

Modern problems of euthanasia in the Russian Federation

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Abstract—The historical and legal analysis of the problems connected with euthanasia, its theoretical and practical side concerned and will always concern mankind. Death as, however, and life, makes one of global world problems. The constant interest of mankind in the problems connected with death is shown by variety of the legends composed by the different people.

Keywords—*Euthanasia, right to death, human life*

I. INTRODUCTION

The recognition of the right to death, religious, philosophical, medical and ethical aspects of euthanasia was addressed in the works of such scientists as: S.S. Alekseeva, N.A. Ardasheva, A.F. Bilibina, A.V. Gnezdilova A.A. Huseynova, A.M. Dukarev, E. Durkheim, A. Schopenhauer, D. Hume, Yu. Kardavi, F. Bacon, J. Bopp.

Among lawyers and philosophers, the pros and cons of euthanasia are increasing, revealing the shortcomings of both positions. At the same time, a paradoxical situation develops: unsolved theoretically, continuing to be the subject of discussion as a problem, euthanasia is already being introduced into life, in medical practice, in legal laws. Practice drives the theory ahead of it, leaves no time for a long discussion, it refutes the theory, corrects it, and is in a hurry to test all the results. Such a “running ahead” leads to a large number of mistakes and abuses, something that can be avoided by laying a solid theoretical foundation, giving legal status to a new human right - the “right to death”. The problem of euthanasia has so far been considered in most cases in the framework of medical science or in the framework of bioethics and philosophy. The prevailing approaches to the problem are characterized by a unitary view of euthanasia, which is considered not as a combination of heterogeneous social relations, but as a single indivisible concept. The theory of law allows you to look at this problem from a different angle, change the prevailing stereotypes and form acceptable legal solutions. The consideration of euthanasia from the point of view of legal theory is a relatively new approach to this problem. Modern legal science lacks unambiguous and indisputable approaches to euthanasia, its concept, and

implementation framework. However, the practical need for solving this problem and its relevance in modern society make this direction promising for research [1].

Today, all countries in the world can be conditionally divided into two groups: countries that do not exclude the possibility of using euthanasia, and countries that categorically do not accept this option for resolving the issue of ending a patient's life. The Russian Federation belongs to the second group, and legislated a ban on the implementation of euthanasia. The Netherlands pioneered legislative authorization of euthanasia by adopting in April 2002 a national law stipulating the procedure itself and the issues of “legal security for physicians”. In fact, euthanasia has been openly practiced in this country since 1997. The Germans (Germany) admit their own “passive” form of euthanasia. At the request of a hopelessly sick person, doctors can stop using medication to prolong his life. “Passive” euthanasia has been practiced for quite some time in Switzerland. In accordance with the laws of Indiana (USA), the patient officially confirms his will so that his life is not prolonged artificially in certain circumstances in a so-called lifetime testament. In 1977, in the state of California (USA), after many years of discussions in referenda, the world's first law on the right to death was adopted, according to which terminally ill people can draw up a document expressing a desire to turn off resuscitation equipment. Although this law “does not work” due to the refusal of medical personnel to carry out euthanasia. The number of supporters of euthanasia, who believe that everyone has the right to a dignified and easy death, is constantly growing. On April 10, 2001, the Dutch Parliament approved a law exempting physicians who help people who are suffering from hopelessly ill people to die. Thus, Holland became the first country to legalize active euthanasia. In March 2002, the UK Supreme Court granted the “right to dignity” to a 43-year-old paralyzed woman [2].

II. MATERIALS AND METHODS

The article used methods of a theoretical level - analysis, synthesis, generalization and induction, the historical and legal method. The study was based on

the legislation of the Russian Federation and international legal practice.

III. DISCUSSION

Studies on euthanasia have been conducted quite a lot; they are all comprehensive and fundamental [1, 3-6]. The dissertation of the doctor of legal sciences O.S. Kapinus "Euthanasia as a socio-legal phenomenon (criminal law problems)" is one of the latest multifaceted works; it provides an extended interpretation of the topic under discussion [7]. It would seem that the problems of euthanasia have already been fully considered by domestic and foreign scientists, however, some controversial issues compel us to turn to it again and again.

