PHILOSOPHIC AND LEGAL ASPECTS OF EUTHANASIA AND ITS APPLICATION IN PRACTICE OF LAWYER

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Summary

The article analyzes the nature of euthanasia in different countries and Ukraine. The study is based on a combination of moral, legal and religious aspects. We analyze judicial practice of the present questions. Also is proved the importance of theoretical and legal study of euthanasia for lawyers and the need for qualification of affairs considering this category. Based on the research it is suggested by the author in the case of the legalization of euthanasia in Ukraine, to amend the Criminal Code of Ukraine and consider euthanasia as a circumstance that mitigates punishment through deprivation of life of their loved relatives on grounds of compassion. The article initiated an approach to develop effective line of defense for lawyers in respective cases.

Key words: euthanasia, legalization, seriously ill, relatives of seriously ill, deprivation of life.

Аннотация

В статье проводится анализ сущности эвтаназии в разных государствах и Украине. Исследование построено на основе сочетания морально-правового и религиозно-правового аспектов. Анализируется судебная практика по исследуемому вопросу. Также доказана важность теоретико-правового исследования эвтаназии для адвокатов и проведения квалификации дел с учетом такой категории. На основании проведенного исследования предлагается в случае легализации эвтаназии в Украине внести изменения в Уголовный кодекс Украины и считать эвтаназию обстоятельством, смягчающим наказание, из-за лишения жизни родственниками своих близких по мотиву сострадания. Положено начало выработки эффективной линии защиты адвокатов по соответствующим делам.

Ключевые слова: эвтаназия, легализация, тяжелобольной, родственники тяжелобольных, лишение жизни.

Problem statement. Now in the world there is quite rapid legalization of the phenomenon of euthanasia, regardless of their political, legal, social order and world view. Nowadays some forms of euthanasia are officially legalized in such countries as Belgium, the Netherlands, Finland, Sweden and in 50 US states, it is authorized by law [7]. For Ukraine it is also the time to take decision on this question and explore essential to the practice of lawyers in our country.

Research background confirms that today there are not enough developed scientific works that have investigated the importance of the topic for the practice of the lawyer. In fact, it is not paid attention to the problem of developing an effective line of defense of relatives of seriously ill, who for reasons of compassion deprived seriously ill lives.

State of research. Scientific analyses of the problems of euthanasia according to legal aspects were made by such scientists as: M. Chornobrovyy, R. Stefanchuk, S. Lozinski, I. Kotyuk, A. Musienko. Analyzed the issue of euthanasia such philosophers: L. Borges, A. Hrytsanova, S. Avanesova, and medicine issues of euthanasia were studied by O. Bobrov, A. Bezarova and so on. D. [11, p. 43].

The purpose and objective of the article is to study the problem of euthanasia in its various aspects and scientific works of scientists of the present topic. The objective of the article is to show the importance of studying of problems of euthanasia in lawyers practice. The novelty of the work lies in the fact that attempts to explore both positive and negative effects of the legalization of euthanasia in Ukraine.

Statement of information. The issues of euthanasia for Ukraine can appear quite sharply because of the following factors:

1) As we can see from the above countries where euthanasia is already approved, only the United States are not members of the European Union. At present, our state and its citizens aspire to join the EU and are interested in a close and productive cooperation with various international and European institutions, organizations, etc. Considering it in Ukraine, the question of euthanasia can acquire special urgency and relevance, if not now then it is possible in the coming years;

2) Considering the sufficiently active discussion process of constitutionalism [3] we need to pay particular attention to article 27 of the Constitution of Ukraine "Everyone has the inherent right to life": "No one shall be arbitrarily deprived of life. The duty of the state – to protect human life. Everyone has the right to protect his life and health, life and health of others from unlawful attempts" [1]. Why is this important? Because in the case of the legalization of euthanasia in our country, the legislation will need to amend the Constitution of Ukraine, including its art. 27. And as we know, is procedurally quite complicated. Thus, the relevance of the chosen topic does not exclude any doubt.

