CRIMINAL LIABILITY FOR ASSISTED SUICIDE:
COMPARATIVE LEGAL ANALYSIS

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Abstract
On the basis of the regulatory and doctrinal sources, in this article, the authors consider assisted
suicide as a comprehensive legal, social and medical category. A proper definition of this concept has
been formulated. Legal aspects of assisted suicide in Germany, Switzerland, Netherlands, Belgium
and Luxembourg, as well as in some Anglo-Saxon countries has been studied in a comparative legal
aspect. Correlation of assisted suicide with various forms of euthanasia – active, passive and indirect
euthanasia – has been studied. Within the framework of further humanization of the Russian criminal
prosecution policy, it is proposed to legalize physician-assisted suicide in the Russian Federation,
since through this process the patient will be spared from extra suffering, while the physician or other
person will be spared from the risk of being baselessly brought to criminal liability.

Keywords: suicide, suicide, assisted suicide, euthanasia, prohibition of euthanasia, legalization of
euthanasia.

Introduction
The question of the right to life has always occupied a key place in philosophy, sociology,
jurisprudence (constitutional and criminal law) and other humanities. The problem of voluntary
renunciation of this right now in the context of legislative changes in many foreign countries is no less
important.

What does “assisted suicide” mean? What legal meaning does it have in Germany, as well as in other
counties? What are the prospects for its legislative consolidation in the Russian Federation?

Assisted suicide is a suicide committed with the help of another person. This term is frequently used as
a term, interchangeable with term “physician-assisted suicide” / “suicide with medical assistance”,
which involves that a doctor knowingly and intentionally provides a person with the knowledge or
means (or both), required to commit suicide, including counselling with respect to lethal doses of
drugs, prescribing such lethal doses or supplying the drugs.

Assisted suicide shall also be understood to mean “assistance (accessory) in suicide”, that is a person,
williing to die, voluntarily takes a substance for suicide. This substance was provided to him (her) for
this purpose by another person – for example, by a relative, intimate partner or well-acquainted person, physician or accessory in suicide.

Physician-assisted suicide has been frequently confused with euthanasia. In cases of euthanasia, the physician independently administers the means, which causes death, usually, a lethal medicinal drug. In the case of assisted suicide, it is required that a person of sound mind voluntarily expresses his or her wish to die and requests a dose of the drug that will end his or her life. The distinguishing aspect is that the procedure of physician-assisted suicide requires the patient to self-administer the drug.

Materials and Methods

Legal Aspect of Assisted Suicide in Germany. Currently, suicide is not a criminally punishable act in the Federal Republic of Germany, thus, the accessory in suicide is not considered to be a criminally punishable act either. An exception, however, is the provision of assistance in committing suicide on a commercial basis (§ 217 of the Criminal Code of Germany). Paragraph 217, which establishes criminal liability for the incitement to suicide, committed in the professional activities, was introduced into the Criminal Code of the Federal Republic of Germany in 2015: “Whoever with an intention to assist in suicide, committed in the professional activities, provides this opportunity to another person, creates it or assists therein, shall be punished with deprivation of liberty for the term of up to three years or with a monetary fine. The accessory or the instigator remain (criminally) non-punishable, if their actions are not related to the professional activities of the type, specified in paragraph 1, and are neither representatives of the person who incites to suicide, nor intimate partner of this person.

Criminal responsibility can also be entailed by criminal inaction. Important attention is paid in the German legal doctrine of the possibility of legal prosecution for the inaction in the form of the failure to provide assistance to the sick person. For example, a person who is present during suicide is obliged to provide, to the extent possible, assistance to the self-murderer who is in an unconscious state. Should he (she) fail to do so, the mentioned inaction can be classified as a failure to provide assistance or as a murder without aggravating circumstances by the failure to provide assistance. In the event that the self-murderer explicitly expresses his (her) will, legal liability for the non-occurrence of the consequence is not incurred on the strength of the absence of both guilt and objective aspect of the criminal action.

The Model Professional Code of Physicians in Germany, established by the German Medical Association of Germany, prohibits the physicians from performing assisted suicide. At the same time, this Model Professional Code of Physicians has not been adopted in all the states of Germany, in which connection, there are differences.

