



REVISTA INCLUSIONES

HOMENAJE A MAJA ZAWIERZENIEC

Revista de Humanidades y Ciencias Sociales

Volumen 7 . Número Especial

Abril / Junio

2020

ISSN 0719-4706

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Fecha de Recepción: 11 de enero de 2020 – **Fecha Revisión:** 22 de enero de 2020

Fecha de Aceptación: 06 de marzo de 2020 – **Fecha de Publicación:** 01 de abril de 2020

Abstract

This article examines the problems of legal regulations for euthanasia in national and international law and legislation. The article aims to distinguish between murder and euthanasia in the Criminal code and investigate the possibility of euthanasia legalizing. Approach to euthanasia among lawmakers and law scholars differs; a uniform approach to its legalization has not yet been developed. However, at the present stage, due to its moral meaning, the legalization of euthanasia continues to be pertinent and relevant. A number of countries has already legalized euthanasia. By focusing on the concept and forms of euthanasia, the article considers the legal regulations for euthanasia in the Netherlands, Belgium and the USA. The article shows that our contemporary world is becoming favorable for moral and psychological acceptance of euthanasia. The article investigates the main trends of scientific research, which are characterized by growing attention to the problem of legalizing euthanasia. Due to its legal, medical, religious and moral aspects, the problem of legalization of euthanasia is complex. The article demonstrates the positions of supporters and opponents of euthanasia. Altogether, the article argues that in current situation

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acceptance of euthanasia in the Russian Federation, due to the moral and ethical views prevailing in the society, has not yet gained the support; however, mitigation of penalty for such an act in the penal code is necessary.

Keywords

The right to life – Medical aid – Euthanasia – Legalization

Para Citar este Artículo:

Baksheev, Andrei Ivanovich; Turchina, Zhanna Evgenievna; Gusarenko, Victoria Vladimirovna; Rakhinsky, Dmitry Vladimirovich; Rukavitsyna, Elena Aleksandrovna y Bershadskaja, Svetlana Vyacheslavovna. Euthanasia and Human Right to life in international and national law. Revista Inclusiones Vol: 7 num Especial (2020): 329-341.

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Introduction

Current human rights law enshrines the main and undeniable right of each person – the right to life. Life is the greatest and most important social and legal blessing. It also implies the ability of an individual to freely dispose of one's own life. The human right to life is natural and inalienable; it is legally enshrined in constitutions and legislations of each country and international law¹. In particular, international conventions secure the rights of people and the right to life being the main one (for example, Article 6 of the International Covenant on Civil and Political Rights²; Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms³). Possessing such a right, any individual is free to dispose of it as he or she sees fit, but, of course, to the extent authorized under the law, and it seems that an individual has also the right to determine for oneself at what point he or she can stop using this right. Euthanasia is one of the ways of voluntary cessation of life. Euthanasia as a phenomenon has already found its supporters and a number of states has embodied it in their legal codes.

It seems that euthanasia is a complex legal phenomenon that combines the norms of constitutional, medical and criminal law. Its history is long and poses intractable problems. Currently, the “right to death” legalization is a growing trend in societal development, and it contributes to the rise of new legal problems. Therefore, resolution of the problem of euthanasia legalizing is of great practical importance. Euthanasia legalizing secures the rights and legitimate interests of citizens.

There is now a large number of theoretical and practical studies on the topic of euthanasia. Among them the researches made by V.G. Sapozhnikov⁴, S.E. Shokin⁵, T.A. Duraev⁶, A.I. Baksheev, Z.E. Turchina and others⁷ should be noted.

Despite the large amount of research, the problem of euthanasia legalizing in national and international law has not been resolved, so the new research, which seek for its solution, is in demand.

¹ V. Sidorov; I. Blokhin; S. Kurushkin y S. Smetanina, “Analysis of the political field of journalism: methodological grounds”, *Revista Inclusiones*, num 7 (2020): 142-153.

² International Covenant on Civil and Political Rights (New York, December 16, 1966)

³ The Universal Declaration of Human Rights and Fundamental Freedoms ETS N 005 (Rome, November 4, 1950) (as amended and supplemented)

⁴ V. G. Sapozhnikov, Introduction of Euthanasia in Russia. In: “Situational Approach in Legal Science and Practice: Current Opportunities and Development Prospective”. Materials of International Scientific-Practical Conference Dedicated to 15th Anniversary of Scientific School of Forensic Situational History of Baltic Federal University named after I. Kant. 2017. 118-121.