From the doctrinal position, regarding the present issues would be appropriate to emphasize that: "In the literature intentional deprivation of life of incurably ill person to end her suffering is called by various terms, "euthanasia" [8, page 72–75; page 318–319], "euthanasia" [9, page 391], "euthanasia". The term "euthanasia" is used in part 3 of article 52 of the "Basic Laws of Ukraine on Health of 19 November 1992" [5]. So its use in scientific research has gained legal status, based on the etymological meaning of the word. This meaning is disclosed in the literature from two Greek words: "eu" – Well and "tha'natos" – death. Sometimes such death in the scientific literature is called "good", "sweet", "light" [10, page 110].

It will be very appropriate to express a position regarding how this phenomenon can be seen in various aspects such as moral, legal, criminal, social, political, religious, cultural, historical and so on.

We will start to understand more deeply the topic of study moral and legal aspects. In my opinion this approach is most appropriate because the primary

stage of introduction, establishment and development of any phenomenon, regardless of its nature, it is governed by accepted rules of morality, and then socio-political public opinion came to the understanding that a certain phenomenon cannot be ignored and must deal applying the law or legalize. For example, how mentioned thesis is reflected in practice? If the state is a supporter of the first approach is "deal with a certain social phenomenon using the law" then in that case, it (i. e. the state) will not admit euthanasia, and cases of its manifestation is admitted as a murder. Simulate another situation where state for various reasons: just from basic reluctance, not interested authorized state bodies and officials, insufficient funding from various budgets (the reason is banal, in our time, but truly, it is quite possible) and for other reasons does not fight with a certain social phenomenon and legalizes it. This state legalization of certain negative and even harmful social phenomenon or process can be conducted with the purpose of filling budgets of different levels through the mechanism of setting taxes for already legalized i. e. legitimate phenomenon or "profession". Certainly should immediately be noted about that a "profitable" legalization goal of a social phenomenon of euthanasia in my opinion is not prosecuted in this case. Because what taxes can be imposed for that person who by her own desire deprived life through the mechanism of application of euthanasia? Although nothing is impossible, where there is a will, there is a way even if it is contrary to certain fundamental standards of morality, ethics and culture. Immediately it should be noted that even the most theoretical possibility of introducing, expanding any taxes, fees from doctors, hospitals for the fact that they helped people to interrupt their lives through euthanasia is a shameful and cynical. By the above, the author of the study of issues of euthanasia, tried to show all the deep, essential meaning of moral and legal aspects of the study of any socio-political phenomenon, process, including euthanasia.

In this case, the question of euthanasia concerns the value of human life. This value lies in the possibility of such a living being as a person on their own without assistance or various medicines, devices to carry out the most basic natural biological action such as: breathe, see, hear, move freely and easily actually live and feel fit worthy member of society in which that person lives. Consequently, raises the question: "how the death of a person through the use of euthanasia can be called "good", "sweet" and "light"? Because death, is death because of which a person loses their life, this natural biological value of human life. Thus, we can say that a person who suffers from an incurable disease and as a result feels unbearable anguish get rid of them such way. But, in my opinion, these people are coming to realize that they need to interrupt their lives through euthanasia, because of the incredible despair, critically pointed doldrums and the absence of sincere, convincing moral support of loved ones and those who are with her constantly near for example doctors. That is, we again are convinced in vital roles and categorically moral, or rather in this case moral support. In fact, anyone who is close to such person should learn to be in some way a psychologist, and it relates to medical personnel supervising and treating such patients. Medical personnel should not show indifference, as often happens especially to those patients, which essentially are on the verge of despair and can take irreparable decision. The doctor of the patient does not have its direct, indirect actions, utterances push seriously ill, or his close relatives to the decision to interrupt their lives using euthanasia. The doctor should be careful, calm and tolerant to tell his patient or his family in case of excessive vulnerability and unstable psycho-moral state specificity about his illness, to provide professional and truthful information regarding Perspective for recovery.