Euthanasia, in this respect, can relate not only to terminally ill people, for example, to patients suffering from oncological diseases, but also to people with severe disabilities, for example, to persons who are in a minimally conscious state, to patients with an advancing Alzheimer’s disease or to patients with a Locked-In Syndrome who do not express the wish to die. This is a controversial expansion of the concept. Some positions see therein a classification of violations of law, related with murder. This broad concept of euthanasia is also considered in this article.

According to the widespread legal opinion, failure to perform medical intervention at the request of the patient who has transferred the rights to make major medical decisions in case of loss of legal capacity to another person, is not considered to be passive euthanasia. Treatment conducted against the assumed will of the patient, consequently, failure to respect the will of the patient who has transferred the rights to make major medical decisions in case of loss of legal capacity to another person, represents constituent elements of the crime, which consists in the infliction of bodily injury or harm. Leaving a person to die through the failure to provide medical assistance or failure to provide technical assistance against the will of the person concerned to be treated represent constituent elements of the crime, which consists in the crime against life or in the failure to provide assistance (Corpus of Decisions of the Federal Constitutional Court 2 BvR 1451/01). Nevertheless, this cannot be defined as prohibited passive euthanasia, since actions performed against the will of the patient cannot be considered as assistance. Assistance in suicide can be criminally prosecuted and can subsequently be...
be classified as passive euthanasia, but, depending on the circumstances, it can also be classified as active euthanasia, which represents constituent elements of the crime, which consists in killing at request.

Terminally ill people do not only experience suffering, related to the pain syndrome, which can (although not always systematically) be mitigated, but also suffering, related to the quality of life, for example: loss of autonomy, dependence on other persons, partial or complete immobility, etc. Sometimes these people lose their patience and voluntarily end their lives with the aid of not very reliable and/or painless methods, receiving, in case of failure, complications, caused by unsuccessful attempt of suicide, in addition to the principal disease.

At the same time, the instinct of self-preservation is the most powerful instinct not only among people, but among all living beings on the Earth. This means that if a terminally ill person has decided to commit suicide voluntarily, his (her) suffering has become intolerable.

A terminally ill person must have a natural right to die – a right to independently choose the place and the time to end his or her life, while a state must have a positive obligation – an obligation to provide a medicinal drug for this purpose. The practical result is as follows: terminally ill people will be able to independently choose whether or not to live, if the disease makes their lives intolerable.

**Situation in Other Foreign Countries**

Physician-assisted suicide is, in particular, legalized in Switzerland and in the USA (Oregon, Washington, Montana and Vermont). Physician-assisted suicide and active euthanasia are legalized in Belgium, Netherlands and Luxembourg. The procedure of physician-assisted suicide must be strictly voluntary, i.e. by the decision of the patient himself (herself) and no one else.

**Assisted Suicide or Euthanasia in Switzerland.** Several years ago, citizens of other countries were allowed to come to Switzerland for the so-called assisted suicide. Two interviews with a psychiatrist, spread out over a period of time, a conclusion on the serious disease – and a few thousand Euros a sick person gets an opportunity to say farewell to the pain, fears of future pain and feebleness and to say farewell to the nearest and dearest in quite comfortable conditions. The House for Suicide is situated in an industrial district of the city, but there is a beautiful, eye-pleasing little garden, a couple of bedrooms, arm-chairs, couches, where a person has an opportunity to pass away with dignity. The assistants prepare two glasses with the drops: the first glass contains a drug for the stomach, which makes it possible not to reject the deadly poison; the second glass contains the deadly poison itself, a very bitter poison, which could be followed by chocolate and some water. Those who are immobilized take the glasses from the hands of the assistants by themselves, having answered twice that they realize that, having drunk this medicinal drug, they will fall asleep and then will die. Those who cannot take the medicinal drug in their hands, also answer twice and then drink it from the hands of the assistants through a straw. Their near and dear may be beside. Surprising is the determination of sick people and the courage their relatives; the atmosphere resembles a birthday party of an elderly man. The assistants are extremely attentive and polite to the patient. The patient is quiet and self-possessed and is completely ready to die. The death occurs approximately within 5 – 10 minutes after the administration of the medicinal drug. During the first minutes, the patients remain conscious; they keep on speaking, as if nothing has happened, they thank their wives and children for everything that had happened in their lives, then they fall asleep rather quickly, and after a while, their breathing stops. Subsequently, the assistants formalize the documents, call the police in order to demonstrate the whole procedure, recorded on a video camera, and to submit the documents, signed by the patient to confirm his (her) voluntary departure from life. One of the first such suicides, the suicide of British millionaire Peter Smedley, who had suffered from a progressive neuronal disease, was shown on the British television in 2011. Currently, there are 4 companies in Switzerland, which are working at full capacity, providing a full range of services, up to the delivery of the bodies of the deceased to their home countries. A certain part of the Swiss speak out against the suicidal tourism, but do it within the framework of the applicable legislation.
**BENELUX Countries.** In Europe, euthanasia has to one extent or another been legalized in the Netherlands, Belgium and Luxembourg. In 2001, quite a sensation was caused by the Law “On Termination of Life at Request and on Assisted Suicide” (Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding) – the first law in the world, which allowed active euthanasia in the Netherlands. It was followed by the two similar laws on euthanasia – the Law “On Euthanasia” (Loi relative à l’euthanasie), adopted in 2002 in Belgium, and the Law “On Euthanasia and on Assistance in Suicide” (Loi sur l’euthanasie et l’assistance au suicide), adopted in 2009 in the Grand Duchy of Luxembourg.