⁵ S. E. Shokin y V. A. Andronova, “Suicide or Murder (Inconsistency in International Legislation on Euthanasia)”, *Bulletin of Vladimir Law Institute*, num 3 Vol: 52 (2019): 201-205.

⁶ T. A. Duraev y P. V. Alekseev, Legal Problems of Euthanasia: International and Russian Experience. In: *Law and Law enforcement in Russia, the CIS Countries and the European Union: Legislation and Social Efficiency*. Materials of the V International Scientific and Practical Conference of teachers, practitioners, students, undergraduates, graduate students, applicants. 2018. 37-40.

⁷ A. I. Baksheev; Z. E. Turchina; V. V. Mineev; S. V. Maksimov; D. V. Rakhinskiy y L. U. Aisner, “Euthanasia in modern society: the topicality, practicability, and medical aspect of the problem”, *Journal of pharmaceutical sciences and research*, Vol: 10 num 6 (2018): 1360-1363.

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Methods

The article is based on the dialectical method, which allowed to consider each legal phenomenon in its development and constant motion. Based on it, the method of system analysis of euthanasia as a socio-legal phenomenon was widely used. In addition to the systematic approach, a comprehensive analysis of the problems of legalizing euthanasia is used. The historical method made it possible to show the views and positions of a country and society towards this phenomenon from historical perspective. By means of the comparative method, the main trends in the development of euthanasia regulation were identified in acts of international, medical and criminal law codes of different countries. The scientific validity and consistency of the analysis of the phenomenon of euthanasia and the problems of its legalization was achieved by using the deduction method, i.e. the move “from the general to the specific”, as well as the use of research methods such as sociological, formal-logical, structural, etc. First, the general positions and patterns of a particular issue were studied, and then specific forms of its manifestation. The research also applied the method of legal analysis, which allowed for better identifying certain patterns and trends in the development of legal regulations for euthanasia and the most important contradictions and possible ways to resolve them.

International law, national legislations of the Russian Federation and other countries expressing different attitudes of society and legislators towards the issue of legalizing euthanasia formed the legal framework of the research.

The works of Russian and international legal scholars in the field of medical and criminal law, international and constitutional foundations of the right to life form the theoretical basis of the research. The research includes evidence for practice.

Results and findings

Before discussing the current legal problems of euthanasia, it seems appropriate to consider the historical and philosophical aspect of this phenomenon.

Killing the elderly and sick was a common practice among many primitive societies. Changing their places of dwelling the nomadic tribes simply left their old and weak behind. With the development of society, the institution of euthanasia began to manifest itself in the form of customs. For example, in ancient India, widows were supposed to “commit suicide”. In early modern Japan, the elderly, who became a burden for their relatives, were taken away with their consent to the sacred mountain and left there to die. In addition, in India, the doctors treated only those patients who were expected a favorable outcome and the long-term prognosis⁸. As a custom, euthanasia existed in ancient Greece; translated from ancient Greek the word means “quick and easy death”. Ancient Greek warriors considered it their duty to alleviate the suffering of seriously wounded comrades. They helped them to die in a faster and more humane way, which, in their opinion, was much better than a slow and painful death from wounds⁹.

⁸ P. S. Kurochkina, “Euthanasia: Criminal Act or Lawful Exercise of Right to Death”, Sustainable development of science and education, num 12 (2018): 80-93.

⁹ V. V. Filimonov; A. I. Baksheev y O. V. Andrenko, “Some ancient sources of rationality formation”, Kant, num 4 Vol: 29 (2018): 195-199.

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The first philosophical views on euthanasia appeared in ancient Greece. Therefore, in his famous “State” Plato sets forth the idea that medicine should care only about a healthy soul and body; the death of the physically weak should not be prevented, and the nasty souls will destroy themselves. Socrates, Plato and a number of other scholars supported the killing of weak and seriously ill patients even without their consent. They favoured the view that if a person had become a burden to society his or her moral duty was to commit suicide¹⁰. At the same time, there were opponents of euthanasia, for example, Aristotle. Later in the XVII century, the English philosopher F. Bacon (1561-1626), who believed that it was the duty of a doctor to make the death of a hopelessly sick patient easy and calm, used the term euthanasia¹¹ [8]. Religion has also treated euthanasia as one of the forms of suicide. Since the very beginning, Christianity opposed euthanasia regarding it as a suicide because a person’s life was a gift of God. Thus, St. Augustine strongly opposed suicide and considered it a manifestation of cowardice and weakness. However, until the 20th century, euthanasia was never prohibited by law and was not considered a crime, and remained a legal custom¹².