Then in my opinion it is appropriate to consider a range of issues related to the role and effects of action "of subjects" who take the decision to interrupt the life of seriously ill using euthanasia or recommend to take this decision without stopping at the seriously ill. What could be the problem? First, consider all the issues regarding doctors and medical staff who are required to treat patients regardless of their disease and perspective of recovery. In my opinion in this context is relevant this problem: "How to be patient when the diagnosis of several different doctors is radically different? Is it necessary in this case to one of these doctors who brought different diagnoses ask about their professional correspondence, or even to attract to a certain type of legal liability? If so, who should conclude such professional uselessness of doctor or doctors if the decision regarding the diagnosis of the patient was taken collectively?" It will be correct express credibility regarding the relevance and appropriateness to discussed issues.

We will try to answer reasonably these questions. The first thing in my opinion should be noted is that when assigning by the doctor the diagnosis and expressing his opinions on actual hopeless prospects for recovery seriously ill patient mandatory must go to another similar examination of condition of his health of at least to one and even to several different doctors. Why it is important to repeat tests for seriously ill patient whose doctor suggested to interrupt his life through the use of various forms of euthanasia? Because in this situation the price is too high for potential medical errors. Not a lot, but the question is about people life, will the person be deprived of such a natural biological value as the right to life or not. If repeat the examination of seriously ill patient to another doctor or doctors, we will have the opportunity, once again to assure the correctness of diagnosed, or get refutation of availability of the most terrible. Continue to find out the truth, whether the patient is incurable according to medical indicators and at what stage is the development of his illness. If the patient or his family will have a situation where there are two fundamentally different diagnoses on the results of examinations conducted in different doctors, in this case it is appropriate to carry out a complex and collegial examination of such patient. If necessary, domestic doctors should consult their foreign colleagues, carry out professional consultation of doctors from various fields of medicine. Such actions should be conducted to eliminate any doubt that the patient is incurable. Of course, even with such detailed, collegiate diagnosis are possible medical errors, but the more we will survey the patient the more confident we can make a conclusion regarding the state of health.

Responding to a question regarding attraction of doctors to a certain type of legal responsibility who bore radically different diagnoses regarding the health status of the same patient, must proceed in each case from the factual circumstances that were available at the time of making each argument diagnoses and doctors. That is one thing when a doctor because of his

incompetence makes a wrong diagnosis and another thing when a doctor makes a mistake, but quite due to objective reasons beyond his control. Such objective reasons may be for example: outdated medical equipment mistakes of medical personnel (physician assistants, nurses) during certain medical research etc. How to set incompetence of the doctor? For example, the doctor concluded that the patient is incurable based on health indicators of the state of his health, which he received as a result of his work with medical equipment and another doctor working with the same equipment like the first doctor denied the diagnosis. In such situation is clearly that one of the doctors made a medical mistake and it can be installed by finding out that one of the doctors who issued a radically different diagnosis because of its no awareness, read or decoded data obtained using medical equipment with mistakes.

In this case, in my opinion the incompetence of doctor who put patient misdiagnosis are obvious. What actions relative to a doctor to apply? I am sure that such facts of lack of professionalism of doctor or doctors if a patient diagnosis was collectively set must be a reason, at least for re-certification of doctors. Sure to be a danger of corruption risks, but to minimize them, Certification Commission should be formed at the highest level. Such commission should include experts from the Ministry of Health of Ukraine and leading experts, the most famous doctors of medical institutions of our country for whom own credibility and reputation in professional circles are not empty words.

When deciding to prosecute doctors who put the patient misdiagnosis to a certain type of legal responsibility in my opinion, we must proceed first with the consequences that come or not come to the patient because of unprofessional actions of doctors. It's one thing if a doctor put a patient misdiagnosis and its appointed on expensive treatment for the patient. In this case, depending on the specific circumstances of the case, taking into account the amount of money that the patient or his relatives spent to such not needed treatment, and the onset of adverse consequences for the patient of such treatment, need to talk about the feasibility of attraction of doctor to disciplinary, administrative or civil liability. If the doctor based on this false diagnosis advise the patient or his relatives prematurely terminate the patient's life following his advice and were enforcing it right in this case will bring a doctor criminally liable for elementary neglect of their duties.

