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Death with Dignity: The Legal Dilemmas of Euthanasia

Summary

Death with dignity is very often equated with euthanasia and assisted suicide, which are regulated as prohibited acts in articles 150 and 151 of the Polish Penal Code Act of 6 June 1997. However, the media discussion between supporters and opponents of legalization of euthanasia, which is heating up especially when there are cases of terminally ill people who publicly demand the right to a dignified death without pain and suffering, which would entail the decriminalization of euthanasia and assisted sicide in national law. In the European Union, there are no uniform solutions in this respect and each of the member countries can adapt its internal legislation to its own legal regulations. The article points to the definitions and types of death as a legal and medical event, an analysis of existing legal regulations in Polish law related to euthanasia and its variants including assisted suicide. Additionally, it clarifies important legal doubts related to the existence of the right to a death with dignity as a normative category resulting from the Constitution and a cautious approach of the direction of changes in law in this area in the nearest future – proposing the adoption of a specific legal model due to the approach to the legalization of euthanasia within the European Union and changes in views on euthanasia in the opinion and public awareness in recent times.

Keywords: death, dignity, euthanasia, murder, assisted suicide, mercy killing, legal regulation of euthanasia

Introduction

Most of us prefer not to think about death and about situation in which we can get affected by an incurable disease, be connected to alife-supporting machines under persistent therapy, or be deprived of the ability to function on a daily basis and to decide for ourselves to leave this world, or leave this decision to doctors, lawyers, or close relatives.

The wish for death with dignity and the fear of suffering a further unwanted life are existential dilemmas which often invade the public debate due to for example the fate of Alfie Evans who touched public opinion in Great Britain and beyond. The child was admitted to the Alder Hey Hospital in Liverpool in November 2017 with a recognized neurodegenerative disease of unknown etiology that led to the irreversible destruction of nearly 70 percent of the brain surface by losing the white matter of the brain (tissue that lies under the brain and connects the brain). In fact, the brain of this six-month-old child was only composed of water and cerebrospinal fluid due to degradation in the disease process. In the spring of 2018, the medical team decided that, in the absence of any hope to improve the child's vegetative state, continuing the persistent therapy did not make any sense. A decision was made to disconnect life support equipment. The High Court in London and the Court of Appeal of England and Wales approved this decision after the legal battle. It was then that the father of the child, Thomas Evans, approached the public to transport the small patient to Italy and reconnect the devices at the Roman hospital Bambino Gesu. After the disconnecting of the life support devices on 23 April 2018, the child was still alive for 5 days. The case of Alfie Ewans caused quite a stir in the world. Hundreds of people protested in front of the hospital. In defense of the boy's life, signatures were collected under petitions to Queen Elizabeth II and the British Parliament. Pope Francis I spoke to those who sought to transfer the boy to Italy. There was even a social movement named Alfie's Army which sought to maintain the child's life at any price[1]. In the media, especially on the Internet, the slogan "Save Alfie Evans" appeared.

1. The death of a human being

Thanatology or the science of death indicates that the death of the organism is the irreversible cessation of its activities, especially brain activities[2]. The cessation of life is of great importance especially in the aspect of organ transplantation and resuscitation issues (orthotanasia). Human life lasts as long as coordinated systems work: circulation, respiration and the central nervous system. The cessation of one of them usually leads to death. The nervous tissue dies on average after 3-4 minutes from the lack of oxygen. After stopping your breathing you can keep your heart active for several minutes; up to 30 minutes in healthy adults and up

[1] J. Bielecki, *Dylematy godnej śmierci,* „Rzeczpospolita Plus Minus", 12-13.5.2018, No. 109 (11049), pp. 4-6.
[2] T. Marcinkowski, *Medycyna sądowa dla prawników,* Warszawa 1993, p. 111.

to 2 hours in newborns[3]. Clinical death as a result of cessation of circulation and respiration is characterized by such symptoms as: reduced muscle tone, passive body position, lack of awareness and reflexes, lack of respiratory movements, heart rate and tones, pale body shells and body cooling.