The first penal code in which the problem of euthanasia received a well-defined normative base was the Russian Law Code of 1903. Its Article 460 provided for mitigation of the punishment of the perpetrator of the murder, committed at the request of the victim and out of compassion for the victim. The central point of punishment was the idea that the death of the victim, although happened at victim’s own request, was caused not by the victim but by another person¹³. In accordance with the above-mentioned article, the following conditions were necessary to define – sanity of the victim; request from the victim, initiative from the victim; compassion intent¹⁴.

Unfortunately, there are historical examples of the use of euthanasia by totalitarian regimes to achieve the basest political and social goals. Fascist Germany used the T-4 “Euthanasia” programme. In order to maintain the purity of the Aryan race in accordance with the programme people with any physiological or genetic abnormalities were subject to lawful murder¹⁵. As the Nuremberg tribunal established about 275 thousand people were killed during a year¹⁶.

Those atrocities were the main reason to prohibit euthanasia under international law. A worldwide ban on euthanasia was introduced immediately after the end of World War II. For the first time, in 1950 the World Medical Association (hereinafter – the WMA) condemned the use of euthanasia “under any circumstances”. Gradually, legal norms

¹⁰ Yu. A. Chernysheva, *The “For” and “Against” Problem of Euthanasia* (Moscow, 2008).

¹¹ F. Bacon, *Introductory Article by L.L. Subbotin. Volume 1. In: Essays in 2 vol.* (Moscow: Thought, 1971).

¹² P. S. Kurochkina, “Euthanasia: Criminal Act or Lawful Exercise of Right to Death”, *Sustainable development of science and education*, num 12 (2018): 80-93.

¹³ G. G. Evangulov, *Criminal Code (Royal Assent March 22, 1903): text of law with outline of main provisions and its significant differences from current legislation and with alphabetical index* (St. Petersburg, 1903).

¹⁴ G. G. Evangulov. *Criminal Code...*

¹⁵ G. Kinder y V. Hilgeman, *World History: teaching manual. Translated from German* (Moscow: Rybari, 2003).

¹⁶ M. Yu. Raginsky, *Nuremberg: Before the Court of History. Memoirs of participant in the Nuremberg trial* (Moscow: Politizdat, 1986).

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establishing liability for carrying out euthanasia appeared in the legislations of almost all countries. However, from time to time public leaders, doctors and priests have repeatedly appealed to allow euthanasia in exceptional cases¹⁷.

In the Russian Federation Article 20 “The Right to Life” of the Constitution of the Russian Federation lays down the right to euthanasia. Article 41 of the Constitution also lays down the right to health protection and medical care¹⁸.

A number of Russian legal scholars argue that euthanasia allegedly contradicts Russian Constitution. However, at the same time, the constitutional right to life logically means the ability of an individual to choose to enjoy this right or not. That is, there is a choice in favor of death and it does not contradict the Russian Constitution. Obviously, since the right to life is one of the individual rights, any person should decide the issue of life and death individually and nobody should interfere. The right to death gives a person the opportunity to independently dispose of his or her own life¹⁹.

Russian legal scholar M.I. Kovalev holds a different point of view. “There is no compelling argument against declaring that a person has the right to life and death. Both human rights are so closely interrelated that they are like two sides of the same coin, and at the same time so delicate and fragile that special attention is required in dealing with them. A fairly large number of problems arise when one tries to compare the right to death with the right to life”²⁰.

Certainly, any medical specialist must not leave any patient completely without any medical support: “refusal of treatment should not exempt a medical specialist from the duty to help a dying person, to prescribe medications that alleviate suffering”²¹ [14]. Besides, the WMA “Euthanasia Declaration” passed in 1987 “does not exclude the need for a medical specialist’s respect for the patient’s desire not to impede the natural process of dying in the terminal phase of the disease”²² [15]. This provision applies to part 4 of Article 15 of the Constitution of the Russian Federation since the Russian Federation (in 1987 still the USSR) became a member of the World Medical Association.