After reviewing the role and importance of physicians in making the patient or his relatives' decision to terminate, the life of the patient through the application of euthanasia should examine the role and importance of close friends of the patient in making this irreversible decision. In this context of not less.

One of the main problems in this aspect is the question of motives that guide family of seriously ill, to take quite, complex and not a simple decision on early interruption of life of their loved one who can stay out of consciousness for long periods of time (month, half a year, more than a year), and is unable to express his own vision regarding the termination of his life. One thing is if the patient can pay for his expensive treatment or relatives to give consent to use their savings to pay for the cost of doctors and medicines. If the patient for a longer time (month, half a year, more than a year) comes to life, then his family can count on sick funds and use them in good faith and for the intended purpose. Radically different situation is when a seriously ill patient and his relatives has not significant financial resources. Considering the above said seriously ill family members or the patient may simply be unable to pay for treatment and possibly be forced to take a complex and difficult decision to interrupt the lives of their loved one using euthanasia. There may also be other reasons cynical relatives and doctors of seriously ill, such selfish motives, various cases of fraud and so on.

Consider this display issue in domestic and foreign laws. What can we say about the legislation of Ukraine? Besides the mentioned above page 27 of the Constitution of Ukraine dated 06.28.1996 [1] would be appropriate to refer to other legal regulations of our country such as the "Civil Code of Ukraine" from 02.16.2003 [2], Fundamentals of Ukraine on Health Care from 11/19/92 [5] "Code of Ethics of nurse of Ukraine" from 1999 [6]. Briefly on the characteristics of normative legal acts of Ukraine regarding the issues of euthanasia. Civil Code of Ukraine in Part 4 Art. 281 provides a position as "forbidden to meet individual requests for termination of life" [2]. This legal act as "Basic Laws of Ukraine on Healthcare" article 52 clearly prohibits the interruption of life using euthanasia in the following wording: "medical staff are not permitted to use euthanasia – deliberately accelerating death or killing the terminally ill to end his suffering" [5]. Euthanasia is not considered ethical and in accordance with Art. 10 of "Code of Ethics of nurse of Ukraine" [6]. In addition, as noted by lawyers: "In the modern theory of criminal law of Ukraine and law enforcement is acknowledged that the consent of another person on the deprivation of life or even her request for deprivation of life does not eliminate the illegality of actions aimed at depriving the life of a man and does not release from the object, which made it from criminal liability. However, the question of euthanasia for the qualification relevant article of the Criminal Code Ukraine" [4].

With active euthanasia as "murder with mercy" guilty action is deliberate, so if all other elements of the crime committed belongs to qualify, depending on the circumstances of the case under Part. 1 or 2 art. 115 "Murder" of the Criminal Code of Ukraine [4].

Therefore, the position of Ukrainian legislator at the time of the issue is sufficiently clear and consistent. Foreign experience is worth mentioning that the "passive euthanasia is not considered a crime in Sweden and Finland, and in 50 US states, in Belgium and in the Netherlands it is allowed by law. Only in 2000 in the Netherlands officially reported 2216 cases of euthanasia [7].

In most counties of the world, euthanasia is provided by law or prohibited by it. In this regard, the Criminal Code provides for such States responsibility for euthanasia as a kind of murder with extenuating circumstances. Among these countries belong: Austria, Azerbaijan, Georgia, Poland, Portugal, Denmark..." [10, p. 115].

