voluntary procedure euthanasia (their right to dignified death).

The procedure is complicated an adult (patients) who is competent, is a resident of Washington state, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner. The request also must be signed by two witnesses. The law provides specific requirements for one of the witnesses [15].

So, if the article 43 according to the Law says that patient has full civil capacity and understands

the significance of his actions and could control them, refuses from further medical care in writing form and with the understanding that this will lead to serious consequences including death, considering the experience of countries which have already done it, why voluntary euthanasia can't be officially introduced. Especially because this article contains elements of relevant procedures, but with some shortcomings as a legal and procedural. We also have to say that we don't understand the position of legislator in these aforementioned circumstances when the terminal patient refuse from medical care and it means he actually confirms his desire to die. So, obviously, if the patient had the right to end his life with dignity, he would use this right. However, instead of resolving the issue lawmakers as Pontius Pilate washes his hands by getting doctors written confirmation of such a rejection of the patient.

**Conclusions.** Based on the laws of other countries, we could established their norm to our national legislation that perpetuate human right to voluntary euthanasia. So, according to our opinion this legal act should include the following:

– a patient has the right to dignified death – means an individual who is eighteen years of age or older. "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months;

– a patient who is competent, is a citizen of Ukraine, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner. Written request has be dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, acting voluntarily, and is not being coerced to sign the request.

One of the witnesses shall be a person who is not: a relative of the patient by blood, marriage, or adoption; a person who at the time the request is signed would be entitled to any portion of the estate

of the qualified patient upon death under any will or by operation of law; or an owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident; the patient's attending physician at the time the request is signed shall not be a witness.

– a patient should be explained of his or her medical diagnosis and the potential risks associated with taking the medication to be prescribed for the purpose of voluntary end his/her life in a decent way;

– 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 competent, is acting voluntarily, and has made an informed decision. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not 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;

– a medical institution should inform relatives about the request of the patient to end his/her life in dignity way;

– a patient should also be explained an alternative way of life with an incurable disease that is the use of palliative care, hospice care;

– it also should be established the date from the request to the date of taking the decision at medical institution by physician who should written the requests for lethal medications recipe

– the following shall be documented or filed in the patient's medical record which contained the following documents:

a. All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

b. All written requests by a patient for medication to end his or her life in a humane and dignified manner;

c. The attending physician's diagnosis and prognosis, and determination that the patient is competent, is acting voluntarily, and has made an informed decision;

d. The consulting physician's diagnosis and prognosis, and verification that the patient is competent, is acting voluntarily, and has made an informed decision;

e. A report of the outcome and determinations made during counseling, if performed;

– should be formed under the Ministry of Health committee, which would be carried out inspection of medical institutions that are authorized for formation of the case of voluntary euthanasia and issuing oral requests by a patient for medication to end his or her life in a humane and dignified manner.

In this way we could give a definition of the concept «a right to life». It is a system of rules which establish the right of a human as the biological, social individual and as a person of law for his/her right to birth, providing inviolability against from illegal encroachments to allow the person in free way and free will to use, have and dispose of his/her inalienable natural right to life, but only if such actions do not violate the rights of others; and regulate social relations which appear between individuals, legal entities and the state.

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