

SOCIETY “FOR” AND “AGAINST” LEGALIZATION OF EUTHANASIA

SABIEDRĪBA “PAR” UN “PRET” EITANĀZIJAS LEGALIZĀCIJU

Rihards Poļaks, Mg. iur.,

Doctoral student of legal science, Latvian University Faculty of law,

Postal address: Svētes street 28 – 10, Jelgava, Latvia, postal code: LV-3001,

E-mail: rpolaks@inbox.lv, mobile phone number: (+371) 26729263

Abstract. On the appearance of the term of “*euthanasia*” in the XVIIth century, one of the most complicated and discussed questions was formulated within all of history, i.e., if a human has any rights to take another life because of compassion even if someone requests their own death. The answer to this phenomenon is not found even nowadays, dividing society into supporters and deniers of euthanasia.

The issue about the possible legalization of euthanasia has entailed an especially active discussion among physicians, lawyers, philosophers and clergy, and as a result the analysis shows that until now the Christian religion expresses categorical rejections to any aspirations to legalize euthanasia, and physicians and lawyers thoughts about this question remain rather contradictory.

One stream of physician consider that the Hippocratic Oath, which includes straightforward prohibition of practicing euthanasia, has become archaic and it does not correspond to the rapid development of medicine. On the other hand, another school of thought supposes that euthanasia contradicts the physician’s mission and for this reason should not be authorized.

Furthermore, even among lawyers the opinions are divided. Some of lawyers defend the belief that any human has the right not only to life, but also to death; another fraction of lawyers opposes the current point of view by presenting the argument that the legalization of euthanasia would be a stimulus for the growth of crime and that is why its legalization should not be allowed.

Even if in such a complicated question a single point of view will hardly ever be achieved, constructive discussions promote not only the appropriate legal development of euthanasia, but also characterize our attitudes towards the question of death with dignity.

Key words: euthanasia, society, ethics.

Introduction

Even though the beginning of practicing euthanasia could be found already in antique times, the term of “*euthanasia*” appeared relatively recently, it was introduced in the XVIIth century by the English philosopher Francis Bacon (1561-1626).

On changing centenaries, also the comprehension about “easy death” was changed, as well as in practice several unaided forms of it were marked, for example, active and passive, voluntary and non voluntary euthanasia, (physician) assisted suicide etc.

For that reason, nowadays with “*euthanasia*” one should understand the instance, when a physician or any other person consciously, due to compassion, with his own action or inaction causes death of terminally ill person based on these people or their legal representative’s explicit request or any other instance, when such of request had not been made with the purpose to release dying person from the pain and suffer causes by a disease or from the medically unjustified extension of life.

Nowadays there are no medical problems in practicing euthanasia, merely, with the appearance of the term and subsequently by its legalization of the several forms of euthanasia in some countries, such as, the Netherlands¹ (Termination of Life on Request and Assisted Suicide (Review Procedures) Act, 2002), Belgium² (The Belgian Act on Euthanasia of May, 28th 2002., 2002), Luxembourg³ (Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide: Recueil de legislation, 2009) and in some other countries, there was formulated one of the most complicated and controversial questions in the history of humanity – if a human has any rights to take another life because of compassion or even personally request the death and do human rights to life which is connatural from the birth including also rights to death, the answer to this phenomenon is not found even nowadays, dividing the society into supporters and deniers of euthanasia.

About allowance of practicing euthanasia many decennary there is observed a never – abating discussion among branch specialists, mainly between miscellaneous representative of religion, physicians and lawyers, but unanimity up to this time has not been reached. In the same time there is directly expressed argumentation of these branch specialists who allow to look at the problematic of euthanasia in the context of the XXth and XXIth centuries more objectively, and to shape the presumed negative consequences, what can be produced in case of legalization of it.

As the aim of the research the author moves out to find out factual typical coefficient and denying arguments of legalization euthanasia among different branches of specialists. To reach this aim there are the following enabling objectives:

1. to find out linkage deputy of religions, physicians and lawyers arguments “for” and “against” legalization of euthanasia;
2. to find out the aspects of the existing confrontation between linkage specialist in the own groups, and also in terms of mutual interchange.

In order to achieve the enabling objectives the author has studied and analyzed mainly ethical, medical literature in Latvian, English and Russian languages, a legal doctrine, a foreign countries normative acts, publications and legal practice of the European Court of Human rights.