There should be distinction between clinical death and apparent death, where cardiovascular and respiratory functions do not subside so much, which is at a very low level (the so-called *vita minima*). Clinical death, which can be a reversible state and usually lasts about 10 minutes, is already close to biological death which is characterized by irreversible changes in organs important to stay alive, especially in the brain tissue. In medicine, attempts have been made to determine the time when it is still possible to restore the full efficiency of a specific organ after clinical death. This time for the brain is 8-10 minutes; for the heart, 15-30 minutes; for liver, 30-35 minutes; for lungs, 60 minutes; for kidneys, 90-120 minutes[4]. Understanding the phenomenon of death, and in particular its determination, is also associated with the intended organ collection for the purpose of transplantingand the development of transplant medicine.

According to Art. 4, para. 1 of the Act of 1 July 2005 on the procurement, storage and transplantation of tissue and organ cells (Dz. U. 2017.1000 of 2017.05.22) –cells, tissues, and organs may be taken from human corpses upon death in a manner specified in Act of 5 December 1996 on the professions of a doctor and dentist (Dz. U. 2018.617 of 2018.03.26) for diagnostic, therapeutic, scientific and didactic purposes. It is worth noting that the Act of 24 February 2017 amending the Act on the professions of doctor and dentist and the Act on the collection, storage and transplantation of cells, tissues and organs (Journal of Laws, item 767) moved matters related to the statement of brain death from Act of 1 July 2005 on the procurement, storage and transplantation of tissue and organ cells (Journal of Laws of 2015, item 793) to the Act on the professions of doctor and dentist and changed the way and criteria for determining brain death[5]. Currently, in accordance with Art. 43a of the Act, the criteria are:

1. permanent irreversible cessation of brain function (brain death),
2. irreversible cardiac arrest prior to organs procurement,

– if determined by the specialists referred to in paragraph 5 or 6 with proceedings in accordance with current medical knowledge, taking into account the method and

[3] Ibidem, p.112.

[4] S. Raszeja, W. Nasiłowski, J. Markiewicz, *Medycyna sądowa Podręcznik dla studentów,* Warszawa 1993, p. 43.

[5] https://www.infor.pl/prawo/nowosci-prawne/754506, Zmiana-zasad-orzekania-o-smierci-mozgu-przez--lekarzy-w-2017-r.html [access:15.08.2018].

criteria referred to in paragraph 3. Thus, a permanent irreversible cessation of brain function (brain death) is unanimously stated by two specialist doctors holding the second degree of specialization or specialist title, including one specialist in the field of anesthesiology and intensive care or neonatology, and the second specialist in the field of neurology, pediatric neurology or neurosurgery. A irreversible cardiac arrest preceding organ collection is unanimously confirmed by two specialist doctors holding the second degree of specialization or the title of specialist, including one specialist in anesthesiology and intensive care or neonatology, and the second in emergency medicine, internal medicine, cardiology, pediatric cardiology, or pediatrics. A permanent irreversible cessation of brain function (brain death) or irreversible cardiac arrest prior to organ procurement is tantamount to death. The method and criteria for the determination of permanent irreversible cessation of brain function (brain death) and irreversible cardiac arrest prior to organ procurement are determined by the Minister of Health by way of an announcementin one of the official journals of the Republic of Poland, *Monitor Polski.*

Article 3 of the Act of 24 February 2017 indicates that, pending the announcement of the method and criteria for the determination of permanent irreversible cessation of brain function (brain death) and irreversible cardiac arrest prior to procurement of organs on the basis of Art. 43a, paragraph 3 of the Act changed in Art. 1, the announcement of the Minister of Health of 17 July 2007, the way and procedure for determining brain death still applies on the criteria and manner of determining the permanent and irreversible cessation of brain function (MP 2007, No. 46, item 547), and thus until the new Minister of Health will issue a new notice and the old criteria will be used to determine the permanent irreversible cessation of brain function (brain death) and irreversible cardiac arrest.

