

# EUTANASIA: LEGAL REGULATION IN EUROPEAN COUNTRIES AND PROSPECTS FOR LEGALIZATION IN UKRAINE

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**Received in:**  
2021-05-10

**Approved in:**  
2021-06-15

**DOI:** <https://doi.org/10.24115/S2446-62202021731334p.479-486>

The descriptive method presented the results of the study in a coherent manner. The integrative method made it possible to study the degree and nature of the integration of approaches to the legalization of euthanasia in the laws of European countries. The total methodological base used finally ensured the reliable and valid conclusions.

Based on the analysis of the established trends and patterns of legal regulation of euthanasia, it was considered necessary to improve the legislative framework of Ukraine.

## THE CONCEPT AND TYPES OF EUTHANASIA

The concept of euthanasia has already become quite widespread (the term itself literally means "good death" in Greek) and it is considered as "mercy murder", "an opportunity to die painlessly for people suffering from incurable diseases" (HEATHER DRAPER, ANNE SLOWTHER, 2008). At the same time, there is a rather narrowed approach, when the concept of euthanasia is understood as "the actions of a doctor who intentionally kills a person by injecting drugs because of his/her voluntary and competent request" (<https://hospicecare.com>). One can agree with the criticism of such a narrowed approach, as it includes only active actions and exclusively one method (drug administration) and leaves out the grounds for euthanasia, i.e. an incurable disease.

Despite the different approaches that are encountered when considering the concept of "euthanasia", an extended systemic view is correct, in particular, which considers euthanasia as a procedure regulated by law, which may provide for the performance of certain actions (or refraining from active actions) that can only be applied to a person with an incurable disease

## INTRODUCTION

The COVID-19 pandemic has led to restrictions on human rights in most countries of the world to protect human life and health. When the value of human life and health acquired particular importance, the question arose again about the expediency of legalizing euthanasia in different European states and Ukraine.

Within this study, we will focus on the concept and types of euthanasia, analyze its evolution based on the ECHR practice, and also find out the experience of legal regulation of euthanasia in European states and the prospects for its legalization in Ukraine.

To achieve this goal, the authors used both general scientific and special legal research methods, with comparative legal analysis foremost among them, which made it possible to compare the legislative regulation of euthanasia both in Ukrainian legal system and in European states. In addition, methods of analysis, synthesis, analogy, opposition, system-structural analysis, etc. were used.

The systemic and structural analysis made it possible to identify the levels of implementation of the practice and standards of the European Court of Human Rights in terms of the regulation of euthanasia-related issues in the legislation of different countries.

on the basis of his/her free, informed, and conscious will, made in writing in accordance with the requirements of the law.

A standard practice distinguishes between two main forms of euthanasia: passive (death of a person due to inaction, for example, stopping treatment) and active (when death is caused by certain actions, for example, an overdose of appropriate drugs). Another type distinguished is indirect euthanasia, when the provided treatment (usually to reduce pain) has the side effect of accelerating the death of the patient. Recently, the issue of the decriminalization of assisted suicide (i.e. assisted suicide) has been discussed.

At the same time, new forms of care for people suffering unbearable pain are emerging, in particular "Continuous Deep Sedation" (CDS), which is set forth in French law and provides for the introduction of strong doses of sedatives to relieve any suffering before the patient's death. In addition, orthothanasia is common, which in no case should be confused with "euthanasia". Orthothanasia involves the provision of the patient with all the necessary medical care to reduce suffering along with the course of the disease and, accordingly, does not accelerate the "moment of death". Orthothanasia allows for the full provision of palliative care (PORA LAURA GARCÍA, PENSAR LA MUERTE, 2020). Thus, along with the development of the institution of euthanasia, other forms have become widespread, which are aimed at ensuring the natural death of a person in decent conditions.

### CHANGES IN APPROACHES TO REGULATING EUTHANASIA IN THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS

The practice of the European Court of Human Rights has also evolved in terms of understanding death, the right to a dignified death and the use of euthanasia. Let us first consider the rather well-known ECHR decision "Pretty v. the United Kingdom". The appeal to the European Court of Human Rights was the result of the refusal of the English courts not to prosecute the husband for helping his wife, who was paralyzed and suffered much as a result of illness, commit suicide. Criminal liability could have occurred under the provisions of the 1961 Suicide Act for assisting an unauthorized person, while committing suicide is not considered a crime ([www.legislation.gov.uk](http://www.legislation.gov.uk)). Despite the refusal to satisfy the application of the ECHR, this decision is quite important in the context of the motivation and position of the court. In particular, the ECHR substantiated that the right to death is diametrically opposed to and cannot follow from the right to life and cannot be interpreted in accordance with Art. 2 of the Convention as guaranteeing the right to death (<https://hudoc.echr.coe.int>).