**Germany.** In the Federal Republic of Germany, there is currently no law, which would regulate the occurrence of death in the consequence of euthanasia in cases of incurable diseases. In spite of the fact that an interdisciplinary working group had represented an “alternative draft law on euthanasia” as far back as 1986, the discussion in the legal environment has since then been almost exclusive theoretical in its nature. A draft comprehensive law on euthanasia has even been recently published, which places a premium on the protection of life, and also thoroughly considers the tiniest details of the possible legal regulation. On the basis of the scientific discussion, access to the current political discussion was found, at least, by the topic of transfer of the right to make major medical decisions by one person to another person in case of loss of legal capacity.

**Countries of Anglo-Saxon Legal System.** In the Anglo-Saxon Legal System, medical assistance in suicide was first unconditionally allowed in 1995 in the Northern Territory (Australia) – but only for a short period of time – by the Law “On the Rights of Terminally Ill Patients”. In addition, laws, which allow the provision of medical assistance in suicide, have since 1997 been in force in two states of the USA: the state of Oregon’s Death with Dignity Act and the state of Washington’s Death with Dignity Act, which entered into force in 2009.

**Types of Euthanasia.** Euthanasia is distinguishable from assistance in suicide (“medically assisted suicide”), which is not in principle criminally punishable in Germany; on the contrary, in the Netherlands, assistance in suicide is considered to be a criminally punishable act, which is only criminally punishable for physicians under very strictly defined conditions, termination of the provision of medical assistance at the request of the patient concerned (possibly, also of a person specifically so authorized), disconnection of medical installation (for example, artificial lungs ventilation installation), which is criminally punishable in Germany, or refusal to make attempts of resuscitation, taking place after the brain death, assistance in the process of dying, which is (criminally) non-punishable in Germany: administration of medicinal drugs, which are pain-relieving drugs and do not wittingly shorten life.

Three forms of euthanasia: active, indirect and passive euthanasia are distinguished in the majority of cases. At the same time, the European Association for Palliative Care proposes to distinguish only passive and indirect euthanasia (now it is a synonym for medically assisted suicide; see Section “Assistance in Suicide” below) and to refuse from the concept of active euthanasia.

Euthanasia may include the following:
1) Active euthanasia, as a purposeful, active infliction of death (“killing at request”; Austria: “spurious” direct euthanasia; Switzerland: direct active euthanasia; the Netherlands: euthanasia; Belgium: active euthanasia (euthanasie active));
2) Passive euthanasia in the form of a failure to implement or termination of the implementation of measures, serving to the prolongation of life (Belgium: passive euthanasia (euthanasie passive));
Indirect euthanasia in the form of relieving suffering of severely ill patients by accepting the necessity to shorten life, – as a result of which the difference of active euthanasia is exclusively the subjective position of the person who performs the action (Austria: “spurious” indirect euthanasia; Switzerland: indirect active euthanasia; Belgium: indirect euthanasia (euthanasie indirecte); the Netherlands: double effect (double effect).
Active euthanasia represents the implementation of measures for the shortening of life on the basis of an actual or assumed wish of the person. At a universal scale, active euthanasia is only allowed in the Netherlands, in Belgium and in Luxembourg.