An announcement by the Minister of Health reads that "death is a dissociated phenomenon, it encompasses tissues and systems at different times. This causes disintegration of the system as a functional wholeness and subsequent, permanent functions will fall out in a different time sequence. Some functions of the system or parts of it may persist for some time in isolation from other previously dead ones. The dissociated nature of the phenomenon is manifested in a special way in situations in which death has already taken place in the brain, while blood circulation is still preserved. In these cases, the state of the brain determines the life or death of a human being. In most clinical cases, the swelling of the brain resulting from its damage grows from the side of the suprenaline space, and the brain stem dies as the last part of the brain. In such situations, the factor that qualifies brain death is the irreversible lack of brainstem function. Permanent brainstem

injury is based on the lack of specific nerve reflexes and lack of spontaneous respiratory function. Such proceedings, based primarily on clinical trials, are possible in the majority of cases, and its result is certain. In special circumstances, the examination of neural reflexes is not fully feasible (e.g., craniofacial injuries), and their interpretation is difficult (e.g., poisoning, pharmacotherapy). Moreover, in the primary sub-naonal brain damage, its death requires special diagnostic treatment, because clinical symptoms of permanent brain stem damage do not mean in this case simultaneous irreversible damage to the entire brain. In such cases, the suspicion of brain death must be confirmed by instrumental studies.

The constant expansion of knowledge and medical experience, the implementation of new medical methods and technologies is a continuous process. This allows for the introduction of increasingly better, more reliable methods of diagnostic and therapeutic procedures. Incorporating instrumental methods into the procedures for determining brain death is a valuable complement to clinical trials, and in some cases, also decisive. Instrumental, electrophysiological, or vascular examinations are used in injuries of the primary brain (e.g., direct trauma) and secondary (e.g., hypoxia), and are also indispensable in special cases of diagnosis of brain death in children. Many years of medical practice has clearly demonstrated that in selected cases, departing from the concept of death of a human being as a whole in favor of the death of the human brain as a whole, is justified from a scientific and practical point of view. In the light of advances in medicine and the dynamic development of intensive care, such a position turns out to be absolutely necessary and right. Despite the huge possibilities of saving human health and life currently offered by modern medicine, there are limits to their use, and one of them is the brain death[6].

In addition to cerebral death, there are also some artificial divisions for pulmonary and cardiac death. Pulmonary death occurs when impaired lung function leads to hypoxia and the accumulation of excess carbon dioxide in it. Cardiac death may be caused by damage to the myocardium or located in the heart of the internal conductive system[7]. This division however is not important for the recognition of a man dead from brain death (brain stem) which differs from the classical definition of biological death, in which the permanent cessation of blood circulation leading to the death of all tissues plays an important role.

6 Zał. do obwieszczenia Ministra Zdrowia z dnia 17 lipca 2007 r. w sprawie kryteriów i sposobu stwierdzenia trwałego i nieodwracalnego ustania czynności mózgu („Monitor Polski” No. 46 item 547), I Założenia ogólne.

7 T. Marcinkowski, op. cit., p. 116.

2. Euthanasia in criminal law

The word euthanasia comes from the Greek language (euonymy, gentle, tanatos – death). According to Kopalinski euthanasiain contrast to orthotanasia and mercy killing, means shortening the patient's suffering in prolonged agony by administering a lethal dose of painkiller[8].

Penal regulations of euthanasia boil down to three models. In the first model, euthanasia is qualified for basic types of homicide (USA, Great Britain, France); in the second model, it can create the privileged type of homicide (Austria, Germany, Italy, Poland), and in the third and extreme model, euthonasia can be legalized, provided that the contractor – the perpetrator is a person entitled (doctor), following a specific procedure (Belgium, the Netherlands, and Luxembourg)[9].

In the world, euthanasia is also acceptable in Colombia since 1997, after a judgment of the Constitutional Court, and in Canada, after its Supreme Court judgment of 2015 that opened the road to adopt, a year later, legislation on assisted death for the irreversibly ill[10]. Supported suicide is allowed in Oregon – which regulated the issue of suicide assistance in the Death with Dignity Act adopted in a referendum in November 1994[11]- and in some other states the of the United States of America: California, Colorado, Montana, Vermont, and Washington State. In Switzerland, euthanasia is punishable, but the law allows assistance in suicide when the patient is terminally incapacitated[12].

Help in suicide is provided in Switzerland by an organization called Dignitas around which a lot of controversy has arisen. Assisted suicide is performed by drinking a solution of pentobarbital sodium. A scandal erupted in 2005 around the death, assietd by Dignitas, of a 69-year-old German citizen who showed a health card with the diagnosis of liver cirrhosis. As a result of autopsy, it was determined that the patient was completely healthy – she suffered only depression. The health card has been previously falsified. A doctor who helped the suicide patient committed suicide after hearing the news. Most of the patients of

[8] http://www.slownik-online.pl/kopalinski/25A78697A79C18F2C12565BE0043A0A3.php [access: 15.08.2018].