A modern analysis of the problems associated with euthanasia is impossible without considering the views on life and death in Russian and international law. Life arises outside government orders, and the biological birth of a child is least of all in need of public institutions [8]. The right to life is the first fundamental natural right of a person, without which all rights lose their meaning. Objectively, it acts as a reference point, a criterion for the whole institution of rights and freedoms in a democratic society. When it is claimed that human rights are the highest value, this refers to the person as the bearer of these rights. Without a person, outside a person, apart from him, any rights turn into a meaningless abstraction. A person, his life, health, honor, dignity, security are the basic, fundamental values with which all legal systems must relate. The right to life is given to man by nature (in some concepts - by God), but never by the state or power. The latter are obliged only to recognize, respect and fully defend this value, which dominates everyone else [9]. By enshrining the right to life in the Constitution of the Russian Federation (Article 20), the state invests a certain meaning in this subjective right, expressed in a specific legal meaning. The very existence of the right to life is not disputed by anyone (since this is enshrined in law), the subject of discussion is only the interpretation of the content of this right [10-12]. In contrast, the right to death remains the subject of dispute between Russian lawyers.

Death is an inevitable phenomenon associated with the end of the existence of any living creature, including those belonging to the genus *Homo sapiens*. However, death is not only a biological process, it also acquires a social character in human society. Indeed, the style and lifestyle can determine a certain type or characteristics of death, but, on the other hand, the inevitability of death determines a person's life. In addition, death is a legal state, which occupies a special place among legal states. This is due not only to the psychological attitude of a person to death, but to the fact that it is a specific legal phenomenon [13]. The right to die has been known since antiquity. Some primitive tribes had a custom according to which old people, who became a burden for the family, chose death, leaving the tribes. Independent death was encouraged in Sparta, Ancient Greece, allowed in Ancient Rome, condemned in the Middle Ages. The

evolution of this right in its direction is almost the opposite of the evolution of the right to life, which has managed to go a long way towards absolute recognition and unconditional consolidation throughout the world. At that time, when the right to life was proclaimed in international acts and constitutions of various states, the right to death was pushed "into the shadows", having lost recognition and consolidation. This restriction is expressed in the following: assuming the possibility of independent death (almost no state has preserved suicide laws), the law excludes the possibility of such leaving with the help of other persons [1].

Is the right to death (including with the help of other persons) fixed in the Constitution of the Russian Federation? There is no direct prohibition on this in it. O.E. Kutafin noted that, recognizing the right of everyone to life, the Constitution of the Russian Federation does not recognize the right to leave life (the right to die) [14]. V.D. Karpovich holds a similar position, noting that a person's right to life does not mean that he has a legal right to death [15]. Is it really? The Constitution of the Russian Federation does not directly indicate the existence of the right to die for a person and citizen (including with the help of other persons). However, in accordance with paragraph 1 of Art. 55 of the Constitution of the Russian Federation, the listing in the Constitution of the Russian Federation of fundamental rights and freedoms should not be construed as a denial or derogation of other universally recognized human and civil rights and freedoms. Is the right to death universally recognized for a person? If so, then we have the right at our discretion to exercise this right, and the duty of the state is to develop a mechanism for the implementation of this right (recognition and protection of the rights and freedoms of man and citizen is the duty of the state, article 2 of the Constitution of the Russian Federation).

Among the many natural and inalienable human rights, one can distinguish a group of those that are based on the confidence and human right to control one's body: improve it, change functional capabilities and expand them with medication or using the latest technologies. These rights include the right to death, the right to change sex, to transplant human organs, tissues, and genes, to artificial insemination, to sterilization and abortion, to clone and "voluminous" virtual modeling. Some of these rights have been known since antiquity, and some are actualized by time and cause a shock in the minds of modern man [16]. In legal literature, the right to death is described inextricably linked to the right to life. So, M.I. Kovalev notes that there are no compelling arguments against declaring that a person has the right to life and death. Both of these human rights are so closely related that they are like two sides of the same coin, and at the same time so delicate and fragile that special care is required in dealing with it. However, the right to die poses significantly more problems than the right to life [17]. G. Nikitin believes that the right to death can, rather, be regarded as a waiver of the right to life (as an intangible good regulated by civil law), which, in