Research methods

In the research the author uses the analysis reference method to make the researched object separated in parts and inquire any element of it, with the help of the information obtained through the synthesis it could be possible to merge into one unit, and the deductive research method, with the help of it will be achieved in logical way new thoughts, which are based on previous formulated opinion in the analyzed question.

Results and discussion

Consequently, the issue of the euthanasia caused a sharp debate and criticism not only of the society, physicians and lawyers, but also among the clergy. These discussions take place not only at the national level, but we can also see its cross-border character that shows the enduring relevance and importance of this question worldwide.

So far in every country the sharpest criticism against the legalization of euthanasia has come from the Christian religion where it is believed that “easy death” directly violates one of the most important commandments of God - “Thou shalt not kill!” (Mozus 2;10)⁴ (Bībele. Vecās un Jaunās derības svētie raksti, 1967).

Members of the clergy have different interpretation about prohibition of euthanasia. The Latvian University Dean of the Faculty of Theology Juris Calītis (Juris Cālītis) at one of the interviews indicated that the problem of euthanasia should not be assessed unambiguously. To live or die is not an important issue in the context of the Christianity, what is important – one has the right to decide⁵ (Gabre, 2001). The pastor Juris Rubenis (Juris Rubenis) acknowledges that “the main issue is the questions about person assuming the power to intervene in matters that relate to our existence borders ...”⁶ (Krišjānis, 1996). As a result of several decades - long debate a constant position has been created on the sanctity and inviolability of life, because only God not the human himself or another person can determine when new born will come to this world and when and under what conditions will pass away.

So far Vatican has approached with particularly sharp criticism against the “easy death”. In order to formally express their position on May 5, 1980 in Rome the Sacred Congregation of Faith accepted and soon published The Vatican's “Declaration on euthanasia”⁷ (Deklarācija par eitanāziju, 1996). This declaration is noteworthy for several reasons - namely, not only because it is one of the first documents of such type expressing the official position of the Christian religion representatives on the “easy death” issue, but it also explains the essence of euthanasia reviews the values of human life and surmises the main arguments on which Christians base their deprecatory attitude.

Russian Orthodox Church already in 1999 came with statement “The modern trends in legalizing euthanasia” considering euthanasia as a specific form of homicide and recognized it like a sin⁸ (Исаев, Воропаев, Диллис, Караваева).

The unacceptability of the practice of euthanasia is not limited only by the Christian religion. The Jewish and Islamic faiths also sharps condemn the practise of “easy death”. On July 16, 2003 in Stockholm, The Islamic Council of Europe on the precepts of the Koran officially announced that active and passive euthanasia and suicide are prohibited in Islam⁹ (Islamic Religious Leadership

Council Rules against Euthanasia, Assisted Suicide, 2003.). Also the Jewish Law prohibits active euthanasia and this kind of activity is evaluated as a homicide. Also Mormons has a similar view on it¹⁰ (Medical and life ethics). However, not all religions have a clear position in the context of euthanasia, diversity at opinion is observed. For instance in Hinduism and Buddhism, euthanasia is seen as an exceptional case, not as a norm.

If most of the religions practice and legalization of euthanasia and preclude using is argument that Creators arrangements and attitude to life, which with certain exceptions, are declared sacred and inviolable, the medics look upon “easy death” through the prism of medical ethics. The collisions of views result in establishment of two mutually controvert camps.

Part of the medical personnel consider euthanasia as contrary to the Hippocratic oath¹¹ (Sīle, 1999), as it contains a direct prohibition of practicing euthanasia and disagrees with physicians mission as such. Others argue that the oath is outdated and mismatches with rapid development of medicine. Even more, helping to “past away” from life for a human who is incurable with the method of “easy death” is much more humane and statuary than to watch patient suffering unbearable pain clearly knowing that in the near future the person will die. However, a question appear – once asked by former Latvian Doctor Association president Viestur Boka (Viesturs Boka) and with what one can agree - “who could draw a line and say - in this case human life would cease but in this not ...”¹² (Nikers, Fridrihsone, 2001).

It can be said that the majority of Latvian medical personnel deny euthanasia as one of the forms of assistance to hopelessly ill patients. In this context important cognition has the chief on Riga’s Eastern Clinical University Hospital Clinic “Gaiļezers” Anesthesiology and Resuscitation Clinic and a associate professor of Riga’s Stradiņa Anesthesiology and Resuscitation Department Viestur Ligut (Viesturs Liguts): “Humanly I understand it, but the physicians is not an executioner, he is unable and he can not execute the death penalty ...”¹³ (Gavare, 2008). However, one needs to be cautious about such statements because not all physicians have the same about investigational question and as the Latvian Oncology Centre for Palliative Care department doctor Vilnis Sosar (Vilnis Sosārs) notes: “Latvia has euthanasia cases when hopelessly ill patients were given an excessive drug dosage or simple despair ate patient’s suicide cases ...”¹⁴ (Dingēlis, 1996).