[9] *Kodeks karny Komentarz*, eds. A. Grześkowiak, K. Wiak, Warszawa 2017, wyd. 4, p. 150.

[10] https://natemat.pl/182837, kanada-legalizuje-eutanazje-dla-ciezko-i-nieodwracalnie-chorych [access: 15.08.2018].

[11] Zob. M. Szeroczyńska, *Eutanazja i samobójstwo wspomagane na świecie,* Kraków 2004, pp. 224, 361-362, and K. Poklewski-Koziełł, *Sąd Najwyższy Stanów Zjednoczonych Ameryki wobec eutanazji*, „Palestra" 1997, No. 11/12, p. 12.

[12] O. Guillod, A. Schmidt, *Assisted suicie under Swiss law*, „European Journal of Health Law" 2005, No. 12, p. 26.

the organization are German citizens who travel to Switzerland in large numbers to part with their lives[13].

Active euthanasia has been also allowed, since 1996, in the Northern Territory of Australia. The legislative assembly of the Northern Territory passed an act allowingthe possiblity to end, under medical supervision, the lives of people who are terminally ill[14].

In Polish law, euthanasia is a privileged type of murder due to the special motivational situation of the perpetrator of the act, who commits it at the request of the victim and under the influence of compassion. According to Art. 150 of the Penal Code, euthanasia is the killing of a person by acting or abandoning and for the characterization of an act it is required that the killing takes place at the request of the victim and under the influence of compassion for him or her. The wording of this provision has been reproduced from Art. 150 of the Penal Code previously in force of 19 April 1969 and Art. 227 of the Penal Code of 11 July 1932. In Art. 150 of the Penal Code of 6 June 1997, both constitutive elements determine the assumption of criminal responsibility of the perpetrator. If the action of the offender is motivated by a different motive than compassion or pity, then it excludes the fulfillment by the perpetrator of such an act of the subject of the act of Art. 150, para. 1 of the Penal Code.

However, not every murder under the influence of compassion and on demand can be included into this privileged form. A murder committed at the request of a mentally ill person (insane), a person with a drowsy illness, or a minor is considered a basic type of murder under Art. 148 of the Penal Code. With regard to euthanasia, there must be serious motives for the demand for homicide (a high degree of suffering). The demand for deprivation of life expressed by the victim "is to be a fully conscious, unquestionable, unconditional act of free will in the understanding of civil law"[15].

Case law emphasized that, in the light of the disposition of art. 150, para. 1 of the Penal Code, such a demand is a form of expressing the will which is characterized by decisiveness, personality, one-sidedness, and the compassion of the perpetrator is an expression of his or her psychological relation to the victim with distinction between compassion and pity for the suffering person[16]. The demand, in contrast to consent and even requests, contains an element of pressure on the psyche of the recipient of the request. The active person must be the demander

[13] *Szwajcaria: Eutanazja popularna coraz bardziej,*http://www.bibula.com/?p=52272 [access: 15.08.2018].

[14] P. Sadurski, *Australia – prawo do śmierci*, „Rzeczpospolita" 1996, No. 116, p. 18.

[15] M. Tarnowski, *Zabójstwa uprzywilejowane w ujęciu polskiego prawa karnego,* Poznań, 1981, p. 248.

[16] Wyrok SA w Krakowie z dnia 13.05.2014r., II AKa 72/14, Legalis.

and the initiative must belong to him as well[17]. It will not be euthanasia but simple murder committed at the request of, for example, a person under the influence of a broken heart or a loss of a loved one. The source of compassion can be an incurable and severe disease but not a temporary reaction caused by sudden pain[18]. In the Appeal Court verdict of 6 August 2013 in Łódź, it was pointed out that euthanasia does not occur when compassion is caused by human mental suffering such as material loss, many years of disability, heartbreak, or when it concerns a different person or persons than the victim[19].

Euthanasia is not only an action (e.g. an injection of poison), but also abandonment (e.g., not providing a life-sustaining drug by a doctor or nurse). Sometimes the behavior of the perpetrator may take another unpunishable form. In addition to euthanasia, such concepts as orthotanasia and dysthanasia (anti-dysthanasia) have been developed, but they are so vague that they bring a lot of confusion into the discussion.