accordance with Art. 9 of the Civil Code of the Russian Federation does not mean the termination of this right [18]. T.K. Satskevich believes that the constitutional establishment of the human right to life logically means the legal consolidation of the human right to death. A person must decide the issue of life and death individually [19]. According to A.I. Kuznetsova, the implementation of the right to life is carried out individually by a person and involves the disposition of life at its discretion, including the voluntary decision to terminate life. The ability to independently manage one's life, including resolving the issue of ending it, is one of the competencies of a human right to life [20]. A. Malinovsky points out that it is legally impossible to imagine that a person having the right to live does not have the right to die, that he is free to legally dispose of his property, but not his life. Failure to recognize a person's right to death makes the right to life an obligation to live. If a person does not have the right to die, then neither the state nor society is obliged to recognize and respect this right. Consequently, any person committing suicide must be forcibly brought back to life [21]. S.V. Tasakov believes that the possibility of independent management of one's life, including resolving the issue of its termination, is one of the competencies of the human right to life [2]. Position M.N. Maleina consists in the fact that the subject of personal non-property rights has the authority to own, use and dispose of the object (intangible good). She claims that the content of the right to life consists of the power to preserve life (individuality) and the power to dispose of life [22]. I.A. Mikhailova points out that the right to life and the right to death are inextricably linked, and since death is inevitable, the right to death, as the only form of competence to dispose of life, is the right to consciously choose the method and the moment of departure from life, acting "in one's own way discretion", "by one's own will and in one's interest", as it is legally enshrined in the form of one of the fundamental principles of civil law - the principle of dispositiveness, which represents all individuals freedom in implementation and the disposal of their rights (paragraph 2 of Article 1, paragraph 1 of Article 9 of the Civil Code), including the most important of them - the right to life [23]. In contrast to this point of view, G.B. Romanovsky believes that the right to life in no way can serve as the basis for the proclamation of the subjective right to death. Firstly, the right to life is a constitutional right that cannot be evaluated only on the basis of the principles of civil law - in some aspects they are not applicable. Secondly, life and death are opposite phenomena: if the living is mortal, then the deceased will never come to life [8].

Is it possible, on the basis of the foregoing, to assert with confidence that the human right to death is universally recognized. Rather yes than no. This is also confirmed by the 39 Declaration of the World Medical Assembly (WMA) 1987 (Russia is a member of the WMA and, in accordance with part 4 of article 15 of the Constitution of the Russian Federation, universally recognized principles and norms of international law and international treaties of the Russian Federation are

an integral part of its legal system): "Euthanasia, i.e. an act of intentionally interrupting a patient's life, even at the request of the patient or at the request of his close relatives, is unethical. This does not exclude the need for a respectful attitude of the doctor to the patient's desire not to impede the natural process of dying in the terminal phase of the disease. WMA condemns active euthanasia, allowing its passive form. The international legal acts regulating the right to life and thereby indirectly affecting the issue of the possibility of renouncing life include, in particular, the Universal Declaration of Human Rights of December 10, 1948, the International Covenant on Civil and Political Rights of December 16, 1966, European Convention for the Protection of Human Rights and Fundamental Freedoms ETS No. 005, adopted in Rome, November 4, 1950, and other regulatory legal acts. Thus, the fact that the Russian legal system recognizes the right of a person and a citizen to death (including with the help of other persons) cannot be denied [1]. Thus, the fact that the Russian legal system recognizes the right of a person and a citizen to death (including with the help of other persons) cannot be denied.