In March 2004, the ECHR made a quite important decision in the case of "Glass v. the United Kingdom". Here, the European Court of Human Rights found a violation of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms in connection with the application of a medical procedure without the consent of a legal representative (<http://eurocourt.in.ua>).

In the case of "Haas v. Switzerland" the ECHR concluded that there was no violation of the applicant's right to respect for the private life of the applicant, who was refused to issue lethal drugs (sodium pentobarbital) out of the counter. The position of the Swiss government on the obligation to obtain a doctor's prescription for lethal medicinal products was recognized by the European Court of Human Rights as justified, including from the considerations that a patient who mistakenly takes a medicine would not receive a lethal dose (<https://hudoc.echr.coe.int>).

In 2012, the ECHR examined the case of "Koch v. Germany", in which the applicant challenged the refusal to grant permission to administer a lethal dose of medication to his wife, who was on mechanical ventilation, completely paralyzed and suffering from spasms. In par.51 of the case of "Koch v. Germany", the ECHR emphasized that the principle of "sanctity of life", which is protected by the Convention, is in no way denied, at the same time, the improvement of medicine, combined with a longer life expectancy, worries many people that they will be forced to be weak or have a significant physical or mental disorder, which is contrary to the right to personal identity (<https://hudoc.echr.coe.int>).

The following year, the ECHR passed on the case of "Gross v. Switzerland", in which the applicant appealed against the doctor's refusal to issue him a prescription for lethal drugs

because he did not have a fatal illness. The ECHR found there had been a violation of the applicant's right to respect for the applicant's private life guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the grounds that the government did not fully ensure legal certainty because the actions of doctors were not clearly regulated in the case of a person who did not suffer from specific diseases, when applying for lethal medicines (<https://hudoc.echr.coe.int>).

In addition, the termination of life-support medical care was not found to be a violation of Art. 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (decision of the Grand Chamber of the ECHR on the case of "Lambert and Others v. France"). In this decision, the ECHR noted the lack of consensus among states on the issue of stopping treatment, which artificially supports life. At the same time, most countries provide for such a possibility and establish the decisive role of the patient's desire. After the decision was made, there were a number of critical publications, including the inconsistent positions of the ECHR (Grégor Puppink). Other scholars note the development of important criteria by the European Court of Human Rights to be observed when introducing or canceling treatment: there are compatible regulations with the requirements of Article 2 of the Convention; the previously expressed wishes of the patient, his relatives, as well as the opinions of medical workers are taken into account; there is the possibility of appealing a decision in court, which may be contrary to the interests of the patient (DARIA SARTORI, 2018). The ECHR criteria in the case of "Lambert and Others v. France" were used in inadmissibility decisions in cases where parents argued against the use of passive euthanasia for their minor children, i.e. "Gard and others v UK" (2017) and "Afiri and Biddarri v. France" (2018).

Thus, the consideration of the court decisions of the ECHR in cases of euthanasia confirms the existence of already relevant case-law with the established positions, which puts a premium on personal autonomy and subsidiarity.

## LEGAL REGULATION OF EUTHANASIA IN EUROPEAN STATES

The ECHR practice has also influenced the legalization of euthanasia in European states. Analysis of the legislation of a number of European states in the context of the euthanasia legalization allowed us to group them as follows:

1) European states that have legalized euthanasia (Netherlands, Belgium, Luxembourg, Switzerland, Spain). The Netherlands was the first European country to legalize euthanasia: the corresponding law was adopted in 2001 and entered into force in 2002. Doctors were also exempted from criminal liability for using legal euthanasia or assisting suicide. In September 2002, the law on euthanasia in Belgium came into force (The Belgian Act on Euthanasia of May, 28th 2002), and since 2014 it has been extended to minors. The third European country to legalize euthanasia and assisted suicide was Luxembourg, which passed the corresponding law in 2008 and legitimated it in April 2009. In March 2021, the law on the legalization of active euthanasia in Spain was finally adopted and came into force in June of the same year (<https://www.loc.gov>).