Orthotanasia is an abandonment of further artificial support of vital functions (e.g., a continued non-use of a ventilator in a patient with irreversible changes or severe brain damage). Dysthanasia is the reverse of orthotanasia: it means an artificial maintenance of vital signs of a patient with irreversible changes or severe brain damage (e.g., the use of a respirator). Examples of orthotanasia may be the case when life support drugs are withheld because they are very expensive and needed for other patients, or the case when life-saving emergency measures are abondonned (disconnecting the patient from the life-support machine if the treatment does not produce positive results, not applying intensive treatment, and not attachinga patient to an apparatus). Dysthanasia is a process of intensive therapy used by doctors in resuscitation. Resuscitation dysthanasia is usually used when the assessment of treatment chances is positive and promises recovery, as well as until brain stem death. Proceeding in which there is a disconnection from the life support apparatus when the brainstem dies (but the heart and respiratory action remains) and also when only part of the brain dies, but there is certainty that the patient will not regain consciousness, is called anti-dysthanasia.[20] In this case, orthotanasia applies to a person with the statement of brain stem death, and not a living person – which is especially important in transplantology. The decision on orthotanasia belongs to a doctor and is associated with the assessment of

[17] Wyrok SA we Wrocławiu z dnia 19 grudnia 2014r., II AKa 267/14, LEX No. 1630913.
[18] Wyrok SA w Łodzi z dnia 06.08.2013 r., II AKa 118/13, Legalis.
[19] Ibidem.
[20] M. Angosiewicz, *O eutanazji,* http://www.racjonalista.pl/kk.php/s,898 [access: 15.08.2018].

treatment opportunities with regard to the further sense of using emergency life support measures[21].

Orthotanasia is inseparable from medical treatment in the so-called terminal conditions and the issue of cessation of persistent therapy. Cessation of persistent therapy combined with the use of extraordinary life support methods is not considered euthanasia. Permission for such behavior results also from Art. 32 of the Code of Medical Ethics[22]. As M. Filar points out, "both legal and ethical norms allow the physician to withdraw from such treatment and allow the patient to die. Therefore, it is a universally recognized deontological standard, which obviously can not have an impact on the legal situation of the doctor"[23].

It should be noted that the Code of Medical Ethics in Art. 31 clearly opposes euthanasia. The doctor is not allowed to use euthanasia or help the patient commit suicide. The physician should make every effort to provide the patient with humane terminal care and dignified conditions of dying. The doctor should relieve the suffering of terminally ill patients until the end and maintain the quality of the ending life, if possible[24].

Euthanasia as a privileged type of homicide is punishable by imprisonment for 3 months to 5 years. In exceptional cases, the court may apply extraordinary mitigation of punishment and even refrain from imposing it (Article 150, para. 2 of the Penal Code). The legislation provides for the possibility of exceptional accidents and appropriate criminal justice in this respect. However, it is impossible to agree with the view of A. Grześkowiak that this procedure may mean the opening of criminal law to the gradual depenalization of euthanasia[25].

Assisted suicide should be distinguished from euthanasia whose penalization is regulated in Art. 151 of the Penal Code. The legislation has accepted that imprisonment from 3 months to 5 years applies for helping a person to commit suicide (for example, by prescribing a deadly dose of medicine to the patient, preparing the device to administer the poisonand connecting it to the patient). In this case, the doctorprovides help for the patient to take his or her own life. The widely publicized case of doctor Jack Kevorkian, euthanasia promoter, in which he admitted that in 1990-1998 he assisted in 130 cases of suicide by

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[21] S. Raszeja, „Ortotanazja i dystanazja jako problem prawny, medyczny i moralny", *Biuletyn Informacyjny OIL,* Gdańsk, 1999, http://old.amg.gda.pl/uczelnia/gazeta/archiwum/gaz_04_2000-01.html#15 [access: 15.08.2018].

[22] https://www.nil.org.pl/__data/assets/pdf_file/0003/4764/Kodeks-Etyki-Lekarskiej.pdf [access: 15.08.2018].