Scientists also can not give a clear answer regarding their attitude to euthanasia. Here are scientific views regarding this issue of such scientists as G. Ivashkevich, S. Doletskyy, V. Hakob, J. Dmitriev, E. Shlenova. According to G. Ivashkevicha, there are many opponents of euthanasia in the world not only for fear of the law, because every normal person has higher internal law, which always says: "Thou shalt not kill" [12, p. 93]. His position G. Ivashkevich justifies not only the immorality of euthanasia, but the fact

that the issue of euthanasia is associated with transplantation, creating the ground for possible abuse even at very thorough legal regulation of this process [10, p. 115].

Professor S. Doletskyy and Professor Hakob follow the opposite position. According to S. Doletskoho, fighting for the life of the patient is valid only as long as there is hope that salvation is possible. If this hope is lost, it is at this point that the right to a charity that is also realized through euthanasia. Therefore, he believes that euthanasia is true, the only correct way regarding the terminally ill, paralyzed, patients whose existence continues only through the life supporting medical devices, atrophied brains of newborns, pregnant women, fetuses, if you set them disfigurement or incompatible with the life of pathological disorders, as man differs from the animal intellect and morality [13]. Yuri Dmitriev and E. Shlenova argue that the biologist and medical aspect of euthanasia is to define the range of patients for which it is advisable to apply [14, p. 42]. I think given point of view of scientists are rather controversial but nevertheless must first come from the fact that any idea if it is reasonably justified has right to exist.

Summarizing all the above is still advisable to build a single system for pros and cons euthanasia. The arguments "cons": 1. The moral side. God gave man life, and therefore the decision on his deprivation can only Him. 2. Psychological brakes. Permission to use euthanasia with high confidence can be a brake to Searching for new effective ways and means of treatment for patients because it often leads to the death makes medicine move forward. 3. Pressure on physically limited people. The legalization of euthanasia could lead to pressure on the disabled, the elderly and terminally ill people who could live and still live, but by others and themselves consider themselves "burden". 4. Crimes tool. This way of taking life can be a means of committing crimes, killing the elderly, disabled, terminally ill, the treatment of which is not enough money to bribe medical staff, abuse of office, fraud and so on. 5. The issue of voluntariness. It is very difficult to establish voluntary consent of the patient. Even when the patient verbally or otherwise agreed obvious way, he can always change his mind, and when the procedure is in progress, he has not right to change the decision. 6. The problem of "miraculous recovery". Euthanasia eliminates cases of so-called "miraculous recovery". Although a relatively small percentage, but such incidents still occur, which can also be seen as a chance for the patient [15].

Specific reasons "pros" legalization of euthanasia are: 1) Euthanasia allows fully possible to realize the human right to dispose of his life, including the decision to terminate his own life; 2) The man is recognized the supreme value, and therefore its real welfare needs and the right to self-determination, the right to liberty, the right to respect of dignity, the right to a dignified death must be guaranteed and fully equipped; 3) Euthanasia ensures the implementation of one of the fundamental principles of law – the principle of humanity. Euthanasia is humane, because stops pain and anguish terminally ill; 4) The State and society should recognize such right, not for everyone, but for the small group of people who really need it [15].

Doctrinal studies of all issues of euthanasia are extremely useful for practical activities of lawyers. The author comes to the conclusion that, to date, there are a growing number of murders of citizens on their request by their own relatives. In practice, there is a practical problem that relatives of seriously ill who fulfilled their wish are attracted to criminal liability for murder. So, it is necessary in such cases to develop an effective line of defense for lawyers. To confirm this opinion it is necessary to pay attention to the judicial practice on this issue. However, it should be noted that the relevant registers of court decisions of Ukraine is difficult to find a specific case which confirmed the above. Consequently would be useful to refer to the court practice of countries such as the United States [16], the UK [17] and Russia [18]. In such cases, lawyers in Ukraine face a practical problem that formal action of relatives of seriously ill are aimed to depriving lives of their loved for reasons of compassion but are qualified as murder. Yet the legislation of Ukraine does not contain any provisions on euthanasia. Under such circumstances legalization of euthanasia in Ukraine should be made with legislative changes to ch.1art. 66 of Criminal Code of Ukraine [3]. The idea is when depriving lives by relatives at request of their seriously ill on the grounds of compassion when sentencing court took into account as a circumstance of mitigating punishment. Such changes will give lawyers an effective instrument for effective protection of their clients in criminal proceedings.