2) European states that have legalized only passive euthanasia (Great Britain, Ireland, Latvia, Norway, Slovak Republic, Finland, Sweden, and Hungary). Passive euthanasia has been legal in Sweden since 2010. Germany legalized passive euthanasia only after an appropriate decision was made on May 17, 2014, by the Federal Constitutional Court. On February 26, 2020, the Federal Constitutional Court also found it illegal to criminalize assisted suicide. These decisions legalized passive euthanasia and assisted suicide, led to new discussions, and so far two new bills have been submitted to parliament for consideration (DEREK SCALLY, 2021).

In the Slovak Republic, refusing treatment (the right of a patient who, on his initiative, refuse treatment to improve his health) does not contradict article 6 of the Health Care Act. Therefore, the literature makes a reasonable conclusion that the Slovak Republic allows, in fact, for passive euthanasia through the institution of informed consent, if an informed patient refuses treatment (<https://www.medipravnik.sk>). Since 1997 in Hungary, a law has granted permission and regulated the conditions for the use of passive euthanasia. In particular, a legally capable patient over 18 years of age has the right to refuse medical care if this does not threaten the life or physical integrity of others. A refusal of life-sustaining intervention is only valid if a three-

member drug committee examines the patient and declares unanimously in writing that the patient suffers from a serious fatal illness and he/she has made a deliberate decision. In addition, on the 3rd day after the statement of the committee of doctors in the presence of two witnesses, the patient must repeat his/her intention to refuse treatment. The members of the committee are the patient's attending physician, other doctor not involved in the patient's care (a disease-relevant specialist), and a psychiatrist. According to Hungarian law, a patient cannot refuse to intervene in or save a life if he/she is pregnant and is expected to bear a child (<https://tasz.hu>).

3) European states that prohibit any kind of euthanasia (France, Poland, Romania, and others). Among these states, France is the first to be mentioned: on the one hand, euthanasia is illegal in this country, and on the other hand, since 2016, a law has been in force that gives terminally ill patients the right to "continuous deep sedation" (CDS), which provides for the introduction of strong doses of sedatives to relieve any suffering prior to the patient's death. While some describe it as "passive euthanasia", the law clearly distinguishes between euthanasia and CDS, which sets France's approach apart from other European states. Scholars note it as "an alternative to euthanasia" and "the French answer to problems at the end of life" (RUTH HORN, 2018). In April 2021, a bill was introduced to the French parliament to legalize euthanasia. The bill provides for the granting of the right to active assistance in death, which must be included in the health code, and specifies this can take the form of suicide or euthanasia (Article 1) (France Parliament debates bill to legalize assisted dying). The bill was introduced by Olivier Falorni, who speaks of the need for its adoption, since "French residents often travel to Belgium or Switzerland to assist in suicide and French doctors secretly perform about 2,000 to 4,000 acts of euthanasia every year". Opponents of euthanasia have made more than 3,000 amendments, which significantly slowed down the consideration of the bill (<https://www.rfi.fr/en>).

In Poland, euthanasia is considered murder and is punishable as a crime. The Polish Penal Code criminalizes aiding or assisting suicide. In addition, the Code of Medical Ethics in force in Poland clearly states that "a doctor should not use euthanasia or help patients commit suicide" (Wiktorja Bielaszyn, n.d.).

Exceptional situation in Portugal. In January 2021, the Portuguese parliament adopted a law that legalized euthanasia and gave the right to terminally ill patients (over 18 years of age) to seek medical help to end their lives (Portugal moves to legalise euthanasia). At the same time, already in March 2021, the Portuguese Constitutional Court overturned the law decriminalizing euthanasia, stating that "the law is too imprecise" ("in defining the circumstances under which an assisted suicide procedure can take place" and "an extremely suffering person") (<https://apnews.com>). Experts note that a new law with clarified and amended provisions may soon be adopted, and euthanasia will be allowed. However, as a result of the decision of the Constitutional Court of Portugal, euthanasia is currently prohibited.

## PROSPECTS FOR LEGALIZING EUTHANASIA IN UKRAINE

The issue of legalizing euthanasia in Ukraine has been discussed for more than a decade. The recognition of human life and health as the highest social value in Article 3 of the Constitution of Ukraine is one of the weighty arguments of opponents of the legalization. Moreover, the arguments against legalizing euthanasia are as follows: granting the right to euthanasia is contrary to medical ethics; granting the right to euthanasia can slow the development and search for new ways and means of treating patients; the likelihood of erroneous diagnoses, as well as the invention of life-saving drugs; euthanasia will make impossible the cases of so-called "miraculous healings", although their percentage is too small but still exists; the possibility of deliberate abuse of the use of euthanasia by medical workers and the patient's relatives; and inadmissibility of euthanasia for religious reasons (MERNIK, LUKASH, 2019).