Dr. V.Sosar believes that the issue of euthanasia arises when there is inadequate and off grade medical and social care and as an alternative palliative care is created¹⁵ (Pohodņeva, 1998). However, it would not be superfluous to note that palliative care in Latvia is in development phase and is not available to each person¹⁶ (Apine, 2005). Besides there have been significant reduce in budget of health sector.

Although, when looking for supportive and denying arguments of the practice of euthanasia that often have been looked at in the practical context, at first “easy death” is one of the most complex issues of medical ethics and from this perspective is unlikely to be solved at all.

Many medical professionals in the United States of America consider that active euthanasia, in contradiction with life support treatment, kills and therefore it is ethically incorrect. Others believe that the distinction between killing and permit patient to die from an illness is the difference between action and inaction. At the same time the majority holds the position that if a patient's quality of life is poor and continuing further existence is not desirable then the values that maintain the ethical side are not acceptable and therefore, if the patient is suffering and has no hope of recovery charity requests to maintain a voluntary active euthanasia¹⁷ (Уиклер, Брок, Каплан, 1989).

J.Rachels (Dž. Reičels) also agree to such a view, esteeming that in many cases it is much more humane to use active euthanasia because passive euthanasia is excruciating and inhumane¹⁸ (Rachels, 1987).

However, to this argument opponents can be found. As noted by A.Gromov (A.Gromovs) and G.Rossolimo (G.Rossolimo) medicine really should not become inhumane, however such patient requests are made reluctantly and often are not true because pain and disease alters the patient's personal harmony and as a result physicians during his actions need to reckon with patient not like with a regular person but like with a human who has the psychological diversity¹⁹ (Котельников, 1987). Therefore, physician in the moment of aggravation of the disease needs to dedicate more attention to the care of the patient, maximally alleviating his passing away.

Indisputably „easy death” is a complicated question that surpasses context of contest of constant scientific discipline. Religious, ethical, medical aspects are in the continual interaction and they can not be viewed separately, also from the point of view of legal science.

Undeniably euthanasia endangers one of the most important interests protected by the criminal law – human life. That is why discussions between lawyers about admissibility of practicing and legalizing euthanasia, especially in foreign countries, are not rarity.

Like physicians, also lawyers do not have one single point of view in such complicated question. There are some who justify euthanasia in context of the humanity and human rights and there are also lawyers who think that practicing it and even more legalizing it, can not be allowed under any circumstances, noting the negative consequences that such action can cause.

Unfortunately in Latvia between communities of lawyers practically there are no discussions. In year of 2000 in one of the interview sworn advocate Vija Jacobson (Vija Jākabsone) accented, that in Latvia legalization of euthanasia is not allowed, as the main argument mentioned that “good

will to release a human from suffer can be used maliciously to dispose of undesirable”²⁰ (Saulīte, 2000). Sworn advocate Guna Kaminska (Guna Kaminska) drew attention to euthanasia, if this action is not parted by concerned person, as a free choice of human, nonetheless, in cases when someone has promoted taking away of a life, then the case is qualified as a homicide²¹ (Jākobsons, 2000). In case if the law legalizing euthanasia will come into force, is considered to be state issue.

A slightly different point of view on 30 January, 2002 expressed the lawyer of the Latvian Office of the Patient Rights Solvita Olsen (Solvita Olsena) during the State Office of the Human Rights round table discussion, stating, that at the particular moment such a law could not be introduced until the field of the protection of the patient rights are not arranged, and at the same time stated, that patient has rights to refuse from the medically unjustified extension of life²² (Valsts Cilvēktiesību biroja rīkotās apaļā galda diskusijas “Cilvēktiesības un eitanāzija Latvijā” materiāli, 2002).

Also in Russia between lawyers there is variety of opinion. One part of the specialists suggests declaring euthanasia as collateral circumstance eliminating criminal responsibility²³ (Ивченко, 2002), meaning decriminalizing this crime. Others suggest declaring homicide based on victims request as privileged composition, О.Капинус (О.Капинус) even suggests to supplement Russian Criminal Codes Special part with special article²⁴ (Капинус, 2006). In her turn М.Малеинoja (М.Малеинoja) holds a view that euthanasia could be allowed only in the situation when patient has enounced explicit, absolutely conscious and insistent request, besides it should not be feared that euthanasia can be used malevolently, because its realisation has to be provided with extra duties that are applied by state and law enforcement bodies²⁵ (Мишаткина, Денисова, Яскевич, 2003).