[23] M. Filar, *Przestępstwa są niczym niewyczerpalnym bogactwem naturalnym,* Konferencja Polityczność przestępstwa. Prawo karne jako instrument marketingu politycznego, Warszawa 2011.

[24] Art. 30 Kodeksu Etyki Lekarskiej.

[25] A. Grześkowiak, *Ochrona życia ludzkiego na tle rozwiązań nowego kodeksu karnego*, Lublin, 1999, pp. 273-274.

providing terminally ill patients a device that, with a push of a button, was able to inject poison into their body. This behavior earned him the nickname "Doctor Death." A biographical film about Dr. Kevorkian was released by HBO in 2010, *You Don't Know Jack,* in which Al Pacino played the role of Doctor Death[26].

Another widely commented case in the European media was the case of 43-year-old Diane Pretty, a British women suffering from motor neuron disease (MND), paralyzed, and confined to a wheelchair. Due to a progressive illness, in 2002 she led a court battle for agreement to let her husband Brian help her die with dignity. Despite considerable paralysis, she was mentally fit but the illness was very advanced and the doctors gave her a few weeks of life. She wanted to decide on the time and the manner of dying but was able to commit suicide herself. Therefore, she wanted assistance with impunity. The battle for help in suicide was unsuccessful. Unfortunately, all the courts rejected her request. The case even went to the European Court of Human Rights which issued a ruling of 29 April 2002 on this matter (complaint 2346)[27]. Particularly controversial is the help in suicide carried by people with mental disorders. In 2017, the first forced euthanasia of a mentally ill person was conducted in the Netherlands. A doctor with the help of other people and with the acceptance of the family killed a nursing home patient with symptoms of dementia. The patient previously expressed the euthanasia request "when the right time comes" but she did not set a deadline. At the time of the killing, the patient was surrounded by physical resistance but the Dutch Euthanasia Committee found that the doctor did not make a mistake and that the killing took place in good faith[28].

In Poland, the case of Janusz Świtaj was put into the spotlight. In 2007, after a back injury and spinal cord crushing as a result of a motorcycle accident, he applied to the court for consent to euthanasia – which was refused. Thanks to publicity, the public heard a cry for the death of a patient chained to a wheelchair with an incurable illness but later it turned out that it was actually a desperate cry for a better life. Because he was not allowed to die, he decided to live on. With the help of the Anna Dymna foundation Mimo Wszystko (Despite Everything), he regained his psychological balance, received a special trolley with a respirator which allowed him to breathe, and was implanted with a baclofen pump to alleviate spastic pain. His life changed. After graduating from high school for adults, he even studied psychology at the University of Silesia. Janusz Świtaj did

[26] https://pl.wikipedia.org/wiki/Jack_Kevorkian [access: 15.08.2018].

[27] M. Derlatka, *Wyrok Europejskiego Trybunału Praw Człowieka z 29.4.2002 r. w sprawie Diane Pretty przeciwko Wielkiej Brytanii (skarga 2346*), „Kwartalnik Prawa Publicznego" 2002, No. 2/3, pp. 293-306.

[28] A. Bryk, *Eutanazja jako prawo człowieka*, „Rzeczpospolita Rzecz o Prawie", 16.12.2017.

not, however, withdraw from the view that every sufferer should have the right to die when the right time comes[29].

3. Worthy of death

In the light of the legal considerations presented, it is worth asking whether there is a right to a death with dignity and what do we mean by that, or does the right to human dignity include the right to death? Reflections about death have been with us for a long time. In ancient Romehonorable death was a question of honor and the right to it was something natural. There was also the notion of shameful death. The Roman thinker and writer Seneca argued that "one should learn all his life and – what is even more surprising – one should learn to die all his life"; "In the very necessity of dying, believe me, there is great happiness"; "Is this something extraordinary that a man dies, whose whole life is nothing but the way to death?"; "I do not know if it is rather stupid not to realize the necessity of death, or rather the audacity to resist it"; "If you look at the end of life not as a punishment but as a law of nature and get the fear of death out of your heart then from now on no fear will dare to sneak into it"[30]. It seems that nowadays under the notion of death with dignity we mean dying without pain and suffering.