Conclusions. You can have a lot to write about issues of euthanasia. The author of this research tried to show all the complexity and multidimensional nature, which is certainly available in the present issue of early interruption of life. In my opinion answering the question: "Will at present be right to legalize euthanasia in Ukraine" it is necessary to give a negative answer. Why the answer for today is correct? Because today all the risks which are mentioned in this research are not removed and remain extremely important. First we should create a really effective mechanism for implementation of the phenomenon of euthanasia, and then consider the possibility and advisability of legalization of euthanasia. This issue should be treated carefully, soberly and clearly to show consistency in order not to provoke rapid surge of cases of euthanasia at the request of seriously ill citizens of Ukraine or his family in case of legalization.

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ЗАРУБЕЖНЫЙ ОПЫТ ПРАВОВОГО РЕГУЛИРОВАНИЯ НАЛОГОВОГО КОНТРОЛЯ ПО КРИТЕРИЯМ РИСКА В ДЕЯТЕЛЬНОСТИ НАЛОГОПЛАТЕЛЬЩИКА

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Summary

In the article the comparative analysis of the individual elements of the legal mechanism of tax control in Ukraine and some foreign countries in the use of risk in the course of tax audits. The propositions for changes term verification for taxpayer's manufacturers leading sectors of Ukraine's economy in order to create confidence taxpayer supervisory authorities and declared increasing number of developed countries voluntary tax. Also offered a complete and comprehensive theoretical and legal structure determination of state fiscal risk for use in legal acts of tax legislation.

Key words: national producer, tax control, taxpayer, risk.

Аннотация

В статье осуществлен сравнительный анализ отдельных элементов правового механизма налогового контроля в Украине и отдельных зарубежных странах в части использования рисков налогоплательщика как определяющего фактора в ходе определения периодичности проведения налоговых проверок. Сформулированы предложения о необходимости изменения периодичности проверок для налогоплательщиков-производителей ведущих отраслей экономики Украины с целью их государственной поддержки, а также формирования доверия налогоплательщика к контролирующим органам и увеличения, как в экономически высокоразвитых странах, уровня добровольности уплаты налогов. Также предложено исчерпывающую и завершенную теоретико-правовую конструкцию определения фискального риска для использования в нормативно-правовых актах налогового законодательства.

Ключевые слова: национальный производитель, налоговый контроль, налогоплательщик, риск.

Постановка проблемы. У подавляющего большинства стран мира главной проблемой является обеспечение стабильности и избегания кризисного состояния собственной финансово-экономической системы. Важным и действенным элементом финансово-экономической системы любого государства является налоговая система, которая на нормативно-правовом уровне защищена от рисковых последствий процесса налогообложения для государства и налогоплательщиков. На сегодняшний день в Украине не разработаны механизмов избегания рисков налогообложения, в частности, в части осуществления налогового контроля.

Актуальность темы. Анализ зарубежного опыта показывает, что правовое регулирование налоговых отношений направлено на максимальную защиту национального товаропроизводителя от возможных рисков налогообложения. Однако в налоговой системе Украины основной функцией налогов является фискальная функция, согласно которой налоги обеспечивают наполнение доходной части бюджета. То есть, нормы и предписания налогового законодательства Украины о порядке администрирования налогов и осуществления налогового контроля сформированы по принципу фискального регулирования налогово-правовых отношений. Следствием этого является формирование значительного количества налоговых рисков государства и налогоплательщиков и отсутствие надлежащего правового механизма их регулирования. Одной из причин такого положения дел является отсутствие в современной украинской финансово-правовой науке базовых исследований налогового риска. По нашему мнению, формирование эффективного правового механизма предотвращения или минимизации налоговых рисков на всех этапах реализации государством