



Armen Gabrielyan

**THE PHENOMENON OF  
EUTHANASIA IN CRIMINAL-LEGAL,  
CRIMINOLOGICAL AND  
MEDICAL-BIOLOGICAL ASPECT**

Summary of the Doctoral Thesis  
for obtaining the degree of a Doctor in the Field of Legal Science

Speciality – Legal Sciences  
Subfield – Criminal Law

Riga, 2014

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## **DESCRIPTION OF THE DOCTORAL THESIS**

### **The Topicality and Practical Importance of the Thesis**

Modern scientific evolution is characterized by the growth of interest in phenomenon of euthanasia that has become the topical problem of public legal awareness of the population. Consequently, the fact that the individual's life is recognized as a key value of a modern civilization and the achievement gained in the field of scientific and legal progress, the issue of euthanasia has received a qualitatively different meaning. The fundamental nature of the value of a human life regarding all the legal and moral values includes any public legal problem (such as the death penalty, abortion, the admission of human cloning), which in some affects the right to life in the rank of universal global problems. Each historical era has provided its vision and solution. Nowadays it is in the spotlight as an ambiguous and rather complicated problem.

The killing at the victim's request has begun its chronology in the ancient times. Even then, several generations of philosophers, lawyers and physicians tried to solve this problem. Currently, the interest of our society in this problem has significantly increased. As a result of evaluation of this situation there have been formed two conflicting views: on the one hand euthanasia is not acceptable from a moral and legal point of view, on the other hand, it is necessary to free a person from a lingering unbearable physical and mental suffering.

Euthanasia pertains to the passionately debated problems of jurisprudence, bioethics, philosophy and medicine due to issues such as: whether a person has the right to freely handle his own life, the dividing line between life and death, whether a human's life is an absolute value, or whether preservation of life is always in favor of a person etc.

At present, euthanasia is officially allowed only in the Netherlands, Belgium and Luxembourg. The world community actively discusses the question of the admission of euthanasia. There have been expressed different opinions regarding this issue in the press. The draft legislation of right to die is considered quite often in several countries, for example, the British parliament rejected it more than twenty times.

In the western countries, has long been a difficult situation between the supporters and opponents of euthanasia. Opinions differ widely: from complete rejection of euthanasia (never and under any circumstances is it morally acceptable) to the totally opposite view (euthanasia is a benefit and not only should it be allowed, but it also should be considered as the release from unnecessary suffering). The supporters of a moderate

point of view offer to limit any extremes, as well as to work out the details that would concern the control and safety of the patients.

Lawyers and philosophers raise arguments “for” and “against” euthanasia that explain shortcomings of both positions. At the same time there has been formed a paradoxical situation: as a theoretically unresolved problem, which is still a subject of debate, euthanasia is already being introduced in medical practice and legislation. The practice urges theory; it outdistances theory without leaving much time for discussion. The practice challenges the theory, making adjustments and rushing to try out all the results. So far, in most cases, the problem of euthanasia has been discussed within medical, bioethical or philosophical framework. This kind of approach is characterized by a unitary view on euthanasia, which is seen not as a divergent set of social relations, but as a single indivisible concept.

In recent years, hospitals have found a significant number of patients whose physiological state is seen as an intermediate stage between life and death. Thanks to the newly acquired knowledge of humanity, they can be protractedly sustained in the living state. The choice is complicated by certain issues: is there a need for such existence for those who are condemned to death, may such existence be terminated and who should assume this function; if it happens should there be a punishment for this action and the degree of the punishment.

In human society the interests of an individual do not entirely coincide with public interests. These interests have never coincided and never will. The differences arise because some members of society do not realize their true interests or value them more than public interests. This means that these interests need social regulation. Supposedly, when the terminally ill person is killed at his own request, the compassion is focused on meeting personal interests of the killed person. Moreover, it is often neglected that this type of act breaks the order that is internally typical for social relations, because every person who commits an offence is the subject of specific relationships, which in turn are threatened by his offence. The act itself regardless of any changes it has caused to the outside world, and regardless of its form of expression, destroys these relationships from the inside. This circumstance explains the continuous public and state concern about the protection of the existing and emerging social relations from the criminal threats.

The topicality of the theoretical foundation of euthanasia as a study of criminal legal phenomenon is determined by the lack of its theoretical research and practical necessity in society. Our country lacks the relational regulation of the difficulties of the moral and legal nature associated with the performance of euthanasia, due to which there

may have been murders at the victim's request in order to rid him of his suffering; its criminal legal assessment does not correspond with the objective characteristics.

The topicality of the research is determined by the necessity to improve the legal order of euthanasia, as well as the development of the appropriate concepts and categories.

The issue of euthanasia is located at the contact point of the several social sciences. That is why the study of euthanasia needs a systems approach.

Its meaning in the research and comprehension of euthanasia is not only in the fact that this phenomenon is viewed as a way of resolving conflicts, but primarily already as an independent systematic phenomenon that is a dependent component of the general system of human relations.

However, it is important to remember that the systematic approach itself is not a direct solution to the problem, but the technique of posing a new problem. Due to unification of the cognitive potential of different branches of science, modern science is experiencing an unprecedented growth. Its prospects are unquestionable. During current period of scientific development, the continuous collection and improvement of the generally accepted views on euthanasia and related legal problems, there is a chance to move to the new level of understanding and resolving these problems.

The study of euthanasia from the criminal law and criminological perspective is a relatively new approach to the problem. The modern legal science does not have an unequivocal and unchallenged approach to euthanasia itself, its concept and implementation limits. However, the practical necessity of resolution of this problem and its topicality in modern society makes it a perspective research direction.

## **The Research Question**

The research question – euthanasia is considered to be a particular type of murder; the procedure of establishing liability for committing euthanasia requires a more lenient approach. The author proposes to separate euthanasia from a murder as privileged composition in terms of subjective of this offence (compassion and other motives).

## **The Scientific Elaboration Level of the Research Topic**

The research of this thesis has found that there has not been conducted a thorough enough study of euthanasia, as evidenced by the fact that there is a lack of scientific

publications concerning this issue, as well as euthanasia problem account has a one-sided approach.

The legal aspects of euthanasia have been studied insufficiently; especially it concerns criminal justice aspects of euthanasia. The publications made in this field are mostly of a journalistic nature and it is difficult to apply them to legal regulation of euthanasia. The author's study purports to have a fuller understanding of the above-mentioned problem. The author provides a scientifically substantiated necessity of legal regulation of euthanasia and puts forward certain proposals for discussion and approbation.

## **Thesis Aims and Objectives**

The aim of the thesis is comprehension and analysis of the criminal justice, criminological as well as medical and biological issues of euthanasia; the proposal of ways to solve the identified problems, as well as proposal of appropriate legal regulation model of euthanasia in Latvia.

### **The Objectives of the Research**

In order to achieve the formulated aim it is necessary to complete a number of basic tasks:

1. to study the theoretical basis of the concept of euthanasia;
2. to identify and analyze the forms of euthanasia;
3. to conduct an analysis of the theoretical issue of the right to life;
4. to define the criminal justice characteristics of the killing at a victim's request;
5. to distinguish euthanasia from homicide and similar compositions;
6. to disclose the cause and circumstances of the killing at a person's request and to elaborate tools for the prophylaxis and prevention of euthanasia;
7. to characterize peculiarities of the legal regulation of euthanasia in foreign countries.

**The object of the research** is a human life as a certain social value.

**The subject of the research** is the phenomenon of euthanasia in criminal legal, criminological and medical - biological aspect.

## **The Research Methods**

**The theoretical and methodological** basis of the research is formed by the emergence of regularity of the criminal justice phenomena and the dialectical principle of the comprehensive review of development taken with the phenomenological approach. The above-mentioned information allows to justify the research methods that are used in this thesis. One of the examples of such methods may be the phenomenological method, which provides both explanation and comprehension of the author's aim. The comprehensive method was developed by the authors of the hermeneutics theory W. Dilthey, F.E.D. Scheiermacher, H.G. Gadamer, H. Rickert and others who allow it to be used on the basis of the existing developments. The phenomenological approach has been applied to the analysis of issues related to the human right to life.