The right to die without suffering is often an elementary cry for dignity, as in the case of Diane Pretty. However, it will not always be met with understanding in this respect, especially when ethical arguments and religious dogmas are included in the discussion. Especially the Catholic church, in which the traditional message of faith stigmatizes euthanasia and indicates that suffering ennobles and may deepen the perception of the world or even is a "divine gift," introduces considerable confusion to this discussion and consequently makes suffering inseparable from human life and death. Such perception leads to the conclusion that man should come to terms with dying in suffering only because it leads to salvation. Death is the antithesis of life, something inevitable, an evil in itself that must be reconciled with. A martyr's death suffered in the name of ideas and beliefs exists until modern times. Now it is present especially in Christianity, Judaism, and Islam, but in principle it no longer exists in other religions – for example, in Hinduism or Buddhism. It should be noted that Poland just like other European Catholic countries will always be limited in the discussion of euthanasia by the

[29] http://wiadomosci.dziennik.pl/wydarzenia/artykuly/126306,janusz-switaj-zaczyna-nowe-zycie.html [access: 15.08.2018].

[30] L. A. Seneka, *Myśli,* Kraków, 1987, pp. 217 and following.

official teaching of the Church and especially its opposition to other ethical solutions such as palliative care or hospices that no longer carry such controversy.

However, one should not confuse death with dying. Death is a state of non-existence. Dying is often a long-lasting process that can be pleasant or painful. We do not experience death but only dying, often unpleasant, painful, in which a human being is stripped of his or her dignity. For those who suffer horribly in connection with illness death appears as a salvation from their state. While living people usually do not know when and how to die, leaving this issue to time and chance. However, when one is in sickness and suffering because of dying, one should have a choice to a death with dignity and theoretically the legislation should make this choice possible for him or her – after all, there is a right to human dignity and freedom.

The principle of inherent human dignity in the Polish Constitution is already stressed by the preamble but it is fully expressed in Art. 30. According to it, the inherent and inalienable dignity of a man is a source of freedom and human and civil rights. It is inviolable and its respect and protection is the responsibility of public authorities. In turn, Art. 223, para. 1 of the Constitution of 1997 additionally underlines the importance of human dignity by strictly prohibiting restrictions in the event of emergency states. Article 30 of the Constitution refers to the personal recognition of dignity treating it as a peculiar innate feature of every human being, where human dignity belongs to axiological concepts and is defined differently depending on the general nature of the religious or philosophical system in which it occurs. Dignity as a natural right of every person is protected by law. The role of the state is to protect dignity. The essence of human dignity is the autonomy understood as the freedom to act in accordance with its own will. The problem arises when a person expresses voluntarily and consciously the will to end his or her life (self-destruction). Then there is the collision of two components of the principle of dignity – the protection of life and the right to autonomy (self-determination) of the individual. If we assume that respecting a person's decision about suicide does not conflict with the norm of Art. 30 of the Constitution, the legislature would not find reasons to criminalize the behavior specified in Art. 151 Penal Code associated with helping to commit suicide. Thus, the normative problem of human dignity returns on the occasion of discussions on euthanasia, genetic research (cloning), and the death penalty – and seemingly it will not be quickly resolved in Poland. The essence of the public discussion about euthanasia is the degree of individual autonomy and the value and purpose of human life itself. This normative problem has not yet been resolved.

The 1997 Constitution does not guarantee the right to euthanasia or death with dignity, and the role of the legislation is not to guarantee everyone the possibility of committing suicide. Suicide is not a protected right but it is not penalized by the Penal Code. The Constitution first of all points to the right of a human being to life and the authorities are to ensure his or her protection for this highest good[31]. Article 38 of the Constitution excludes the admissibility of euthanasia understood as acceleration of death at the request of the patient in a situation of illness causing suffering, not conducive to improving health by limiting or abandoning medical activities. Therefore, there is no guarantee standard of the right to death with dignity. Creating a legal system that would allow for deviations from the human right to life seems to be an extremely difficult task. However, the pace of society's development requires at least public debate about euthanasia.