We may agree with the position of scientists that any form of euthanasia cannot be considered as a sufficient legal basis for terminating the right of a person to life, which is due to both the dominant legal and philosophical, moral, religious, and medical worldviews (STEFANCHUK et al., 2018). At the same time, the state of health and extreme pain of a terminally ill person are conditions for the right to a dignified death and, given informed voluntary consent, may be grounds for euthanasia in those states that provide it for by law.

Current Ukrainian legislation prohibits the use of any form of euthanasia. Thus, Article 52 of the Fundamentals of Ukrainian Healthcare Legislation explicitly prohibits medical workers to use euthanasia. According to this article, medical workers are obliged to provide full medical care to an emergency patient; they can stop active life-supporting measures only when irreversible death occurs (<https://zakon.rada.gov.ua>). In addition, part 4 of Art. 281 of the Civil Code of Ukraine prohibits satisfying a person's request to end his life (Civil Code of Ukraine No. 435-IV of 16.01.2003).

Scientists note the most common cases of passive euthanasia in Ukraine, as well as a new type the so-called social euthanasia, when the decision to end life is based on the fact that the funds needed to buy expensive drugs for fatal cases are saved to treat those patients who are more likely to recover. Guilty actions of medical workers in case of passive and social euthanasia are qualified under part 2 of Art. 137, part 2 of Art. 139, part 2 of Art. 140 of the Criminal Code of Ukraine, where the onset of death is a qualifier (ISHCHENKO, MAZIAR, 2017).

According to official data of the Ministry of Health of Ukraine, about 1.5 million patients require palliative care every year. Unbearable pain, as well as the right to euthanasia in a number of European countries are strong arguments for the legalization of euthanasia in Ukraine. At the same time, the need for assisted suicide is being actively discussed.

The supporters of the legalization of euthanasia in Ukraine provide the following arguments: euthanasia pursues primarily a humane goal (to relieve a terminally ill person of suffering); various forms and types of euthanasia have been already used, so it is better to regulate it with a legal framework; refusal to use euthanasia puts the patient in an essentially harsh and degrading position; the right to life presupposes the right of a person to dispose of this right; the socio-economic situation in the CIS countries deprives seriously ill patients of access to full-fledged expensive treatment; a hopelessly ill person can become a donor (ANIKINA, 2009; CHEREVKO, 2016). Although most of these arguments are noteworthy, it is difficult to agree that euthanized patients could be donors. Obviously, anyone can become a donor with his/her voluntary and informed consent. Legalization of euthanasia should not involve mandatory but only voluntary organ donation of those who resorted to it.

Since 2008, bills on the legalization of euthanasia in Ukraine have been submitted to parliament several times but have not been considered. Since 2019, discussions have again intensified on the need to adopt a law that would allow and regulate the procedure for the use of euthanasia. At the beginning of 2021, First Deputy Chairman of the Verkhovna Rada R.A. Stefanчук spoke about the need to legalize euthanasia and assisted suicide (<https://zaborona.com>).

The Concept of the new Civil Code is currently being discussed in Ukraine (RUSLAN STEFANCHUK, 2021). Regarding euthanasia, the Concept contains only general provisions, with the possible introduction of the institution of euthanasia and assisted suicide. The need to legalize euthanasia is justified not only by the experience of a number of European countries but also by the ECHR decisions on the cases of "Pretty v. The United Kingdom", "Haas v. Switzerland", "Lambert and Others v. France", etc. It has been proposed to amend both the Civil Code and the Criminal Code of Ukraine to grant the right to use passive euthanasia and assisted suicide.

Despite the quite common position among scientists about the inexpediency of legalizing euthanasia in Ukraine, its danger and inadmissibility, in our opinion, in recodifying the Civil Code of Ukraine, the issue of legalizing passive euthanasia and assisted suicide should find a positive solution and become the basis for amending both the Criminal Code of Ukraine and the Fundamentals of Ukrainian Legislation on Health Care.

## SUMMARY

Thus, the legal regulation of the institution of euthanasia have underwent significant changes over the past twenty years. At the moment, five European states have already legalized active euthanasia (the Netherlands, Belgium, Luxembourg, Switzerland, and Spain) and most European states allowed passive euthanasia. Also, active discussions continue on proposals to legalize euthanasia in other European states.