The **methodological framework** of the research is based on fundamental rules of jurisprudence and medical science that allows you to define the general and particular notion of euthanasia as a scientific problem, to identify the solutions of this problem and to show the comprehension of this problem in context of reality of contemporary Latvia.

**The methodological framework of the research and specific scientific methods** are based on the dialectical method of the scientific cognition of objective reality, as well as on methodological rules of contemporary legal theory and the international law, criminal law and criminology. Along with the **general scientific methods** (analysis and synthesis, induction, deduction, analogy) in this research had been used the **specific methods** of the theoretical analysis: comparative method, formal legal method and structural method of the system.

The **comparative method** allowed comparing and examining the scientific approach of understanding of the right to life and to determine the place of this right in the system of a person's private law. It has been possible to disclose the nature of euthanasia by applying comparative-legal method and comparing foreign law experience. Logically legal method and the method of legal analysis allowed to study and analyze the existing foreign normative acts that currently are regulating the issues of euthanasia execution.

## **The Structure and Amount of the Thesis**

**The structure of the thesis** is defined by logic of the study, its aims and objectives. The thesis consists of the introduction, four sections and chapters, conclusions

and suggestions, bibliography and Annexes. **The introduction** of the thesis presents topicality of the subject, as well as purpose of the study, tasks, object and subject of the study, as well as the applied scientific methods and methodology.

**The Section I** provides for general description of euthanasia in the historical development of the country and legislation, theoretical grounds of the euthanasia concept are being analysed, as well as its forms and types; it has also been considered also within medically biological, legal and natural sciences.

**The Section II** is dedicated to criminological analysis of reasons and preventive circumstances of mercy killing (euthanasia) of a person, as well as the current situation in Latvia regarding the issue of euthanasia is analysed.

**The Section III** analyses the disposition of euthanasia in the criminal law, differences of euthanasia from substance of some other crimes, for instance, homicide or leading to suicide; correlation of euthanasia is reviewed with some criminal law institutes, comparative criminal analysis of the euthanasia substance structure is provided, as well as regulation of criminal liability on euthanasia in foreign legislation.

**The Section IV** is dedicated to legislation of the European countries and the US regarding legalisation of euthanasia, court practices on mercy killing (euthanasia).

## **The Regulatory and Legal Basis of the Research**

**The normative basis** of the research. The thesis is based on a wide range of normative acts, namely, the Constitution of the Republic of Latvia, Criminal Law and other legislation of the Republic of Latvia that regulate medical issues in Latvia; foreign legislation that regulate issues related to the killing of the victim at his request (Austria, Germany, Italy, Spain, France, Switzerland, Poland, Portugal, Peru, Korea, Azerbaijan, Brazil, Canada, Sudan, Japan, Paraguay, Greece, Georgia, Iceland). In this research there have been used foreign normative acts that regulate the execution of euthanasia (the Netherlands, Belgium, Luxemburg and USA).

**The theoretical base** of this research is composed of authors' works in the field of criminal law, medicine, constitutional law and criminology.

**The empirical base** of the criminal legal aspects of the research of the topic of euthanasia is composed of political-legal and historical-philosophical training, as well as the works of Latvian and foreign lawyers, doctors, philosophers and sociologists. The analysis of

the main concepts of the studied issue was conducted in accordance with conceptual trends that have been developed in scientific literature of foreign countries and Latvia.

### **The Novelty of the Thesis in Theoretical and Practical Aspect**

**The scientific novelty** of the thesis, which is manifests itself in combined study of criminal legal phenomenon of euthanasia, can be defined in several paragraphs.

1. The study of the historical development of the right to euthanasia in foreign jurisprudence and at the political-legal level for the first time has been conducted at the level of the thesis research.
2. For the first time, in order to conduct a scientific analysis of euthanasia there was applied the comparative-historical method that allowed to find out the historical and legal roots and preconditions of euthanasia, and to make on this basis prognosis about its prospects.
3. The author proposes to classify types of euthanasia by the following criteria: the nature of the action performed by the physician; the person, who is subjected to euthanasia, the existence of the will; the motivation of the physician executing euthanasia; the criteria of compliance with the legal provisions.
4. In author's understanding, there is a definition of the main concepts of the research problem, such as euthanasia and the right to life. It is estimated that addressing the issue of euthanasia in the context of human natural rights is one of the main tasks in the field of realization of human and civil rights.
5. There is a contemporary criminal law characterization of euthanasia and a well-founded legal content of the above mentioned phenomenon. There were proposals made to improve the criminal law (to include in criminal law a separate norm that stipulates a liability for euthanasia).
6. There have been devised a criteria on how to distinguish euthanasia from a murder, abandonment, extreme necessity and acquitted professional risk.
7. There have been devised criminological methods of prevention and avoidance of euthanasia.
8. There has been carried out a complex analysis of the studied field and convincing conceptions have been acquired about contemporary situation in Latvia.

These measures are conditionally divided into legislative, organizational, ideological, political and economic measures.

The research has a complex and systematic nature, because along with legal problem there have been covered the other aspects of the problem that allows an objective assessment of both the formed situation and the previously proposed solutions to the problem.

**The credibility of the acquired results** is determined by the representativeness of the studied sources and normative acts, which corresponds to the level of contemporary scientific cognition, with contemporary research methods and methodology, strong argumentation of scientific aspects and findings presenting the basic results during scientific-practical conferences and in publications.

### **The Credibility of the Acquired Results**

**The credibility of the acquired results** is determined by the representativeness of the studied sources and normative acts, which corresponds to the level of contemporary scientific cognition, with contemporary research methods and methodology, strong argumentation of scientific aspects and findings presenting the basic results during scientific-practical conferences and in scientific publications.

### **Theoretical and Practical Significance of the Research**

The materials of the thesis raise both practical and theoretical interest. The basic aspects of the work and conclusions help to develop some of the criminal law theories, as well as to extend the concepts of criminal law. The acquired results may serve as the basis for further criminal law studies on right to life, as well as euthanasia.

The author's recommendations and proposals may be used in scientific research and in practice of right protecting institutions (in the work of investigative and judicial institutions) and in development of criminal law practice. The materials of the thesis may use lecturers in law schools when teaching criminal law and constitutional law, in the preparation of teaching aids, as well as in scientific research.

### **Thesis Results Approbation**

#### **Published Scientific Articles on the Topic of the Thesis**

1. Габриелян А. Этический и правовой аспект эвтаназии в контексте права человека на жизнь. *Administratīvā un Kriminālā Justīcija*. Baltijas Starptautiskās akadēmijas zinātniski