Considering that the question of euthanasia straightly comes in to affect also with area of human rights then discussions about its admissibility goes to the context of the natural rights. For example, the advocates at the United Kongdom, who accede to legalization of euthanasia argued that patient has rights to commit suicide but, if they wish, they have rights to “easily go away” from life with the helping hand of physician. On the other hand those advocates who are against legalization of euthanasia distinguish between suicide and homicide and oppose that even if patient has rights to decide does he want to continue to live or not, it does not at the same time enlarge others rights to commit homicide based on victims interests²⁶ (Dworkin, Frey, Bok, 1998).

In the context of above mentioned cognition substantial is also judgment of the European Court of Human Rights of 2002 in Diane Pretty case²⁷ (Case of Pretty v. The United Kingdom, Application no. 2346/02, 2002) where court explains – it rights to life include also rights to death in context with Article 2 of the European Convention on Human Rights²⁸ (Cilvēktiesību un

pamatbrīvību aizsardzības konvencija, 1998). As the court decided right to life could not be interpreted as diametrically opposed rights, meaning the rights to death, at the same time the article does not include human self-determination rights to choose death instead of life²⁹ (Case of Pretty v. The United Kingdom, Application no. 2346/02, 2002).

This is only a small part of multiplicity view of points between lawyers in the context of the analyzed problem. Even there not physicians, nor lawyers hardly ever will achieve single point of view adduced analysis of arguments partly characterize our attitude towards qualities of life and question of death with dignity in the turn of the XXth and XXIth centuries.

Conclusions

1. Up to now explicitly negative attitude against practicing and legalizing euthanasia is observed in Christian religion, Islam and Judaism belief, argued with the aspect that time when human have to come into life and when and on what kind of circumstances he have to go away from it can prescribed only by The Creator. Also suffering can not be a justifying reason because it serves for established purpose and duty to endure it with dignity will be compensate in afterlife. On the other hand acts that allow practicing of euthanasia do not only endanger established order of The Creator but also deny value of human life as such.
2. Even if nowadays there are no medical problems practicing euthanasia, incurable persons right to death first of all is ethical problem of medicine in addition there is a conflict between basic values – sanctity of life and humanity that is in endless mutual confrontation and can not be settled. As a result any activity of medical personal is it assent to make act of euthanasia or refusal of it, from society's side will be brought under critics, or admonishing of ethic of physician and their mission (to keep a life) or of extreme cruelty under the pretence of purposes of medicine.
3. As like as in case of physicians also between lawyers in question of euthanasia dominate dualism of opinions and hardly there will be reached any solidarity. One part of lawyers understand euthanasia as a fundamental right of human and that is why not only permit practicing but also legalizing it even if it is voluntary and thought - out request of terminally ill person. Other thinks that euthanasia even if it realized by compassion is a homicide because in both cases it endangers one of the most important interests protected by criminal law – human life.

4. Endless ethical, medical, religious, economical, social, judicial and other reasons mutually are confronted through centuries and society have not crystallized one viewpoint – is practicing and legalization of euthanasia allowable and hardly such one viewpoint ever will be formulated, considering the persuasive position of each clench.