Active euthanasia is frequently performed by administration of an excessive dose of pain-relieving medication, sedating medication, narcotic medication, muscle-relaxing medication, insulin in the form of injection of potassium chloride or combination thereof.

In cases where it is not possible to establish the actual will of the person, it is the transfer of the right to make major medical decisions by one person to another person in case of loss of legal capacity, or the will, previously expressed by the patient, that will serve as the evidence of this will. Killing without the expression of the will of the person concerned is usually considered as a murder without aggravating circumstances, or as a murder, rather than active euthanasia.

Active euthanasia is prohibited:
1) in Germany: (§ 216 of the Criminal Code);
2) in Austria: (§ 75, § 77, § 78 of the Criminal Code);

In the Netherlands, active euthanasia is only considered to be criminally punishable (Art. 293 of the Criminal Code) in cases where it was performed intentionally and was not performed by a physician, as well as in cases where it was not performed in compliance with the due diligence criteria, prescribed by the law (Art. 2 of the Law “On Termination of Life at Request and on Assisted Suicide” (Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding)), including the required notification with a report on compliance with the due diligence criteria, which is sent to the forensic pathologist of a municipal formation (Art. 7 paragraph 2 of the Law “On Provision of Funeral Services” (Wet op de lijkbezorging).

Passive euthanasia is a failure to implement or a failure to continue, based on ethical, medical and humanitarian reasons, the implementation of the measures, serving to the prolongation of life, with respect to the persons with whom it had not been possible to conduct preliminary interviews, or with respect to the persons who have not transferred the rights to make major medical decisions in case of loss of legal capacity to another person. This is done on the basis of respect for the human life and death, in order not to prolong the painful process of dying, and in order to allow the person to die a natural death. Despite the fact that it is referred to the concept, which has become internationally well-known and recognized, many people consider it to be a concept, which allows incorrect interpretation or which is inappropriate, and suppose that one should speak more precisely and more explicitly about “leaving to die”. Passive euthanasia is supported by approximately 72% of the Germans.

Indirect euthanasia is the use of medicinal drugs in order to alleviate the symptoms, which, as an adverse effect, can shorten life. This is done at the hospitals on a regular basis, via the injection of morphine in cases of terminal cancer. This case was discussed in the criminal law theory in Germany. As a result, all the opinions agree that in this case the physician must not bear criminal liability. The special opinion expresses a desire to deny the relevance of the behaviour, aimed at the alleviation of pain, to killing, already in the constituent elements of the crime. The prevailing opinion represents a physician whose actions are justified by the combination of extreme necessity and justifying conflict of duties. This rules out the possibility that the physician will be able to “cross the established lines”, i.e. to go beyond the scope of the limits of due diligence, and, consequently, beyond the limits of acceptable risks. In the opinion of the Supreme Criminal Court of Germany, even a failure to use the necessary pain-relieving medications, which is substantiated by the fear of causing premature death, is considered to be criminally punishable, as the infliction of bodily injury or harm (§ 223 – § 233 of the Criminal Code), or as a failure to provide assistance (§ 323c of the Criminal Code).

Medically, “indirect euthanasia” is scarcely ever met in practice, since, as distinguished from the previous opinions, properly used opiates (for example, morphine) or benzodiazepines usually do not accelerate the process of dying, but even prolong it to some extent. This is why some palliative medicine physicians are tending to consider legal discussion on this topic to be academic debate to a greater extent.
Assistance in suicide (assisted suicide). Suicide with the assistance of a person who provides the means of suicide, often takes place in the form where a physician prescribes a lethal dose of barbiturate and places it to the patient’s disposal. In Germany, assistance in suicide is not considered to be criminally punishable, but corresponding active substances cannot be prescribed for this purpose, this is why under certain circumstances it is referred to violations of the Law “On Medicinal Drugs”.

In Switzerland, assistance in suicide is not considered to be criminally punishable in case of the absence of ulterior motives (Art. 115 of the Criminal Code), but, in accordance with the Guidelines of the Swiss Academy of Medical Sciences (SAMS), it is not “a part of medical activities”. Dignitas and EXIT – the organizations that provide the necessary support and provide physicians for the provision of assistance in suicide for a consideration – are well-known in Switzerland.