- teorētisks žurnāls. Rīga (Latvija), SIA „Baltijas Starptautiskā akadēmija”, 2013., Nr. 3 (64), 15.-22. lpp. ISSN1407-2971.
2. Gabrielyan A. Eitanāzija un pašnāvība: korelācijas problēmas. Administratīvā un Kriminālā Justīcija. Baltijas Starptautiskās akadēmijas zinātniski teorētisks žurnāls. Rīga (Latvija), SIA „Baltijas Starptautiskā akadēmija”, 2013. Nr. 1 (62), 21.-25. lpp. ISSN1407-2971.
  3. Gabrielyan A. Завещание о жизни. Baltijas Juridiskais Žurnāls. Zinātniski praktiskais starptautiskais juridiskais žurnāls. SIA „Baltijas Starptautiskā akadēmija”, 2013 Nr. 1/2 42.- 47. lpp. ISSN 1691-07702.
  4. Gabrielyan A. Eitanāzijas kriminoloģiskās problēmas: personas nonāvēšanas pēc tās lūguma iemesli un nosacījumi. Administratīvā un Kriminālā Justīcija. Baltijas Starptautiskās akadēmijas zinātniski teorētisks žurnāls. Rīga (Latvija), SIA „Baltijas Starptautiskā akadēmija”, 2011., Nr. 4 (57), 17.– 21. lpp. ISSN1407-2971.
  5. Габриелян А. Эвтаназия и теория естественных прав человека. Закон и жизнь. Международный научно-практический правовой журнал. Министерство юстиции Республики Молдова (Moldova) № 11(239) 2011., С. 34.-39. ISSN 1810-3081.
  6. Gabrielyan A. Slepavības aiz līdzietības (eitanāzijas) krimināltiesiskais raksturojums. Administratīvā un Kriminālā Justīcija. Baltijas Starptautiskās akadēmijas zinātniski teorētisks žurnāls. Rīga (Latvija), SIA „Baltijas Starptautiskā akadēmija”, 2011., Nr. 1 (54), 21.– 26. lpp. ISSN1407-2971.
  7. Gabrielyan A. Kriminālatbildības diferenciācija par eitanāziju ārvalstu krimināltiesībās. Administratīvā un Kriminālā Justīcija. Baltijas Starptautiskās akadēmijas zinātniski teorētisks žurnāls. Rīga (Latvija), SIA „Baltijas Starptautiskā akadēmija”, 2010., Nr. 3 (52), 15.– 19. lpp. ISSN1407-2971.
  8. Габриелян А. Социально-правовая регламентация применения эвтаназии в странах Европы и США. Журнал научных публикаций. Экономика, социология, право: новые вызовы и перспективы. Nr.12 декабрь 2010. Россия (Russia) Москва, 2010., С. 73 –76. ISSN 1995-9648.
  9. Gabrielyan A. Eitanāzija un galvenās cilvēktiesības. Baltijas Juridiskais Žurnāls. Zinātniski praktiskais starptautiskais juridiskais žurnāls. Rīga, SIA „Baltijas Starptautiskā akadēmija”, 2009., Nr.3 (17), 55.- 58. lpp. ISSN 1691-0702.

**Publications (Abstracts) in Thesis Collections of International and Regular Conferences  
Regarding the Topic of this Thesis**

1. Габриелян А. Согласие потерпевшего на причинение вреда в международном праве. Starptautiskā zinātniski praktiskā konference. Baltijas Starptautiskā akadēmija. „Transformācijas process tiesībās, reģionālajā ekonomikā un ekonomiskajā politikā”. Rīga, Latvija, BSA, 2013., 104.-114. lpp. ISBN978-9984-47-076-4.
2. Габриелян А. Тенденции легализации эвтаназии в странах Бенилюкса. XXXIV International Research and Practice Conference „Solution of a social requirements and objective reality issues in economical and juridical sciences”. Published by IASHE London 2013., p. 141-143. ISBN 978-1-909137-11-0.
3. Габриелян А. „Соматические права в системе прав человека”. Starptautiskā konference „Inovātīvās jurisprudences aktuālās problēmas”. Rīgas Stradiņa universitātes Juridiskā fakultāte, Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, Mykolas Romeris universitāte (Lietuva), Drošības un politikas attīstības institūts (Zviedrija), Rīga, RSU, Latvija, 2013., 54.-55. lpp. ISBN 978-9984-793-27-6.
4. Gabrielyan A. Euthanasia: Living Will. Rīga (Latvija), RSU 2013.gada zinātniskā konference. Tēzes, 2013., 402 lpp. ISBN 978-9984-793-24-5.
5. Габриелян А. Эвтаназия как общественный феномен: социально-правовые проблемы и перспективы ее развития. (angl.) Euthanasia as a social phenomenon: the socio-legal issues and prospects for its development. Sabiedrība un kultūra. Rakstu krājums, XIV. Latvija, Liepājas Universitāte. Liepāja 2012., 67.-76. lpp. ISSN 1407-6918.
6. Gabrielyan A. Euthanasia and the Criminal Law. Zinātnisko rakstu krājums. Rīga (Latvija), RSU. 2012.gada zinātniskā konference. Tēzes, 2012., 440 lpp. ISBN 978-9984-788-98-2.
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8. Габриелян А. Эвтаназия и права человека. International Academy of Sciences and Higher Education, London, Great Britain. International conference Project. Key instruments of human co-existence organization. Economics and law. Kiev, Ukraine, London, UK, 2011., Material digest of the XXth International Scientific and Practical Conference. p. 64.-67. ISBN 978-966-2621-09-9.

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# THE SYNOPSIS OF SUMMARY

## Introduction

**In the introduction** of the thesis author provides the topicality of the work, defines the object and the subject of the research, as well as defines the aims and tasks of the research. In the introduction of author particularly describes methodological, theoretical, legal-regulatory and empirical framework of the conducted research, as well as its scientific novelty, theoretical and practical significance. In the introduction the author sets out theses that are set forth for the defense, as well as provides data on approbation and introduction of the acquired results.

### **1. Euthanasia: Phenomenology, Nature and Legal Nature of this Issue**

In “Euthanasia: phenomenology, nature and legal Nature of this issue” the author provides an epistemological study of euthanasia, as well as provides the general description of euthanasia in the historical development of the country and legislation. This work provides the conceptual study of the phenomenon of euthanasia in criminal-legal and in medically biological terms, as well as generates ideas and makes proposals concerning legal regulation of euthanasia in Latvia.

#### **1.1. The Genesis of Euthanasia in Evolution of State and Law**

“The Genesis of Euthanasia in Evolution of State and Law”, - according to contemporary philosophical view regarding the study of actual reality, develops the making and formation process of phenomenon of euthanasia.

Euthanasia being a criminal-legal phenomenon has very ancient historical roots. However, euthanasia has been highlighted as a scientific research object only at the end of the nineteenth century; thus, euthanasia has been classified as an independent scientific approach. In teaching of state and law in the development of idea of euthanasia, there are four stages. All these stages have specific traditions concerning the issue in regard of this manner of ending one's life.

The first stage includes political and legal teachings of the ancient world (Plato, Aristotle, and Socrates) in which euthanasia, in some cases, was seen as something beneficial

and inevitability. The science in that time had a dominating view that a human life belongs to society, and since a person was not considered a highest value, he could not act freely with his life. In ancient times, the personal freedom (in its existential sense) did not exist. The impersonality of the individual and treating a person as powerless part of the whole set the attitude towards euthanasia as an act that is harmless to society.

The second stage includes medieval political and legal teaching. At that time the world was dominated by Christian religious worldview, which led to a negative attitude of number of philosophers toward the idea of euthanasia (Saint Augustine, Thomas Aquinas, etc.). Therefore, during strengthening of Christianity the attitude toward the voluntary death changed radically. The church had a negative attitude (rejection and condemnation of euthanasia) and later euthanasia was reflected in general civil law regulations as unlawful act.

The third stage began in Early modern period, and this is connected to the pluralism of opinions in regard to euthanasia. During that time emerged a new argumentation in favour of legalization of euthanasia, that was also used during Contemporary history.

During the Early modern period there was an opinion that a human life is a matter of personal choice. At that time the thought was exempted from religious dogmas and there has been developed a new view regarding human nature. The famous philosophers of that time such as Michel de Montaigne, David Hume, Arthur Schopenhauer, Francis Bacon and Thomas Hobbes advocated the idea that the right to a voluntary death is as natural as the right to life, property, etc. A terminally ill person, who commits suicide does not cause any harm to society, he merely ceases to do good deeds, and if it is a violation, then motives of a person who helps terminally ill person to commit suicide are likely to be understood.