¹⁷ T. A. Duraev y P. V. Alekseev, Legal Problems of Euthanasia: International and Russian Experience. In: Law and Law enforcement in Russia, the CIS Countries and the European Union: Legislation and Social Efficiency. Materials of the V International Scientific and Practical Conference of teachers, practitioners, students, undergraduates, graduate students, applicants. 2018. 37-40.

¹⁸ The Constitution of the Russian Federation (adopted 12/12/1993) (as amended by the Laws of the Russian Federation on amendments to the Constitution of the Russian Federation dated December 30, 2008 N 6-FKZ, dated 30.12.2008 N 7-FKZ, dated 05.02.2014 N 2 -FKZ, dated July 21, 2014 N 11-FKZ).

¹⁹ A. I. Baksheev; D. A. Nozdin; Z. E. Turchina; O. Y. Sharova; G. V. Yurchuk y D. V. Rakhinskiy, “Bioethical principles and mechanisms for regulation of biomedical research”, Journal of pharmaceutical sciences and research, Vol: 10 num 4 (2018): 889-892.

²⁰ M. I. Kovalev, The right to life and the right to death (Moscow, 1992).

²¹ The Venice Declaration on Terminal State. Adopted by the 35th World Medical Assembly, Venice, Italy, October 1983.

²² V. N. Uranova (Ed.), The Declaration of Euthanasia. Adopted by the 39th World Medical Assembly, Madrid, Spain, October 1987. Collection of official documents of the Association of Russian Doctors (Moscow: PAiMs, 1995).

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Complex analysis of Articles 2, 7, 20-25 of the Constitution of the Russian Federation reveals their content through the prism of understanding a dignity of a human life. Consequently, on the one hand, the current legal ground for euthanasia does not conflict with the provisions of the Russian Constitution in force; on the other, it directly follows from the understanding of the above articles. A worthy life for a person must end with a worthy death. Everything above-mentioned applies to passive euthanasia²³.

In science, euthanasia can be characterized in different ways. In particular, depending on the patient's consent it may be voluntary or involuntary. It is worth noting here that the concept of "involuntary euthanasia" also includes two categories, namely: involuntary euthanasia when, for example, a patient being in a coma and is unable to give his or her consent to it, and euthanasia committed against the will of a patient²⁴. It must be also noted, that the problem of euthanasia legalization relates primarily to voluntary euthanasia. In addition, euthanasia varies depending on the method of its implementation. Here we distinguish active euthanasia, passive euthanasia, and suicide assistance (or assisted suicide). Active euthanasia involves intentional actions leading to the death of a patient (for example, the introduction of a lethal injection)²⁵. Passive euthanasia, in turn, means the absence of active actions in relation to a patient and most often implies the disconnection of the patient from life support devices²⁶.

Meanwhile, murder at the request of the victim (active euthanasia) is qualified under Article 105 of the Penal Code of the Russian Federation²⁷. The law does not provide for a privileged rule on responsibility for euthanasia. The ban on euthanasia is directly provided for by "The Basics of Protecting Citizens' Health in the Russian Federation"²⁸ [19]. Article 45 states that a medical specialist is prohibited from carrying out euthanasia, that is speeding-up of death at the request of the patient.

At the same time, Article 19 of "The Basics of Protecting the Citizens' Health in the Russian Federation" lays down the patient's right to refuse medical intervention. The article states that the citizen or the legal representative of the citizen has the right to refuse medical intervention or demand its termination. In case of refusal of medical intervention, accessible information on the possible consequences should be provided to the citizen or the legal representative. The refusal from medical care should be entered in the relevant medical record. Thus, despite the prohibition of euthanasia, the patient has the right to refuse treatment, which in certain cases can lead to death and is often considered as passive euthanasia²⁹.

²³ A. I. Baksheev; Z. E. Turchina; O. V. Andrenko; V. V. Filimonov; D. A. Nozdrin y G. V. Yurchuk, "Geriatric patients: compliance issues and ways of its optimization", *Prensa Medica Argentina*, Vol: 105 num 9 (2019): 501-509.

²⁴ Voluntary and Involuntary Euthanasia. Ethics guide. BBC news. BBC Web. 2018.

²⁵ J. Rachel, "Active and Passive Euthanasia", *The New England Journal of Medicine*, num 292 (1975): 78–80.

²⁶ Yu. A. Chernysheva, *The "For" and "Against" Problem of Euthanasia* (Moscow, 2008).