From the position of O.S. Kapinus, the emergence, formation and development of euthanasia as a socio-legal phenomenon in the history of the teachings of law and the state includes three stages. The first incorporated the political and legal teachings of the Ancient World, when euthanasia was considered as a blessing and inevitability in certain cases. The second is due to the development of political and legal thought in the Middle Ages, in which the dominance of the Christian religious worldview led to a negative public attitude to the ideas of euthanasia. The third begins in the New Time period, continues in the Modern Time and is associated with the growth of pluralism of opinions regarding euthanasia, the emergence of a new argument in favor of its legalization. A decisive influence on the historical development of the rule of law related to euthanasia is provided by the religious factor. In ancient times, in various societies and states, legal customs allowed and regulated certain forms of euthanasia, which was widely practiced under the conditions of both eastern and western civilizations, but with the development of the written law system, euthanasia did not receive its consolidation. This was due to a number of factors, primarily with the spread of the main world religions: Christianity, Islam, Buddhism, which, as a rule, have a negative attitude to euthanasia, considering it as a form of murder or suicide. Euthanasia (according to O.S. Kapinus) should be understood as the deliberate infliction of death on an incurable patient, carried out at his request by a medical professional, as well as by another person on the basis of compassion for the patient and in order to rid him of unbearable physical suffering. The scientific basis of the two-link classification of euthanasia forms is presented in two - active and passive component. The active form is the deliberate infliction of a terminally ill patient at his request a quick and easy death in order to rid him of painful physical suffering, carried out on the motive of compassion. The passive form is the refusal of the started life-sustaining

treatment at the request of the terminally ill for deliberate and very quick death by refraining from taking actions aimed at maintaining life in order to rid him of painful physical suffering, carried out on the basis of compassion. However, this is not an active euthanasia: 1) the so-called mercy killing, when the doctor, in the absence of the request of a hopelessly sick person, seeing his painful sufferings that will soon lead to death and, not being able to eliminate them, commits an act resulting in death; 2) suicide, assisted by a doctor, when the doctor only helps a terminally ill person to end his life. The termination of resuscitation in cases where the patient's cerebral death is irreversible is not a murder and cannot be considered euthanasia (treatment no longer gives any result, but only prolongs the time of agony) [7]. The definition of euthanasia given by O.S. Kapinus reflects the whole essence and the conceptual meaning of its content as well as possible. The definitions given by other scientists (for example, N.E. Krylova) as the "executor" of euthanasia indicate only medical workers [24]. Many do not recognize the concept of "another person", and their actions aimed at carrying out euthanasia are proposed to qualify as murder.

Some authors highlight other forms of euthanasia. So A.Ya. Ivanyushkin distinguishes between direct and indirect euthanasia, reflecting the motivation of professional decisions of a doctor. Direct euthanasia is when the doctor intends to shorten the patient's life, indirect euthanasia is when the patient's death is accelerated as an indirect (side) consequence of the doctor's actions aimed at another goal [25]. Yu.D. Sergeev distinguishes 4 forms of euthanasia:

1. Euthanasia without shortening life. Purposeful and multifaceted relief of the physical and mental suffering of a dying patient by the use of painkillers and sedatives (medicotanasia). This group of measures is practically generally accepted in medical activity and is widely used in the final stages of a number of diseases for hopelessly ill patients for humane reasons;

2. Leaving for dying. Refusal of active measures to maintain or prolong the life of a patient suffering from an incurable disease and suffering severe physical and spiritual torment (for example, agonizing a patient with an inoperable form of cancer);

3. Shortening life as a side effect. The actions of doctors aimed at alleviating suffering without intent to shorten the patient's life can to some extent lower the body's resistance and thereby contribute or even accelerate the onset of death (for example, with the introduction of large doses of narcotic analgesics);

4. Purposeful shortening of life. Doctors' actions consisting in intentionally causing death to a patient out of compassion or at the request of the dying person or his relatives [26].

In accordance with Art. 45 of the Federal Law on the Basics of Protecting Citizens' Health in the Russian Federation of November 22, 2011 No. 323-ФЗ, medical workers are prohibited from carrying out euthanasia, that is, satisfying a patient's request to

accelerate his death by any action or means, including the termination of artificial measures to life support [27].

A person who deliberately induces the patient to euthanize and / or carries out euthanasia is criminally liable in accordance with the legislation of the Russian Federation. The Criminal Code of the Russian Federation does not contain a specific corpus delicti related to the implementation or inducement of euthanasia, i.e. special punishment for committing an act of euthanasia by medical personnel has not been established. However, the consequence of euthanasia is the death of the patient, which allows applying Art. 105 (murder) of the Criminal Code of the Russian Federation.