During Contemporary history these scholars influenced the development of western philosophical thought: Karl Binding, A. Hohe and E. Mann. The foundations of legal understanding of euthanasia were laid that were aimed at improvement of regulatory framework. The main ideas of this stage were based on the fact that, on the one hand, euthanasia does no harm to society, and furthermore, criminalization of euthanasia due to its latent nature violates constitutional right to act with his life; but on the other hand, murder, regardless of the motives, is and will always remain a murder, and a person committing this act shall be held criminally liable. Any action that is aimed at cessation of another person's life shall be considered an illegal and criminally punishable action.

In the twentieth century the system of human culture and values had significantly changed and the single universal human cultural base was developed. On the one hand, it was a crucial change to the socio-economic field, but on the other hand, many changes occurred in the field of spiritual culture as well. These changes manifested mainly in destruction of classic

moral, the “crash” of traditional world view, as well as disruption of common opinions on philosophy, culture and science. The society in the nineteenth century was not yet ready to live without cultural traditions. However, in the twentieth century, in postmodern age, it broke link with the past, and regard to a human, the culture and science during this period of time put a greater focus on human body and its needs. All kinds of prohibitions were taken down, which led to unlimited freedom of individual, thus “reviving” theories regarding euthanasia.

Over the centuries euthanasia was and still is one of the categories, which are extremely difficult to solve both in legal doctrines and in consciousness of society. In the past people were able to predict and calculate the balance between good and evil, but now, due to scientific and technical progress, the consequence of a person’s actions changed dramatically, and it became necessary to establish new imperatives. Any country that wishes to acquire the status of the legal country, pays close attention to protection of each person’s lawful right and interests, including the right to life, which has the particular importance. Unfortunately, the experience has shown that these principles are not always feasible, but the requirement to exercise those follows from the nature of the person’s and the state, and is a compulsory precondition of political, legal and social development. In this respect, an effective fight against death (in its various forms) must be one of the state and public priorities.

## **1.2. Theoretical Basis of the Definition of Euthanasia**

“Theoretical Basis of the Definition of Euthanasia” gives the critical analysis of interpretation of ontological, semantic and linguistic of the concept of euthanasia. There is no doubt that in order to carry out analysis of any legal phenomenon it is very important to give its exact definition. Scientific debate about euthanasia puts focus on etymology of this term and its various interpretations. In terms of etymology the term “euthanasia” is composed of two Greek words, namely, “εὖ” [eu] (good, positive, excellent) and “θάνατος” [*thanatos*] (in the ancient Greek mythology it is name of the god of death and later it simply signified death). The first person who defined the scientific status of euthanasia term and put it into scientific use was the English philosopher Francis Bacon (1561–1626), who used it in his work “Advancement of Learning”.

At present there has been a very “controversial” use of the term “euthanasia” in foreign legal literature. Terminological inconsistencies led to the artificial situation in which modern understanding of euthanasia describes not one but multiple realities, which often do not coincide.

The author of the thesis divides the existing definitions of euthanasia according to the following criteria:

1. the state of health (ill, terminally ill);
2. the type and degree of suffering (physical, emotional, mental, great, and unbearable);
3. the type and form of request (clear, open, assertive);
4. capability to represent the interests of the patient (concerned person, medical personnel);
5. the form of implementation (action, intentional act, omission). The thesis provides the critical analysis of different definitions of euthanasia.

Euthanasia is defined not only in the field of law but also in the field of philosophy and medicine. Therefore, viewing euthanasia as a criminal law offence it is important to distinguish between philosophical, medical and legal definition of euthanasia. In the first case, it is a question of the inner meaning of euthanasia, in the second case, it is a question of its procedure and in the third case, it is a question of determination of liability *justice* for this offence.

In view of the above, author believes that within criminal *justice* meaning euthanasia is ***an intentional killing made by a medical person or any other person out of compassion for a patient in accordance with the explicit terminally ill patient's request in order to end patient's physical and mental suffering caused by the final stage of an incurable illness.***

Such understanding of euthanasia has certain advantages that allow us:

1. to identify criminal *justice* totality of euthanasia;
2. to speak about introduction of a new independent components of crime – killing at the victim's request;
3. to separate the proposed components of crime from the related components of crime, including murder for which according to Section 116 of the Criminal law of Latvia criminal liability is provided.

According to author's definition of euthanasia, it follows that the issue of liability has a significant meaning in the legal context concerning identification of this phenomenon.

### **1.3. Forms of Euthanasia**

1.3. "Forms of Euthanasia" provides a review of scientific basis of euthanasia classification. The complex nature of criminal-legal phenomenon of euthanasia makes it necessary to classify forms of euthanasia on the basis of their content and nature.

Euthanasia can be classified as follows:

**1. Nature of actions made by physician** (active and passive euthanasia).

The definition “active euthanasia” means the *intentional, quick and painless killing of the terminally ill person at this person’s request in order to end his physical and mental suffering, and the aim of such action is mercy.*

At the same time the following is not considered to be an active euthanasia: 1) the so-called mercy killing – occurs when a physician without a terminally ill person’s request (for example, when a terminally ill person is in a state of coma or in a critical condition where he is not able to give his consent or a request of his killing), watching unbearable agonizing suffering that will soon result in patient’s death, and being unable to prevent it, injects him, for example, with a deadly dose of painkillers, which results in quick and painless death of a patient; 2) PAS- physician assisted suicide – is when a physician only helps a terminally ill patient to commit suicide, for example, gives a patient a certain amount of pills that will kill the patient. The patient injects himself with lethal medication or switches on the device that will lead to a rapid and painless death.

In the first case, the patient’s life is terminated by another person such as physician, and this is done without the consent of the patient (usually it is a situation where a patient is in such a severe condition that he is unable to express his consent). However, in the second case – the patient consent *is* obtained, and a physician gives a patient medicinal agent that allows him commit suicide.

Material preconditions under which this offence may be considered an active euthanasia are: intentional act; a patient has been diagnosed with an incurable illness, i.e., a patient must be terminally ill person whose disease will certainly have a fatal outcome; patient’s unbearable physical and mental suffering; the lack of effective medicinal agents that could relieve patient’s suffering; the patient’s voluntary request for euthanasia is a compulsory preconditions as well.

**Passive euthanasia.** Passive euthanasia is *intentional interruption (refusal to provide) or limitation of providing incurable patient with medical aid (out of compassion), at his request, in order to end his ongoing physical and mental suffering, which accelerates his natural death.*

Criteria, which determines that an action can be classified as passive euthanasia: the personnel’s omission to act; the potentially fatal outcome of the incurable illness; long-term treatment by using medical means and methods; impossibility to lead a normal life without the use of special medical equipment; patient’s unbearable physical or mental suffering; patient’s voluntary request for euthanasia is a compulsory condition.

## **2. Patient's will during the act of euthanasia can be voluntary and compulsory.**

**"Voluntary euthanasia"** is based on free will, i.e., capacitated, responsible free will of the terminally ill patient, which he expresses regarding termination of his life that may occur with or without the help of physician, in order to avoid suffering.

The patient switches on (or switches off) a device, and this helps him to die quickly and painlessly. The patient's understanding of consequences of his request is compulsory precondition of voluntary euthanasia.

**"Compulsory euthanasia"** is implemented against the will of the terminally ill patient. "Compulsory euthanasia" is when a patient's will is being influenced by someone else (relatives, authorized persons, physician). It is also, where a patient is in critical condition or unconscious and is unable to express his will via regular means – verbally, in writing or otherwise.

## **3. According to motivation of physician's decision by taking the steps that are formally described as euthanasia, it can be classified as direct and indirect euthanasia.**

**Direct euthanasia** is a process when a physician intentionally kills or shortens a terminally ill patient's life.

**Indirect euthanasia** is when death is being accelerated in the result of certain actions of physician, it can also be the result of medical manipulations, which had a different purpose. For example, an indirect euthanasia may be the case when death of patients that have been diagnosed with oncological disease is being accelerated by injecting them a greater amount of drug as an analgesic. Lethal complications during diagnostic or therapeutic procedures can also be classified as indirect euthanasia.