In the Netherlands, intentional assistance in the commission of suicide is prohibited (Art. 294 of the Criminal Code), but is not considered to be criminally punishable in cases where it is provided by a physician in accordance with certain obligations to comply with due diligence criteria and subject to the notification of the forensic pathologist.

In the USA, medically assisted suicide is allowed the states of Oregon and Washington and is regulated by the state of Oregon’s Death with Dignity Act and by the state of Washington’s Death with Dignity Act.

Some Issues Related to Euthanasia. In some cases, it is extremely difficult to establish distinctions between active euthanasia and passive euthanasia or indirect euthanasia. Euthanasia is in conflict between the law and self-determination, between the requirements on the part of the state and individual human rights, between the demands for the punishment on the part of the state and circumstances, precluding punishability (for example, extreme necessity and conflict of duties), between medical possibilities and human dignity, between self-determination and religious aspects.

The most serious conflicts are the conflicts, relating to active euthanasia, and in this case, especially – in various assessments of the will of a severely suffering person. It should be noted here that not each example of euthanasia under discussion falls within its definition. Thus, preparation of the suicide situation, which the patient uses independently, represents assistance in suicide, which is criminally punishable in Germany (example: the patient independently swallows the over-the-counter poisonous substance, which was provided by somebody at his (her) request).

The supporters of active euthanasia emphasize that the will of the patient will in all the circumstances define the admissibility of the medical procedure, which is considered exactly in the issue of making a decision on where and when to die. As far as some diseases are concerned, the stage of death is emphasized, which is perceived as inhuman and senseless, and to which the patients are helplessly subjected. Here, the supporters often come up with an argument that a human is refused something, which is taken for granted with respect to each suffering dog.

On the other hand, the opponents of active euthanasia emphasize the existence of a duty to relieve suffering only in the form of a part of the duty to save the life, but the absence of the right to killing, which in this case should have corresponded to the duty to kill another person. In addition, an existential threat can make a rational decision impossible. The information on the psychology of dying patients indicates to an almost regularly met depressive phase, which indicated to the expressed wish to die partially as to a temporary disorder. With respect to the radical examples of terminal, severely suffering patients, the experience of palliative medicine and hospice-aid movement is often mentioned, which indicates that even severely suffering patients do not want to end their lives prematurely, not until their suffering is alleviated, and they may experience human affection and feel protected. In addition, they come up with different arguments, for example, in the context of protection of life and medical self-awareness. In particular, it is indicated that social pressure can be exerted on severely ill patients and dying patients by means of legalization of active euthanasia in order for them to ask for their own death. Economic constraints in the field of health care and the reduction of family and social ties can further increase this pressure.
**Results**

Thus, in the legislation of many European countries, there has been a steady trend towards the gradual legalization of assisted suicide and the relaxation of criminal-legal prohibitions related to this sphere. This experience is of considerable interest for the Russian legal system.

**Discussion**

The position of the Deutsche Stiftung Patientenschutz (German Foundation for the Protection of Patients) (The Foundation has been working to improve the quality the quality of the provision of palliative medical assistance and provision of palliative care to a severely ill persons) consists, on the one hand, in the existence of an obligation of the society to take care of each member of the society, while on the other hand – in the right of each person to self-determination, the right to determine his (her) own choice in life. Both positions must be brought into conformity with each other. On the basis of the foregoing, one could come to the following conclusion: there is a right to live, and there is a right to die, but there is no right to kill.

In the past, the Foundation had also conducted a campaign aimed at legal regulation of the provision of assistance in suicide. Its requirement to prosecute any form of organized assistance in suicide under the law was adopted by the Federal Parliament of Germany, and the Foundation represented its own corresponding draft law in May, 2014.

**Conclusion. Solution for This Country:** It is proposed to legalize assisted suicide in the Russian Federation, which can be referred to as “euthanasia” in everyday terms, but which is fundamentally different from active euthanasia. Active euthanasia: the physician administers a drug, which causes death of the patient. Physician-assisted suicide: the physician writes a prescription for a lethal dose of the drug, which the patient must take by himself (herself). Under this approach, there is no “doctor-hangman”, and the patient ends his (her) life absolutely painlessly.

The proposed solution conforms to the tendency of humanization of criminal law: the patient will be spared from extra suffering, while the physician or other person will be spared from the risk of being baselessly brought to criminal liability.

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