In its essence, medical activity is the most humane type of activity. But sometimes it is first necessary to inflict pain on the patient (under medical control) for his benefit, in order to subsequently relieve pain. When the disease defeats the body and no one can save the human life, the question often arises - why expose the body to torment every hour, if the outcome is already clear? However, an objection immediately arises: is a "medical" error possible, how accurate is the prognosis of the disease, maybe somewhere in the world there are new approaches and methods of treatment? It is rather difficult to give a definite answer to this.

As many domestic lawyers propose, the need has ripened for the adoption of the Federal Law "On Euthanasia" or the Code "On Euthanasia" with a fixed mechanism for realizing the human right to voluntarily leave life with the help of others. The question of who will be the "performer" of euthanasia is rather controversial. Basically, in those countries where it is allowed, it is indicated that these should be medical workers, which is a very serious ethical problem. Not many will want to be a "death doctor." How then to live with it, suddenly the "performers" will have a craving for "active" euthanasia?! In my opinion, medical workers should not be related to either "passive" and especially to "active" euthanasia. Initially, the profession of a doctor was intended to save and prolong human life [28-31]. Yes, the "stages" of euthanasia in ancient times fell to the lot of doctors. But it's not right. We now live in a civilized society or strive for this. If we teach a future doctor to save a human life and at the same time legitimize euthanasia, then it is necessary to train the Aesculapius and take a person's life !? And what kind of graduate doctor will we receive? I believe that in relation to our country, with its foundations and traditions, elevating a doctor to the rank of "killer" is wrong, no matter what way the legislative change in the problem of euthanasia develops. Yes, the doctor must give complete and reliable information about the patient's health status, the conclusion must be collegial, but the doctor, paramedic and nurse should not be an executor under any conditions. Otherwise, we will "breed" killers in white coats. Based on the foregoing, there is no need to change Art. 45 of the Federal Law on the Basics of Protecting the Health of Citizens in the Russian Federation of November 22, 2011 No. 323-FZ- medical

workers should not carry out euthanasia. Then it is necessary to exclude the concept of “medical workers” from the definition of euthanasia and it should read as follows: Euthanasia is the deliberate infliction of death on an incurable patient, carried out at his request by a specially authorized person on the basis of compassion for the patient and with the aim of ridding him of unbearable physical suffering. In this case, the duty of the legislator will be to establish a “specially authorized person”.

The next problem is determining the circle of patients for whom euthanasia can be applied. Criteria such as the inevitability of death, the exhaustion of all possible medical devices, and the duration of drug treatment should not be the basis for including patients in the number of persons for whom euthanasia can be applied. Science is continuously moving forward and everything that was unattainable in the morning becomes mundane by the evening. Medicine does not stand still and the concept of hopelessness must be used very carefully. Practitioners have known cases of self-healing, including from cancer, although this fact is not recognized by many scientists.

IV. RESULTS

The problem of euthanasia is still controversial. At the moment, a person has the right to die his own death, but there is no right to a process that accelerates it. In the case of legislative legalization of euthanasia, many will also believe that it does not have a right to exist. There is a great danger of unfair compliance with all stages of the implementation of euthanasia. The main reason for this is the human factor. On the other hand, it cannot be denied that euthanasia already actually exists in our lives. A real look at the current situation in the country, determined largely by its economic condition, gives reason to assert the presence of passive latent euthanasia [32].

With the development of transplantology, new problems arise that are directly related to euthanasia. This is a possible organ transplant from one potentially dying person to another. What is the solution in this situation? To lose two human lives or give a chance to one of two patients? As a doctor, I am against euthanasia, in principle and in essence, but as a lawyer, I am in favor of the patient's choice of his fate and the further continuation (termination) of life - a person should always be given the right to choose. L.N. Linik takes a similar position, proceeding from the fact that the most important moral principle, which, as far as possible, should be elevated to the law, is the right to freedom of choice, since interference with an individual's freedom of action is not morally justified if actions do no harm to others. If a person decides to accelerate the onset of his death without causing harm to others, then the act of termination of life is a possible manifestation of individual freedom and should not be prohibited by law [3].

V. CONCLUSION

Summing up, it should be noted that numerous issues of the implementation of the human right to

death, including the use of euthanasia, still remain, and may remain controversial in the Russian Federation. However, the solution to this problem is only a matter of time, and we can't just forget that hundreds and thousands of human lives are behind this.

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