4. The analysis of legislation of different countries allows to divide euthanasia into **involuntary** euthanasia, which implies criminal liability, and **legal** euthanasia, which permissible only by complying with provisions of law (by the example of Benelux countries that have legalized euthanasia).

**"Involuntary – non-voluntary euthanasia"**. The involuntary euthanasia can be mentioned in two different cases. "Involuntary euthanasia" is where euthanasia is carried out without the consent of the patient, even though he was able to express his will. "Non-voluntary euthanasia" is a form of involuntary euthanasia when a patient due to his condition (for example, being in a state of coma or being in irreversible vegetative state) is unable to express his will regarding continuation or termination of medical treatment.

**"Legal euthanasia"** is permitted only by complying with provisions of law (by the example of Benelux countries that have legalized euthanasia).

In case when trying to relieve patient's suffering, who is at the final stage of incurable disease, prescribing him medication that will only indirectly accelerate the physiological process of death, the issue of euthanasia is not being discussed. In this case, the person who performing the above mentioned offence has no intention to kill another person. He does not want "to help the patient to die", but tries to minimize his pain by giving him medication that has certain side effects, which can accelerate the death of a terminally ill patient. The death is not caused intentionally, but it can be the possible consequence of a pain therapy.

Euthanasia is not discussed in the event of termination of intensive care when the cerebral death state is irreversible (there is no treatment that could lead to a positive change; it only prolongs patient's suffering, who has no chance of recovery). In case when it is possible to state that, the device maintains only outward signs of life, which are manifested in breathing and blood circulation when in fact the person is dead and does not feel any pain because his life source – the brain is already dead. This type of "easy death" is not considered a murder, but at the same time, it is not euthanasia.

The author's definition of the term of euthanasia does not include the request of the relatives or the sign of content to realization of euthanasia act, as well as intentional killing of the terminally ill person who is unable to make independent decisions or is in the state of coma. The aspect where terminally ill patient does not feel physical and mental suffering caused by the final stage of incurable disease was not taken into account as well.

Specifying the content of both phenomena, the author considers it appropriate to distinguish between the terms "orthonasia" and "euthanasia". Orthonasia may be manifested in switching off the artificial life maintenance machine that keeps patient alive. Usually people, who do not regain consciousness for years, are suffering from serious organic nervous system disorders, and they are doomed to vegetative existence. Apart from "unplugging" the patient from artificial life maintenance machine, we are referring to the killing of the person in compliance with the request of his legal representatives or by court order. The generalized criteria of this type of killing at the person's request is manifestation of the other people's will of life termination; it is not manifestation of the patient's will. Accordingly, the level of legal protection of orthonasia procedure has to be higher compared to euthanasia, since in this case the right to life is being used not by the person who has this right, but by another person.

It should be emphasized that it is not murder, and it cannot be considered euthanasia in the event of termination of intensive care when the cerebral death state of the patient is irreversible (treatment brings no results and only prolongs the patient's agony). The procedure of terminating life of persons who are in the helpless state when the cerebral death state is irreversible, and the initiators of these persons' death may be their legal representatives and,

in some cases (lack of legal representatives) – the court, there can be used an independent way of life termination – orthonasia.

Based on the foregoing, it is necessary to single out orthonasia as an independent phenomenon, which can be described as terminally ill and helpless patient's, who is unable to express his will, life termination at the request of his legal representatives, the medical council or by court order.

Thus, orthonasia is procedure of terminating life of a patient who is in the helpless state, at the request of his legal representatives, the medical council or by court order, by “unplugging” the patient from artificial life maintenance machine when the cerebral death state is irreversible.

#### **1.4. Medically Biological Aspects of Euthanasia**

“Medical and biological aspects of euthanasia”, - promotes clarification and examination of certain medical and biological aspects of euthanasia. The issue of euthanasia has a complex nature, which means that research is conducted by using a method of multi-disciplinary synthesis. In scientific field of euthanasia research, the conclusions of medical and biological science are used only on the basis of their interaction.

One of the science directions that is closely associated with euthanasia is medical science, which in turn is closely related to biology. Preconditions of medical and biological aspect is the identification of precise range of patients in respect of which it is possible to implement euthanasia. The theory puts forward conditions that should be clarified: the presence of incurable disease; the duration of medical treatment; inevitability of the lethal outcome; the presence of physical suffering that patient considers unbearable; all available medical resources have been depleted.

The preconditions that have been mentioned in this work are discussed, analyzed and evaluated accordingly. In author's opinion, even in view of this or other criteria, the performance of euthanasia is not acceptable, but in every particular case, human rights and legal authorities may consider these criteria as mitigating circumstances.

#### **1.5. Legal issues of euthanasia**

Examination of euthanasia in legal context is relatively new approach to this issue. Modern criminal legal science has not registered a single, unchallenged approach to euthanasia, its concept and implementation limits. However, the practical necessity to resolve

this issue and its topicality in modern society makes this approach a prospect for future research. From a legal point of view, euthanasia is considered to be unlawful, criminally punishable act, which implies legal liability. Society has different views and positions concerning euthanasia – from absolute rejection to full legalization of principles and methods of euthanasia.

Legal regulation of implementation of euthanasia could be attributed to either a direct violation of certain norms, or to expansion of borders of permissive legal regulation, when a physician (in his activity) deviates from the requirements of the principle. In one case, the legal regulation and practice of law implementation may assess such behavior as illegal, in other case – as legitimate.

### **1.6. Euthanasia and the Theory of Human Rights**

“Euthanasia and the Theory of Human Rights”, - defines the concept of human right to life and the content of this right, analyzes the aspects of emergence and termination of the right to life.

Legal issues related to euthanasia must be considered in close relation to the right to life, which is one of the most important human rights. The issue of legitimacy of mercy killing and the punishment (for this action) can be solved only by restricting the right to life and circumstances of the person’s right to freely act with his life, as well as conditions in the context of scientific theoretical analysis. In order to insure the immunity of the right to life, the right to act with one’s life and the right to salvage every person’s life (all the basic elements that make up the content of the right to life), it is necessary to use legislative, executive and judicial complex of means, the efforts of society and state, and relevant international and national legal policy.

The right to life is the basis of existence of human society and, therefore, the life cannot be regarded in the context of property, with which a person can act at his discretion.

The content, observance and protection of this right is widely discussed as it relates to various spheres of life of society and the state, such as law, politics, morality, religion, philosophy and medicine. This thesis views and analyzes different approaches to the interpretation of the right to life in the narrow and broad sense of this right.

All this allows defining the concept of the right to life. Consequently, the right to life is *natural, inalienable human right that is guaranteed by legal norms, and is protected from life threat and arbitrary life deprivation; the right to act with one’s own life and to promote its continuation.*

The right to life has a very complex legal structure. Not all social relations, which are related to realization of the right to life, are properly regulated at the legislative level. The thesis pays a great attention to the legal definition of the moment when a person becomes entitled to protection of his life. It is a debatable issue. Criminal law experts are constantly arguing about what is life as object of the offence: the life of a human as a biological being or totality of social relations as an object of the criminal law protection.

The human right to freely act with his life is one of the structural elements of the right to life. It includes a right to act with one's life, which is one of the most important structural elements of the right to life. The solution to the issue of the right to euthanasia (and the liability for committing euthanasia) depends on detection of limits in connection to the ability to freely act with one's life.

The analysis of different scientific opinions has confirmed our position that human life begins from the moment of physiological birth. The childbirth is a physiological process during which the fetus and also placenta and amniotic fluid is moved out from the uterus, after a fetus has reached its viability. According to this definition, the most important part of the childbirth is fetus viability, and the basic characteristics of the viability are the heartbeat and breathing, i.e., newborn's ability to live outside the mother's body (under regular conditions).