According to a survey conducted by CBOS between 1 and 6 October 2009 on a representative group of 1096 adults in Poland, 48 percent of respondents supported the idea that physicians should fulfill the will of the terminally ill, demanding measures to cause death; 39 percent expressed the opposite opinion; 13 percent did not have an opinion[32]. For comparison, in other studies conducted several years earlier, euthanasia support was at 44 percent, opposition at 40 percent, and the lack of opinion at 16 percent[33]. EU legislation does not consider introducing top-down legal regulations regarding euthanasia. Each member state should do so on its own. One can not underestimate the increase in the legal awareness of citizens in relation to their natural subjective rights. It seems that recently a liberalization of views on euthanasia was connected to European integration[34].

Conclusion

The issue of the admissibility of one's decision about the moment of death with dignity will always divide society and stimulate intense discussions between supporters and opponents of euthanasia. The problem of legal euthanasia, however, can not be postponed or ignored. Without going into the axiological assessment of the right to death with dignity, the legislature should no longer wait for a legal

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[31] Art. 38 of the Constitution of the Republic of Poland guarantees the legal protection of life.

[32] *Opinia społeczna o eutanazji,* Komunikat z badań CBOS 142/2009, Warszawa, 2009 https://www.cbos.pl/SPISKOM.POL/2009/K_142_09.PDF [access: 15.08.2018].

[33] Data from „Polityka" 2000, No. 46.

[34] M. Szadkowska, *Zabójstwo eutanatyczne – tendencje liberalizacyjne w Europie na przykładzie Belgii*, „Studia Iuridica Toruniensia" 2013, Vol. XIII, https://repozytorium.umk.pl/bitstream/handle/item/2023/SIT.2013.024,Szadkowska.pdf?sequence=1 [access: 15.08.2018].

solution that would result in the depenalization of euthanasia and assisted suicide. So far only three countries in Europe have legally regulated these issues. In 2002, it was done by the Netherlands; in 2003 by Belgium, and in 2009 by Luxembourg[35]. The development framework does not allow for a detailed discussion of these regulations. It is worth pointing out that the development of the society results in changes in the perception of accepted values. It seems that worthy death does not necessarily mean consenting to suffering and tearing a human away from dignity. In 2005 in Poland, proeuthanatic circles headed by Senator Maria Szyszkowska made an unsuccessful attempt to submit in the parliament a bill providing for the possibility of euthanasia for terminally ill people. From then on, none of the political or social forces has attempted to change the legal status with a legislative initiative, most likely for fear of denial of center-right circles.

The decisive argument for the legal regulation of this matter should be the willingness to help sick people without a chance for a dignified death without suffering, and to alleviate the situation of doctors who often suffer from difficult moral dilemmas. The inability to end a patient's suffering in the painful stages of a terminal illness is quite cruel, so that very few physicians actually allow themselves to stand by and watch. It seems, following the example of the Dutch approach, that a doctor being convinced that the patient suffers with no chance to improve his or her condition, and after voluntarily and duly considering the request, talking to the patient and informing him or her about the situation and prognosis – could come to the conclusion with the patient that there is no other way out and to eliminate suffering should end the patient's life. The decision on euthanasia should be made and confirmed after consulting with another physician and psychologist or psychiatrist. After the euthanasia is conducted with due diligence and after the autopsy of the patient's body is performed, a final report should be prepared and verified by an euthanasia control committee. If the committee considered that the doctor acted in accordance with the standards, it would relieve him of responsibility, otherwise the matter should be reported to law enforcement authorities.

In my opinion, the current legal regulation does not meet the growing social expectations in this respect with a significant increase in the legal awareness of citizens. Nobody denies the fact that life is the highest good of a human being and should not be taken away from him. The legalization of euthanasia however it is about allowing a person who demands it for dignified death as a way to end his or her suffering. On the other hand, reaching a compromise will be very difficult,

[35] A. Michałek-Janiczek, *Legalizacja eutanazji i samobójstwa wspomaganego w Luksemburgu*, „Problemy Współczesnego Prawa Międzynarodowego Europejskiego i Porównawczego" ,Vol. VIII, A.D.MMX http://www.europeistyka.uj.edu.pl/documents/3458728/54ec4031-1f39-4b28-9a7a-5e1bb2e5ae3c [access: 15.08.2018].

because it leads to confirmation of the total autonomy of the individual in choosing the right to dignified death in due time. It should not be forgotten that euthanasia is primarily a bioethical problem. Perhaps one day, with the progress of medicine, the problem of the length of life and dying will be solved without the necessity of legal interference in this delicate matter.

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