Such changes in the legislation of European states have occurred, including under the influence of the ECHR practice. The decisions of the European Court of Human Rights attempt to reach a balance between the right to choose the moment of death and the rights that are protected by Articles 2 and 8 of the Convention on Human Rights and Fundamental Freedoms. In addition, according to the ECHR court decisions, the procedure for the use of euthanasia should be clearly defined by law, the norms of which may contain imperative prohibitions and restrictions, and also guarantee the priority of considering the patient's will, which should be clear, free and conscious.

Ukraine has also approached the legalization of passive euthanasia and assisted suicide, which may occur during the recodification of the Civil Code of Ukraine with the simultaneous introduction of amendments to the Criminal Code of Ukraine and the Fundamentals of Ukrainian Health Legislation.

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### Eutanasia: legal regulation in european countries and prospects for legalization in Ukraine

Eutanasia: regulamentação legal nos países europeus e perspectivas de legalização na Ucrânia

Eutanasia: legal regulation in european countries and prospects for legalization in Ukraine

#### Resumo

O artigo é dedicado a um estudo jurídico comparativo da legalização da eutanásia em países europeus e na Ucrânia. Os autores investigaram as mudanças nas posições da CEDH na consideração de casos de eutanásia e suicídio assistido. Concluímos que as decisões do Tribunal Europeu dos Direitos do Homem incluem uma tentativa de garantir o equilíbrio entre o direito de escolher o momento da morte e os direitos que se encontram protegidos nos artigos 2 e 8 da Convenção sobre os Direitos do Homem e as Liberdades Fundamentais. A prática da CEDH também influencia a legalização da eutanásia nos estados europeus. A análise das legislações de vários Estados europeus no contexto da legalização da instituição da eutanásia permitiu agrupá-los da seguinte forma: Estados europeus que legalizaram a eutanásia (Holanda, Bélgica, Luxemburgo, Suíça e Espanha); Estados europeus que legalizaram apenas a eutanásia passiva (Grã-Bretanha, Irlanda, Letônia, Noruega, República Eslovaca, Finlândia, Suécia e Hungria); e estados europeus que proíbem qualquer tipo de eutanásia (França, Polónia, Romênia, etc.).

**Palavras-chave:** Eutanásia. Morte digna. Suicídio. Direito à morte. Lei.

#### Abstract

The article is devoted to a comparative legal study of the legalization of euthanasia in European countries and Ukraine. The authors have investigated the changes in the ECHR positions in the consideration of cases of euthanasia and assisted suicide. We concluded that the decisions of the European Court of Human Rights include an attempt to guarantee a balance in the right to choose the moment of death and the rights that are protected by 2 and 8 of the Convention on Human Rights and Fundamental Freedoms. The ECHR practice has been found to also influence the legalization of euthanasia in European states. Analysis of the laws of several European states in the context of legalizing the institution of euthanasia allowed us to group them as follows: European states that have legalized euthanasia (Netherlands, Belgium, Luxembourg, Switzerland, and Spain); European states that have legalized only passive euthanasia (Great Britain, Ireland, Latvia, Norway, Slovak Republic, Finland, Sweden, and Hungary); and European states that prohibit any kind of euthanasia (France, Poland, Romania, etc.).

**Keywords:** Euthanasia. Dignified death. Suicide. Right to death. Law.

#### Resumen

El artículo está dedicado a un estudio jurídico comparativo de la legalización de la eutanasia en países europeos y Ucrania, las posiciones del TEDH en la consideración de casos de eutanasia y suicidio asistido. Concluimos que las decisiones de la Corte Europea de Derechos Humanos incluyen un intento de garantizar un equilibrio en el derecho a elegir el momento de la muerte y los derechos que están protegidos por 2 y 8 de la Convención de Derechos Humanos y Libertades Fundamentales. Se ha descubierto que la práctica del TEDH también influye en la legalización de la eutanasia en los estados europeos. El análisis de las leyes de varios estados europeos en el contexto de la legalización de la institución de la eutanasia nos permitió agruparlas de la siguiente manera: estados europeos que han legalizado la eutanasia (Holanda, Bélgica, Luxemburgo, Suiza y España); Estados europeos que han legalizado solo la eutanasia pasiva (Gran Bretaña, Irlanda, Letonia, Noruega, República Eslovaca, Finlandia, Suecia y Hungría); y estados europeos que prohíben cualquier tipo de eutanasia (Francia, Polonia, Rumanía, etc.).

**Palabras-clave:** Eutanasia. Muerte digna. Suicidio. Derecho a la muerte. Derecho.