The author believes that the right to life, to which each human is entitled to, does not include the possibility (as one of the right realization aspects) to act with it at one's own discretion, to decide on its termination (for example by using euthanasia) with the third person assistance. As an argument, we can mention that the possibility to act with one's life should not be delegated to anyone, but in case of euthanasia (the request to kill expressed to someone else) we observe the delegation of the right to act with one's life.

The person's right to freely act with his own life provides a strict participation of the state and private persons who try (in the legislative way) to prevent the possible treat to this citizen's life and does not entitle anyone to help a person in his desire to die. It is considered unethical and unacceptable to consider the individual right to kill oneself. The state should recognize, respect and protect person's and citizen's rights and freedom during all his life. Nether euthanasia nor assistance or encouragement to commit suicide cannot be the country's law, which declares itself lawful.

## **2. Criminological Aspect of Euthanasia: The Killing at the Person's Request**

“Criminological aspect of euthanasia: the killing at the person's request”, - studies the reasons (circumstances) of killing at the person's request, also the author proposes euthanasia prevention and prophylactic measures.

### **2.1. The Causes and Conditions of Person's Killing at his Request**

“The causes and conditions of person's killing at his request”, - the author clarifies the main causes and reasons of euthanasia. Thus, the cause creates a possibility for the certain consequences. The motivation for the killing of the person at his request is 1. the incurable disease; 2. the person's consent to be killed.

The circumstances of crime is the phenomenon of the social life that does not create a crime, but contributes to its emergence and existence. The process of killing at a person's request takes place under the following conditions:

1. disagreement of politicians and society regarding the issue of euthanasia create two opposing views – “for” and “against” that have led to the fact that there is no normative act that would regulate the issue of euthanasia;

2. lack of financial resources in the state for the establishment of medical institutions that could provide a decent existence of the terminally ill patients. If a terminally ill persons has concerns about becoming a burden to his loved ones, but he is willing to fight for his life until the end, in this case he has an alternative – hospice. However, the state is not ready yet to multiply such facilities. Nowadays, when taking care about the ill person, the main principle should be the economy of resources.

### **2.2. Prophylaxis and Prevention of the Killing at the Person's Request**

“Prophylaxis and prevention of the killing at the person's request”, - considered the methods of prophylaxis and prevention euthanasia. The author proposes preventive measures that would reduce the abuse of euthanasia. In order to reduce the abuse of euthanasia to would introduce to all medical institutions euthanasia prevention program, i.e., to organize activities in order to explain the personnel their responsibilities in assisting to perform the act of euthanasia. Such activities should be organized by the State Police, as the police has the duty to prevent criminal offences and administrative offences, clarify the conditions that contribute

to these offences, and (within its competence) to take actions in order to prevent these offences.

The special crime prevention is a system of measures that prevents the processes of determination and casualty of crime, which have an impact on specific social groups, spheres of activity and objects, which can be characterized by increases probability of criminal behavior. Special attention is paid to those objects, which could be particularly attractive to criminals and those objects, which are the focus and place of business of criminals. Another important preventive measure, which should be taken by the police station inspector and the medical personnel is to check upon the terminally ill patients in order to prevent euthanasia. The authorized person of the police department has a greater access to information on citizens, who in the district that is under his supervision. The terminally ill patient's relatives play an important place in this prevention system, and it is important to explain them the issue of euthanasia.

The meaning of individual prevention of euthanasia is in the fact that it is important to conduct explanatory activities with both the treating physician and the terminal patient. When working with the terminally ill patient it is important to involve a psychologist who will provide a patient psychological support. The measures of prophylaxis and prevention of euthanasia are necessary during the current development stage of society.

### **2.3. Euthanasia Problem Situations in Latvia: Research and Analysis**

“Euthanasia problem situations in Latvia: research and analysis”, - considers the issues related to the patient's rights, regarding to which the legislation of Latvia does not have the direct ban on euthanasia. First, it is a question of passive euthanasia, the refusal to continue the treatment, which is the patient's right and which is actually implemented in Latvia, including the opinion about passive euthanasia, about the refusal of treatment which is the patient's right and which is actually implemented in Latvia.

For example, the paragraph 6, Section 4 “Consent to Medical Treatment or Refusal Thereof” and the paragraph “Right of Another Person to Agree to Medical Treatment or to Refuse it” of the Law On the Rights of Patients, which came into force on March 1, 2010, states that a patient has the right to refuse medical treatment prior to the commencement thereof without declining from the medical treatment at large, or to refuse medical treatment during it. The broad interpretation of the abovementioned norms leads to the conclusion that the passive euthanasia form is not forbidden (for example, when a medical person does not assist the patient at his own request or discontinues life support measures). The sections 6 and

7 of the Law On the Rights of Patients provide that a patient or his legal representative has the right to refuse medical treatment or refuse medical treatment during it, except for a few cases prescribed by law. This right granted to the patient regardless of the incurable disease, is motivated by the fact that any medical intervention is considered an interference in the sphere of personal freedom and, therefore, it must be based on the will of the person.

The explicit interpretation of the meaning, which is presented in the paragraph 6 of the Law On the Rights of Patients is completely logical. Such interpretation of the law provision is acceptable, because in case of legislative failure that may exist in this sphere; there can be a patient's request for passive euthanasia. However, the Law On the Rights of Patients does not address the relationships issue between medical personnel and a patient in case of passive euthanasia. In order to prevent this shortcoming it is necessary to include to the Law On the Rights of Patients a section that would prohibit the active and the passive euthanasia. Thus, the author proposes to include to the Law On the Rights of Patients a section "**Prohibition of Euthanasia**" as follows: *"It is prohibited for medical personnel to perform euthanasia, i.e., at the patient's request by any actions (omission to act) or by any means that may accelerate patient's death, including switching off the artificial means that support patient's life". "A person who knowingly encourages patient to commit euthanasia and (or) performs it, is criminally liable under the Criminal law"*.

The section "**Prohibition of Euthanasia**" should determine the limits of medical treatment refusal that are stipulated in the section 6 of the Law On the Rights of Patients. This limit is passive euthanasia that is carried out in order to satisfy the request of the lawful representative, which is cessation of life supporting measures under the section 7 of the Law On the Rights of Patients.

Section 7 does not take into consideration the issue of the patient's responsibility when he refuses the medical treatment, and therefore it covers a large range of people giving legal representatives (relatives, guardians, etc.) the opportunity to decide on waiver of medical treatment.

As for the use of the section 6 of the Law On the Rights of Patients which considers the patient's or his legal representative's refusal of medical treatment as the ground for passive euthanasia. In this case, this option should be excluded by disposition of the particular provision, which should provide for the prohibition of euthanasia.

The author of the thesis proposes to develop the idea of hospice in Latvia. Hospice in Latvia is the only body where terminal patients can receive an aid package. According to many experts, the palliative assistance would be an acceptable solution in case of incurable disease and the patient's unbearable suffering. It should be noted that most patients who are

receiving palliative aid are the cancer patients. Unfortunately in Latvia, only a certain number of cancer patients can receive qualitative palliative medical aid.

Given the fact that Latvian legal acts do not have the concept of “palliative aid”, the author proposes to include in the Law On the Rights of Patients another section titled “**Palliative Medical Aid**” as follows:

*1. Palliative medical aid is a combined medical intervention geared towards the cessation of pain and alleviation of other symptoms of serious diseases with the aim of improving life quality of the terminally ill patients.*

*2. Palliative medical aid can be provided by medical personnel that is specially trained to provide this kind of aid both in stationary and in the outpatient setting.*

The goal of the palliative aid is to improve the life quality of patients and the life quality of the members of their families. Due to aging of the population of Latvia, there may be an increase of the cancer patients. The approval of the National Program (January 29, 2009), which is aimed at fighting cancer, was a crucial step for improving palliative aid in Latvia. The Cabinet of ministers has issued a decree No. 48 “On Oncological Disease Control Program for the 2009.-2015.”. The program includes a special section dedicated to palliative aid, which became a priority direction of modern oncology. The program is designed for 6 years (2009-2015). In addition, according to the decree No.243 of the Ministry of Health there have been approved “Guidelines for Local Authorities to Health Promotion”. The paragraph 8.8 of this decree include “recommendations for the prevention of oncological diseases”.