²⁷ Penal Code of Russian Federation 13.06.1996 N 63- FZ (ammended 02.12.2019)

²⁸ Federal Law 21.11.2011 N 323-FZ (amended 29.05.2019) "The Basics of Protecting the Citizens' Health in the Russian Federation"

²⁹ A. I. Baksheev; Z. E. Turchina; G. V. Yurchuk; D. V. Rahinsky; A. V. Leopa y T. V. Melnikova, "Medico-psychological support of elderly patients with somatic pathology in doctor-patient relations", *Journal of pharmaceutical sciences and research*, Vol: 10 num 10 (2018): 2506-2509.

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The legislative prohibition of euthanasia indicates that its latent use in the Russian Federation has become significant (according to some indirect evidence appr. 20-30 thousand cases annually), since facts of everyday life are incentives for such legislative initiatives³⁰.

It seems that, until euthanasia is prohibited in the Russian Federation, in terms of its danger death from a mercy killing should not be equated with murder. Several articles of the Penal Code of the Russian Federation provide for responsibility for the intentional homicide but none of them addresses the problem of the killing with the consent of the victim.

Discussion

The Netherlands was one of the first countries to legalize two forms of euthanasia – passive and active. Euthanasia in this country is regulated by its Penal Code and the law of April 1, 2001 “Termination of life upon request and assisted suicide”. This law frees the medical specialists, who help incurable patients to die, from criminal liability³¹. It also regulates the procedure, which includes several stages: - informing the medical specialist; - obtaining permission from the ethics commission and, in case the commission gives a negative opinion, then the patient can contact the prosecutor and the relevant Commission of the Ministry of Health, Welfare and Sports. In accordance with the law, active euthanasia may only be subject to the following conditions: 1) the unbearable suffering experienced by the patient and the impossibility of alleviating it; 2) the patient’s personal request for medical assistance in dying; 3) the medical specialist is obliged to consult an independent specialist; 4) the medical specialist is obliged to inform the relevant state agency about the fact of “unnatural death”. Only the fulfilment of the above conditions frees the medical specialist from criminal liability. If the medical specialist violates the rules on euthanasia, he or she might be sentenced up to 12 years imprisonment³². An analysis of this law allows us to conclude that it can in no way be considered as impeccable; a number of its provisions are contradictory. In particular, its goal is not only to allow the patient to “easily” die but also to free the medical specialists, who assist incurable patients to die, from criminal liability.

That is, the human right (in the present context – the patient) to death is not in doubt. Here, it seems to us, that the law demonstrates the desire of the legislator to make the “murder” lawful or, in other words, to follow the legally permitted procedures. On the one hand, everything is explained by humane values but, on the other, a completely logical question arises: can a person’s death in principle be considered an act of manifestation of humanism? The medical specialist does not take sole responsibility alone. In addition, a number of commissions are called upon to satisfy the patient’s request, albeit indirectly. If, the medical specialist fails to comply with the procedures and provisions stipulated by the law, he or she may be prosecuted for the intentional homicide, then, probably, the actions

³⁰ V. G. “Sapozhnikov. Introduction of Euthanasia in Russia. In: “Situational Approach in Legal Science and Practice: Current Opportunities and Development Prospective”, Materials of International Scientific-Practical Conference Dedicated to 15th Anniversary of Scientific School of Forensic Situational History of Baltic Federal University named after I. Kant, (2017): 118-121.

³¹ E. A. Zolotareva, “Legal regulation of euthanasia in foreign countries”, Bulletin of the Taganrog Institute named after A. P. Chekhov, num 1 (2014): 53–56.

³² D. Humphrey, “What is Euthanasia?”, Human, num 6 (1992): 24–28.

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of the commission members should be qualified as accessory to murder. An independent expert (specialist) who, with his or her conclusion, convinced the colleague of the correctness of the decision, should be subjected to the same criminal prosecution as well.

Thus, the law on euthanasia adopted in the Netherlands raises many questions both from legal and moral points of view. Belgium became the second country after the Netherlands, which made such a serious step towards the legalization of euthanasia on May 16, 2002. Initially, the law adopted by this country had one specific feature on the euthanasia procedure that distinguished it from the Netherlands. In Belgium, minors under 18 (and equated to minors) were prohibited from euthanasia. However, in 2014, Belgium legalized euthanasia for children. The part of the population, who opposed euthanasia, claims that the law is “an unlimited license to killing”. Now the right to death is the same inalienable right for all Belgian citizens as the right to life³³.