References

1. Apine I. Ārstu pretargumenti eitanāzijai. *Latvijas Vēstnesis*. 2005. 11.oktobris, nr.161. Pieejams: <http://www.vestnesis.lv/index.php?menu=doc&id=118618> [skatīts 16.11.2008.]
2. Bībele. Vecās un Jaunās derības svētie raksti. London: The British and Foreign Bible Society, 1967, 83.lpp.
3. Case of Pretty v. The United Kingdom, Application no. 2346/02, Strasbourg, 29 April 2002. Final Judgment 29/07/2002. The European Court of Human Rights. Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=euthanasia&sessionid=40520458&skin=hudoc-en> [looked through 18.12.2009.].
4. Cilvēktiesību un pamatbrīvību aizsardzības konvencija. 1998.gada 1.novembris. Pieejams: http://www.coe.lv/konv_sar.php?kid=5 [skatīts 21.07.2010.].
5. Deklarācija par eitanāziju. *Kristīgā Avīze Solis*. 1996. 28.jūnijs - 4.jūlijs, nr.23.
6. Diņģelis M. Tiesības dzīvot un tiesības mirt. *Diena, pielikums SestDiena*. 1996. 11.maijs, nr.110.
7. Dworkin G., Frey R.G., Bok S. Euthanasia and Physician-Assisted Suicide. For and against. United Kingdom: Cambridge University Press, 1998, p.110.-111.
8. Gabre A. Tiesības uz nāvi. *Rīgas Balss*. 2001. 4.janvāris, nr.3.
9. Gavare J. Latvija var! Tikai ārstēt. 2008. 7.novembris. Pieejams: <http://www.db.lv/sakums/latvija-var/latvija-var-tikai-arstet-170986> [skatīts 08.07.2011.].
10. Hipokrāta zvērests. Grām.: Šīle V. *Medicīnas ētikas pamatprincipi*. Rīga: izdevniecība “Zinātne”, 1999, 140.lpp.
11. Islamic Religious Leadership Council Rules Against Euthanasia, Assisted Suicide. *Catholic World News Brief*. 16 July 2003. Available: <http://www.euthanasia.com/islamic.html> [looked through 08.07.2011.].
12. Исаев Ю.С., Воропаев А.В., Диллис А.Д., Караваева Е.И. Вопросы конституционного права. Доступен: <http://www/law.isu.ru/ru/science/vestnik/20044/isaev.html> [просмотрен 07.03.2005.].
13. Ивченко О.С. Уголовная ответственность за эвтаназию в России. В кн.: *Уголовное право в XXI веке*. Москва: «ЛексЭст», 2002, С.141.
14. Jākobsons A. Žēlsirdība, kas var nogalināt. *Jaunā Avīze*. 2000. 8.decembris, nr.286.
15. Капинус О.С. Эвтаназия в свете права на жизнь. Москва: Издательский дом «Камерон», 2006, С.255.
16. Котельников В.П. От Гиппократ до наших дней. Москва: издательство “Знание”, 1987, С.58.
17. Krišjānis M. Mēs cenšamies uzbūvēt dzīvi bez lielām un liekām ciešanām. *Mediķu ziņas*. 1996. 5.jūlijs, nr.22.
18. Loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide: Recueil de legislation. *MEMORIAL Journal Officiel du Grand-Duché de Luxembourg*. 2009. 16 mars, A — N°46. Available: <http://www.legilux.public.lu/leg/a/archives/2009/0046/a046.pdf> [looked through 07.07.2011.].
19. Medical and life ethics. Available: <http://www.bbc.co.uk/religion/religions/mormon/features/medical.shtml> [looked through 11.03.2005.].
20. Мишаткина Т.В., Денисова С.Д., Яскевич Я.С. Биомедицинская этика. Учебное пособие. Минск: Тетра Системс, 2003, С.99.
21. Nikers O., Fridrihsone M. Vai esam gatavi lemt Nāves vietā. Eitanāzija Latvijā - ārsti PRET, politiķu domas dalās. *Jaunā Avīze*. 2001. 24.janvāris, nr.20.
22. Pohodņeva M. Neparariet ārstus par slepkavām. *Jaunā Avīze*. 1998. 30.marts, nr.75.
23. Rachels J. The End of Life: Euthanasia and Morality. London: Oxford University Press, 1987, p.214.
24. Saulīte J. Advokāte: eitanāziju nedrīkst legalizēt. *LETA*. 2000. 29.novembris. Pieejams: <http://www.leta.lv/latvian/arhivs/arhiveitem.asp?ItemID={E47D9C1E-C466-11.D4-9AF1-00A0C9FC2011}&Phase=eitanazija> [skatīts 18.01.2005.].
25. Termination of Life on Request and Assisted Suicide (Review Procedures) Act. Available: <http://www.euthanasie.org/nvve-english/pagina.asp?pagkey=72087> [looked through 07.07.2011.].
26. The Belgian Act on Euthanasia of May, 28th 2002. Available: <http://www.kuleuven.be/cbmer/viewpic.php?LAN=E&TABLE=DOCS&ID=23> [looked through 07.07.2011.].
27. Уиклер Д., Брок Д., Каплан А. Этика. На грани жизни и смерти. Краткий очерк современной биоэтики в США. Москва: издательство “Знание”, 1989, С.33.
28. Valsts Cilvēktiesību biroja 2002.gada 30.janvārī rīkotās apaļā galda diskusijas “Cilvēktiesības un eitanāzija Latvijā” materiāli.