From June to September 2012 the author has conducted an anonymous sociological survey on the issue of legalization of euthanasia in Latvia. The main data collection method was a survey. The author has drawn up a questionnaire that consisted of 8 questions. The survey involved 305 people. The average age of respondents – 41 years (19 to 83 years).

The survey was conducted in the form of questionnaire, and there were three categories of respondents: physicians (medical practitioners): oncologists, experts in resuscitation, surgeons, and physicians of other specialties (total 98 individuals); lawyers and law enforcement agencies - office of public prosecutor, courts and police officers (total 102); the rest of the population (105 individuals).

The conducted study has led to the conclusion that the society of Latvia is not ready for the introduction of euthanasia. According to respondents, the issue of euthanasia has to be widely discussed because it is not yet fully developed. The majority of respondents believe that euthanasia contradicts the general principles of human morality. This issue needs a legal regulation, it would be difficult to achieve, because our country in recent years has endured a series of economic shocks. In addition, the majority of respondents believe that a human has

to part with life in a natural way and no one should interfere with this process, because it is a sin before God.

### **3. The Criminal Legal Aspects of Euthanasia**

“The Criminal-Legal Aspects of Euthanasia”, - examines the correlation of euthanasia and murder, leading to suicide and abandonment; euthanasia is distinguished from the absolute necessity and the justified professional risk. The thesis provides a criminal-legal characteristic of the killing at the victim’s request, provides comparative criminal analysis of the euthanasia substance structure is provided, as well as regulation of criminal liability on euthanasia in foreign legislation.

#### **3.1. Criminal Justice Characteristics of Euthanasia**

“Criminal-justice characteristics of euthanasia”, - provides a study of the composition of euthanasia. In author’s opinion, the qualification of euthanasia according to section 116 of the Criminal law violates one of the principle of the criminal law the principle of justice, which requires that a penalty, applied to a person who has committed a crime, should be proportionate to the nature of the offence, the caused damage, the offender’s personality and liability.

The crime commitment out of compassion has such significant decrease of the level of harm of the committed offence and the person’s culpability that it should be followed by reduced sentence not only in the Special part of the particular section of the criminal law, but also in reduction of limits of standard penalties.

The amendments that have been made to the Criminal law (April 1, 2013) were mainly focused on the liberalization of criminal penalties. However, in author’s opinion, in some of them, including section 47 (Criminal liability mitigating circumstances) there was a lack of proper attention to the offences such as: the killing out of compassion or the killing at the victim’s request.

In view of the specificity of the above-mentioned crime, the author proposes to emphasize the 8 paragraph of the first part of section 47 of the Criminal law (Mitigating circumstances) should go as follows: “the offence committed due to serious personal or family reasons **or out of compassion, as well as at the victims request**”.

Strategically, this norm is necessary, because the necessity of the legal norms is

dictated by the real practice.

The current legislative approach creates logical difficulties of determining liability for committing euthanasia. Almost all these circumstances of committing offence and imposition of penalty are determined by the court's discretion. The court must take into account the particular circumstances of the offence, such as the victim's request and presence of the compassion. Given the circumstances, the court should impose a penalty for the offence under the section 116 of the Criminal law that does not necessarily comply with the nature of the committed offence.

The author of the thesis presents his own definition of euthanasia and the system of its characteristics, as well as reasonably concludes that the victim's consent for his killing according to legislation of Latvia does not exempt the culpable from the criminal liability for the murder.

The killing at the victim's request is an offence that has been agreed with the victim's will, and it should have a degraded criminal liability. Therefore, the author proposes to include (from the common set of legal norms that implies murder) into independent composition a murder with mitigating circumstances – euthanasia. Supposedly, this decision will help to avoid two dangerous extremes: decriminalization of euthanasia and its identification with as murder. In view of the legal regulation of foreign experience and analysing the scientific views regarding this theory, the author proposes the following version of Criminal law norm on “**Euthanasia**” **Section 116**. (see conclusions and proposals).

The proposed norm will help to avoid two extremes: decriminalization of euthanasia and its identification with murder. This means that part of the problems will be removed, resulting from criminal –legal assessment of the analysed offence.

In order to understand the nature, social orientation and legal issues of euthanasia, it is very important to provide its criminal-legal description. Euthanasia is a set of such social relations, and, without knowing this relationship, it is impossible to assess the level of social risk of euthanasia, or to determine its proper legal qualification. Therefore, during the analysis of the composition of euthanasia the main difficulties arise from the determination of the object of this offence.

The public attitude towards implementation of euthanasia can be divided into two individual subject categories: special (medical personnel) and general (other persons), as well as collective – the officials of state law enforcement institutions. Each of them has certain properties. The knowledge of the public attitude towards euthanasia allows solving certain controversial issues that are related to the object of this offence.

Describing the content of the direct object, the rule that the object of criminal threat is

the public attitude, is not always observed. That is why “public attitude” is actually replaced by other terms, such as “the person’s interests”. Such understanding of the object of an offence leads to the fact that the public attitude ceases to be a direct object of the offence. The structural part of the object, which without the public attitude has no value, is mistakenly considered the object of the offence.

The subject of public attitude towards euthanasia is where these relationships emerge. The subject cooperation occurs due to performance of euthanasia, namely, an action that is connected to realization of subjects’ rights and responsibilities in accordance with their legitimate interests.

The public attitude towards implementation of euthanasia creates active and passive forms of cooperation of individuals, namely, the people who make a request for euthanasia, and those who fulfil this request, i.e., it manifests when one participant violates social opportunities of the other cooperating party. Party interaction mode is strictly set in the regulatory framework.

The quantitative and qualitative characteristics of the above-mentioned social relations are manifested in the fact that the possibility of the assured state of one party implies certain behavioural restriction of the other party. The social relations (that we are interested in), which provide to life, to be alive or in safe condition as opposed to (for example physicians, parents, authorities, etc.) the need to maintain this condition the restriction of behaviour that may violate it, even if offence is committed at the victim’s request or with his consent. Furthermore, the certain social behaviour of the person who has been asked to perform euthanasia provides or does not provide subject of relations, i.e. the person who asked for euthanasia, the opportunity to live.

The direct object of the killing at the person’s request is a human life. However, the chance to be alive is a direct object of threat as long as it is provided by society and state. From the moment when some interest is excluded from the scope of benefits, which is provided by the state and society, this possibility becomes “impossible” and it is no longer the object of crime. Determination of the direct object of euthanasia as the possibility to be alive provides a better understanding of the crime object and clearly shows the nature and character of threat, as well as its harmfulness. As for the objective side of euthanasia, it must be constructed by type of material composition. Therefore, the main characteristics of the objective parts of euthanasia are:

1. offence (action or omission to act) that is aimed at the killing of the terminally ill patient;
2. criminal consequences (killing);

3. casual relationship between the offence (action or omission to act) and the victim's death, which means that logically death follows from the action (or omission to act) of the culpable, hence needed and not accidental;

4. illegality of an act of euthanasia. This characteristic should be distinguished in order to separate murder from killing by violating necessary borders of defence, criminal commands or in the event of order execution, etc.

5. the presence of the victim's request to be killed;

6. euthanasia is always an intentional criminal offence.

The subject of the criminal offence – a person, who committed euthanasia, a natural person who prior to committing criminal offence has reached fourteen years of age. It can be a physician, a nurse, close relatives, or other persons.

