

EUTHANASIA IN POLAND. A FEW COMMENTS ON THE IMPACT OF LEGAL REGULATIONS ON PRACTICE

Beata STĘPIEŃ-ZALUCKA

ORCID ^{ID}: <https://orcid.org/0000-0003-1802-680X>

E-mail: beata@kpmz.pl

Afiliation: University of Rzeszow, Poland

Abstract: *The protection of human life is enshrined in the most important international legal documents. These include the Universal Declaration of Human Rights of December 10, 1948, Article 3 states that “Everyone has the right to life, liberty and security of person”, the subsequent Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on November 4, 1950 (Journal of Laws 1993.61.284), in which Article 2 states that “1. Every human being's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as contrary to this article when it results from the use of force which is no more than absolutely necessary:*

- a) in defense of any person from unlawful violence;*
- b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- c) in actions taken in accordance with the law to quell riots or uprisings.”; or in the provisions of the International Covenant on Civil and Political Rights, opened for signature in New York on December 19, 1966. (Journal of Laws 1977.38.167), where Article 6 states that “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries where the death penalty has not been abolished, a death sentence may be imposed only for the most serious crimes in accordance*

with the law in force at the time of the crime and not contrary to the provisions of this Covenant and the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out on the basis of a final judgment rendered by a competent court. 3. Where deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. 5. Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women. 6. No provision of this article may be invoked to delay or to prevent the abolition of the death penalty by any State Party to this Covenant.

This international standard has also been adopted by the Polish Constitution, Article 38 of which states that "The Republic of Poland shall ensure the legal protection of life to every human being." The result of these contents was a criminal law article, i.e. Article 150 of the Penal Code, which defines euthanistic homicide (Journal of Laws 2024.0.17 i.e. - Act of June 6, 1997 - Penal Code) - "§ 1. Whoever kills a person at their request and out of compassion for them, shall be subject to imprisonment for a term of between 3 months and 5 years. § 2. In exceptional cases, the court may apply an extraordinary mitigation of the penalty or even waive its imposition.

As a result, it is worth considering to what extent criminal law is a deterrent to crime, and if it is considered effective, to what extent this is due to the prevention of legal regulation and possibly the determination of other factors, including non-legal ones. The key research methods will be the theoretical-legal method and the dogmatic-legal method.

Keywords: *Right to life; protection of life; euthanasia; criminal protection of life,*

Introduction

No one needs to be convinced that murder is inherently wrong. This belief unites people regardless of their worldview or religion. Nevertheless, there are situations in which society justifies taking another person's life, and sometimes we even hear in everyday language that someone is "praying for another person's death." These are absolutely exceptional situations, but they do occur and are associated with long-term illness and enormous suffering on the part of the person concerned; the loved ones of the suffering person, wanting to spare them pain, often accept euthanasia and support it. However, Polish criminal law prohibits euthanasia in all its forms. Based on international regulations and the constitutional standard developed on their basis, Poland has developed legal protection of life against euthanasia, which is expressed in Article 150 of the Criminal Code, which states that "§ 1. Whoever kills a person at their request and out of compassion for them shall be subject to imprisonment for a term of between three months and five years. § 2. In exceptional cases, the court may apply extraordinary mitigation of the penalty or even refrain from imposing it."

As a result of the current regulation, it is worth considering to what extent the criminal law provision acts as a deterrent to the commission of euthanasia and, if it is considered effective, to what extent this is due to the preventive nature of the legal regulation and to what extent other factors, i.e., non-legal factors, also influence the existing state of affairs. The key research methods will be theoretical-legal and dogmatic-legal method.

1. Legal protection of life in international law

The protection of human life is enshrined in the most important instruments of international law. These include the Universal Declaration of Human Rights of December 10, 1948, Article 3 of which states that "Everyone has the right to life, liberty and security of his person," and the subsequent European Convention for the Protection of Human Rights

and Fundamental Freedoms of December 4, 1950, Article 2 of which states that "No one shall be deprived of his life intentionally under any circumstances. 3 states that "Everyone has the right to life, liberty and security of his person," and the subsequent Convention for the Protection of Human Rights and Fundamental Freedoms, drawn up in Rome on November 4, 1950 (Journal of Laws 1993.61.284), in which Article 2 states that "1. Everyone's right to life shall be protected by law. No one shall be intentionally deprived of his life except in the exercise of the authority of law. 2. Deprivation of life shall not be regarded as contrary to this article when it is a result of the use of force which is no more than absolutely necessary:

(a) in defense of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c) in action lawfully taken for the purpose of the suppression of a riot or insurrection."; or in the provisions of the International Covenant on Civil and Political Rights, opened for signature in New York on December 19, 1966 (OJ 1977.38.167), where Article 6 states that

"1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 2. In countries where the death penalty has not been abolished, the death penalty may only be imposed for the most serious crimes in accordance with the law in force at the time of the commission of the crime and shall not be in contravention of the provisions of this Covenant and of the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty may only be carried out pursuant to a final judgment rendered by a competent court. 3. In cases where the deprivation of life constitutes a crime of genocide, it is clear that no provision of this article shall authorize any State Party to this Covenant to derogate in any manner from its obligations under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. 4. Everyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the death penalty may be offered in all cases. 5. The death penalty shall not be imposed for

crimes committed by persons under 18 years of age and shall not be carried out on pregnant women. 6. No provision of this article shall be invoked to delay or prevent the abolition of the death penalty by any State Party to this Covenant".

2. Protection of human life and euthanasia regulations in Poland

This international standard has also been adopted by the Polish Constitution, whose Article 38 states that "The Republic of Poland shall ensure legal protection of life to everyone." The Constitutional Tribunal has repeatedly ruled on the protection of human life. Interestingly, however, it also ruled on this issue on May 28, 1997, shortly after the constitutional referendum and thus before the current Constitution came into force, referring to the constitutional norms that had the highest legal force at the time. From the constitutional principle of the rule of law, it derived the obligation to guarantee "the protection of human life at every stage of its development" (see judgment K 26/96, OTK 1997, No. 2, item 19; Banaszak, 2009, p. 212).

This regulation was further developed, inter alia, in the Criminal Code, which criminalized various forms of acts against life, devoting an entire chapter (Chapter XIX, Articles 148-162) to this issue.

This content also resulted in a criminal law article, i.e. Article 150 of the Criminal Code, which defines euthanasia (Act of June 6, 1997 - Penal Code, D.2024.0.17) - "§ 1. Whoever kills a person at their request and out of compassion for them shall be subject to imprisonment for a term of between 3 months and 5 years. § 2. In exceptional cases, the court may apply extraordinary mitigation of the penalty or even refrain from imposing it."

3. The essence of euthanasia

The word euthanasia comes from Greek and means a good death, without unpleasant suffering, or a good and honorable death (Ozorowski, 2021, p. 105). John Paul II, in his encyclical *Evangelium vitae*, wrote

about euthanasia and gave the following definition: "Euthanasia, in its strict and proper sense, must be understood as an action or omission which, by its nature or intention, causes death in order to eliminate suffering." (Jan Paweł II, 1995, p. 65)

Z. Sobolewski defined euthanasia as an act consisting of:

1. shortening the life of a patient in a very serious or hopeless condition by a doctor refraining from using artificial nutrition, respiration, and circulation to keep the patient alive;
2. killing a patient suffering from an incurable disease causing unbearable suffering by administering a large dose of painkillers;
3. killing and assisting in the suicide of very old people who are physically and mentally infirm, who are not needed by anyone and do not need anyone, functioning at the lowest level of possible behavior;
4. and shortening the life of severely physically and mentally disabled children, including not only newborns, but also children of several and several dozen years of age (Sobolewski, 1974, pp. 72–73.).

However, science emphasizes that "euthanasia" has become a "convenient mental shortcut" through the practice of using this term. At the same time, according to the letter of the law, the limits of euthanasia are defined by specific procedures, which are listed, among others, by Karolina Śmigacz, who writes that these procedures consist of:

1. discontinuing life-sustaining treatment when, due to the patient's condition, it is not beneficial and only prolongs suffering and agony;
2. pharmacologically inducing a terminally ill, unbearably suffering patient into an irreversible state of unconsciousness lasting until death;
3. administering to a terminally ill and unbearably suffering patient gradually increasing doses of opioid analgesics, which may accelerate death;
4. providing a suffering patient with pharmacological or technical means necessary to take their own life, providing the patient with information on how to take their own life effectively and painlessly;
5. intentionally killing an incurably ill and suffering person, at their request, by administering a lethal dose of pharmacological agents (Śmigacz, pp. 782-783). The above became the basis for distinguishing

between different forms of euthanasia. The two basic forms concern the method of implementation, i.e. active and passive:

- active euthanasia – consists in a doctor administering special drugs at the request of a seriously ill person, which cause their premature death. It is also called “mercy killing” because it aims to shorten the suffering of the patient.
- Passive euthanasia (orthothanasia, through omission) – involves the decision to discontinue further treatment of a sick person who is in a very serious condition (this applies only to treatment that is not aimed at curing the patient, but only at sustaining their life). (Góralski, 2008, pp. 47-65; Lipowski, & Wiliński, 2021, p. 97)

Marek Czachorowski points out that, depending on who performs euthanasia, we can talk about lethal euthanasia (killing another person) and suicidal euthanasia (killing oneself); voluntary euthanasia (with the patient's consent) and, conversely, involuntary euthanasia (performed without the patient's consent, because they cannot give their consent—cryptanazis); euthanasia against the patient's will; “assisted suicide” (the patient commits suicide, but a healthcare professional participates in the suicide by providing, for example, the appropriate substances). (Czachorowski) ¹

Conclusions

It cannot be denied that euthanasia is a controversial issue, not only legally but above all socially. In practice, it has both opponents and supporters. Proponents of euthanasia focus primarily on freedom from pain and suffering that violates the personal dignity of individuals, as well as the right to privacy in relation to an individual's self-determination regarding the length of their own life. On the other hand, opponents of euthanasia emphasize the value of human life. Religion is often invoked in these discussions, particularly in Christianity, where it is

¹ <https://www.ptta.pl/pef/pdf/e/eutanazja.pdf>

believed that man was created in the image and likeness of God, and therefore human life has the highest value and its violation is the gravest crime against God Himself. (Góralski, 2008, p. 47)

When assessing the situation in Poland, it should be noted that there are no current studies in this area. Previous studies indicate that the number of people who support euthanasia is equal to the number of those who oppose it.¹ However, the fact is that the crime of euthanasia itself, as defined in Article 150 of the Penal Code, is not common in Poland.

Year	Number of proceedings initiated	Number of crimes detected
2023	0	0
2022	0	0
2021	1	0
2020	1	0
2019	0	0
2018	2	0
2017	0	0
2016	1	0
2015	0	0
2014	2	1
2013	4	1
2012	10	0
2011	5	0
2010	1	0
2009	8	0
2008	4	0
2007	3	0
2006	6	0
2005	7	0
2004	3	0
2003	4	1

¹For example, CBOS research from 2009, https://www.cbos.pl/SPISKOM.POL/2009/K_142_09.PDF

2002	3	0
2001	10	0
2000	6	1
1999	2	0.1

When making a specific prediction for Poland, however, extreme caution should be exercised. This caution stems from the fact that one cannot be ignored in the face of a specific “trend” or “fashion” for euthanasia that is observable in Europe. More and more European countries are deciding to legalize it and, what is more, to “loosen” the restrictions on its practice, as confirmed by statistics in this area.² On the one hand, this state of affairs calls for restraint. Nevertheless, on the other hand, factors distinguishing Poland from Western Europe that influence social acceptance and, consequently, possible legal changes in the area under study must also be taken into account. Here, the issue of the influence of religion on social attitudes towards euthanasia comes to the fore. In Poland, there is still a relatively high percentage of Catholics. “According to the respondents' declarations, the distribution of religious affiliation or church membership in Poland is as follows: 88.8% (Roman Catholic), 2.0% (other Christian denominations), 0.1% (other religions), 7.3% (atheism).”³ The high proportion of Catholics in the social profile, whose religion and philosophy of life include its protection from conception to natural death, combined with current statistics on euthanasia crimes, despite European trends, which are key factors in maintaining the status quo or legislative changes in the area of euthanasia, allows us to conclude that, as of today, the forecast in Poland for possible changes and the legalization of euthanasia is low.

¹Data from the Police website, <https://statystyka.policja.pl/st/kodeks-karny/przestepstwa-przeciwko/63419,Zabojstwo-eutanatyczne-art-150.html>

² P. Grata, Wzrost liczby eutanazji. Europejski kraj podał dane, <https://www.rmfm24.pl/fakty/swiat/news-wzrost-liczby-eutanazji-europejski-kraj-podal-dane,nId,7937039>

³ Religijność Polaków w ostatnich dziesięcioleciach, Badania CBOS, 2024, no 50, https://www.cbos.pl/SPISKOM.POL/2024/K_050_24.PDF

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