In Belgium together with the regulations on euthanasia there was adopted the act in accordance with which “palliative care” services should be created. Their responsibilities include the provision of physical assistance to the patient (pain relief) and psychological support to the person. If the medical specialist receives a request for euthanasia, he or she must inform the patient about the existence of such a service. Since April 28, 2005, some pharmacies in Belgium have been selling euthanasia kits for about 60 euros. However, not everyone can buy it. Only a family doctor. This is because people who want to get a lethal injection want to do it at home. The kit for euthanasia includes many drugs that are under the strict control of medical institutions.

The question of whether the United States legalized euthanasia is quite controversial, especially given the specificity of the legislation of this country. In 1994, the Oregon state passed a law allowing physician-assisted suicide for terminal patients; Washington did it in 2008 (repealed in 2012). In Vermont, a law authorizing euthanasia was adopted in 2013. A Physician-Assisted Suicide law is in force in Montana. California passed a Death With Dignity law in October 2015³⁴. Thus, only four states of the USA allow euthanasia. Oregon’s physician-assisted suicide law states that the patient should inject himself or herself, and the medical specialist only prescribes the dose necessary to die. In California, to implement this procedure, the patient must apply for this procedure at least three times.

The US patients who wish to exercise the “right to death” should consider the following: firstly, they must be at least 18 years old; secondly, they must be sane; and thirdly, the procedure applies only to those patients who have no more than six months left to live, the diagnosis should be confirmed by two independent specialists and the patient should express his or her desire to end the life three times. Euthanasia in the United States is performed by means of administering the lethal injection. A special substance is injected into the patient’s vein, thus introducing the patient into unconscious state, and then it slows down the work of the heart until it stops beating.

³³ A. E. Siskovich y N. A. Butenko, “Is euthanasia a Blessing or the greatest crime?”, Research publications, num 8 Vol: 12 (2014): 180–184.

³⁴ The California Legislature Approved the Right to Death Act. Newsru.com

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In addition to the above-mentioned countries, the right to death is legally supported only by a few countries. “Easy death” is fully legalized in Canada, Switzerland and Luxembourg. In some countries, passive euthanasia is allowed; for example, there is no explicit prohibition against death assisting in Israel, Germany, Albania, Spain and France. On March 9, 2018, passive euthanasia was legalized by the Constitutional Chamber of India³⁵.

However, most countries not only reject euthanasia but also prosecute it by criminal law and the Russian Federation is among them. The analysis of the legislation of countries in which euthanasia is legalized allows us to conclude that in the issue of the permissibility of voluntary “right to death” the legal practice of this phenomenon reflects an attempt to “circumvent” the contradiction between law and medical morals.

Conclusions

It seems that the problem of legalizing euthanasia is multifaceted. The vast majority of countries ban it. There are no clear substantive eligibility criteria for defining and distinguishing euthanasia in those countries that have legalized it. After all, uncertainty in deciding who has the right to carry out euthanasia, who has the right to ask for its implementation, in what form euthanasia and its legal component (written or oral) should be carried out is a source of conflicting opinions and affords a basis for further legal research.

The existing approach of the Russian legislation to responsibility for assisting in active euthanasia, without distinguishing between the corpus delict of euthanasia and that of a manslaughter, seems unfair and unacceptable. It seems that the current Russian legislative trend to decriminalize a number of crimes and humanize some criminal penalties calls to a new provision into Russian Penal Code, which should provide appropriate penal regulations according to the form of euthanasia.

The new provision into Russian Penal Code is seen as a separate article, which must incorporate clear definitions of key terms and concepts of “euthanasia”, as well as the target of the act, its actors, motive and purpose. Many legal scholars, who study this problem, analyze its legal, moral, ethical and social aspects are inclined to legalize active euthanasia. Such a decision, if it is ever be supported by the general public and accepted by the legislator, will require the development of special legal procedures that could ensure the right of terminally ill patients to a physician-assisted death with dignity and without pain.

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³⁵ S. E. Shokin y V. A. Andronova, “Suicide or Murder (Inconsistency in International Legislation on Euthanasia)”, Bulletin of Vladimir Law Institute, num 3 Vol: 52 (2019): 201-205.

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