In order to give definition of euthanasia of the Criminal law norms it is necessary to determine its characteristics:

1. Euthanasia is always an intentional act. However, unlike murder (under the section 116.-122. of the Criminal law), subjective side can be manifested only in intentional way, i.e., when the offence indicates that the offender is aware of the harmfulness of his action (omission to act) and intended possible or imminent death of the other person, and has wanted it.

The motive and the aim are obligatory characteristics of the subjective side of the killing at the victim's request, and they have a key role in qualification of the offence.

2. Euthanasia is a killing of the other person. This characteristic differentiates murder, suicide, and an accident.

3. The presence of the victim's request to be killed. First, the victim's request has to be made prior to the offence. In addition, the will must be expressed by a person who is able to understand the meaning and consequences of his request. Finally, the request must be expressed freely. If it was made as in the result of fraud, deceit or coercion, then committed offence cannot be considered euthanasia, and a person committing this offence should held criminally liable as for the murder on general basis.

4. The illegality of the act of euthanasia. The significance of this characteristic is in the fact that the killing, in the event of euthanasia differs significantly from the murder, for example in the circumstances of extreme necessity (section 32, Criminal law), etc.

5. The object of the criminal offence – life. The Criminal law equally protects every human's life from criminal treats, regardless of race, ethnicity, nationality, age, occupation, health condition, etc. However, a person's life itself, regardless of his viability becomes the object of this crime. Both the killing of a person, who was in the prime of his life, and the

killing of a seriously ill or mentally ill person, as well as the killing of a newborn or an elderly person can be seen as murder.

6. The objective side of euthanasia manifests itself both in action and in omission to act. Criminal action or omission to act is the core of any criminal offence around which all other elements of the offence composition are built.

7. The necessary consequence of euthanasia is a killing of the other person.

8. The mandatory characteristic of the objective part of euthanasia is a casual relationship between the guilty person's action (or omission to act) and the victim's death.

9. The subject of euthanasia – the guilty person. A person who has reached the age of 14. The thesis provides a detailed analysis of these characteristics, as well as the motive of compassion, which is very difficult to define. In case of the killing of the terminally ill patient (at his request), it is believed that the compassion is directed to satisfaction of the personal interests of the person that is being killed. However, the intentional killing of the other person violates the order that is inherent to social relations. When choosing criminal policy and the content of the criminal-legal interests of the defended, it is important to state them in the aim of the Criminal law, which is developed in its tasks. Thus, dialectic analysis of public and private interests' interaction in Criminal law, allows to introduce the defence of the public interests as the main task, because the realization of these interests is focused on securing the life and development of society.

### **3.2. Euthanasia and Different Offence Compositions: Correlation Issues**

“Euthanasia and different offence compositions: correlation issues”, provides the analysis of compositions similar to euthanasia, as well as defines common and distinctive characteristics.

#### **3.2.1. Euthanasia and Murder**

“Euthanasia and homicide”, determines correlation between euthanasia and murder, i.e., studies common and distinctive characteristics of elements of crime, as well as pays attention to liability for these offences.

Murder is the extremely grave crime, because it leads to person's death, but the protection of the person's life is the direct responsibility of the state.

In author's opinion, the killing of the victim at his request is an act that complies with the victim's wishes, which should be followed by a lenient criminal liability. However, in case of involuntary euthanasia, it is classified as murder under section 116 of the Criminal

law.

Euthanasia as a legal fact is not “the realization of the right to life”, but a crime.

Euthanasia has characteristics is similar to murder. However, the peculiarities of euthanasia do not fully allow to identify this offence with murder, which is provided under section 116 of the Criminal law, because it violates one of the principles of Criminal law, namely, the principle of justice, which provides application of penalty and other criminal nature means, to a person who has committed a crime, in accordance with the nature, harmfulness, circumstances and offender’s personality.

Murder provided be the section 116 of the Criminal law, - is an intentional, unlawful killing (murder) of the other person that takes the form of an act of violence against the victim. However, the murder out of compassion is carried out at the victim’s request, who, being a terminally ill, is experiencing unbearable suffering. The killing of a person (at his request) who experiences physical and mental suffering (which was caused by a disease that does not lead to inevitable death) cannot be regarded as an act of euthanasia. The consequences of an incurable disease and of the other disease may be similar. Presumably, the object of the killing out of compassion is significantly narrower than the object of murder that is provided by section 116 of the Criminal law, because the object of euthanasia can only be a terminally ill person, who is destined for a painful death.

This creates the necessity to include euthanasia in a separate, less dangerous type of murder composition with mitigating circumstances, as well as to create in the Criminal law the special (of a privileged nature) section, in which the legislature could impose liability for euthanasia or to differentiate it depending on the type of implementation of euthanasia. Supposedly, this solution could help to avoid two extremes, namely the decriminalization of euthanasia and its identification with murder. Since euthanasia is currently being qualified under section 116 of the Criminal law, the author proposes to include euthanasia in a separate, less dangerous type of murder composition.

Based on the above, it can be concluded that euthanasia in many respects is similar to murder, namely:

1. the object of euthanasia is patient’s life;
2. the objective side manifests in action or omission to act;
3. a subject can be any person who has reached the age of criminal liability and who is accountable;
4. the subjective part is composed of direct intention that is aimed at the killing of an ill person.

Euthanasia differs from the murder by the object of the crime. The murder object is

person's life, but the object of euthanasia is terminally ill person's life.

However, the murder out of compassion should be qualified as according to special provisions, which would provide lenient liability unlike in section 116 of the Criminal law. Thus, in author's opinion, it would be useful to distinguish from the general norm on murder the murder out of compassion.

### **3.2.2. Euthanasia and Leading to Suicide**

“Euthanasia and leading to suicide”, based on the retrospective analysis of suicide and euthanasia there have been determined different aspects of this act, leading to different legal consequences.

A suicide is any death case, which is a direct or indirect result of the positive or negative action made by the victim himself when the victim was aware of the consequences, except the cases, the group of people consciously influence other persons, and when a person does not make a voluntary decision to kill himself, but makes it being under the influence of the other people, being deceived, being in a hopeless situation, mentally, physically or otherwise influenced. This definition allows to distinguish between the suicide and the killing and incitement to suicide or its encouragement.

Despite the fact that the legal status of suicide is rather clear, there is still the lack of legal assessment of the third party demeanour, who encourage the other person to commit suicide. Often suicidal thoughts occur not due to inability to satisfy basic physiological needs, but because of mental suffering. In this context, in order to decide “for” or “against” suicide, the great importance have external factors that influence the person's decision. The person's decision on committing suicide is often influenced by the other person's will or action. In such circumstances, there are no evidence that would suggest that suicide was voluntary. This kind of influence, almost all over the world, in one way or another, is found to be harmful and sometimes equated with murder. Unlike the majority of foreign legal acts, in Latvia only leading to suicide has criminal liability under the section 124 of the Criminal law. The Criminal law does not include support, encouragement and incitement to suicide; therefore, it is not punishable.

Currently the rate of suicide in Latvia is rising. It is possible to see the obvious harmfulness of the support or incitement to suicide. Due to suicide the society loses many of its active members, therefore many legislators have a negative attitude towards this phenomenon, because there is a possibility of intentional deprivation of life (murder) that can be masked as an act of suicide.

Given the harmfulness of these murder like activity they should be criminalized supplementing the disposition of the section 124 of the Criminal law with the following: *“for incitement to suicide by persuasion, bribery, deception or by any other way, as well as support of suicide by giving tips, guidance, information, resources or tools shall be punished by imprisonment for a term not exceeding three years”*.

From the objective side the incitement to suicide or the support of suicide, as well as murder is a typical a criminal offence with a material composition, which is characterized by: 1. action (omission to act) that is aimed at the killing of the other person; 2. the victim’s death – an obligatory consequence of the criminal offence; 3. the casual relationship between the action (omission to act) of the guilty person and the victim’s death.

Since from the subjective side the offender’s actions that encourage someone to commit suicide or support it (advice, persuasion, and deception) are aimed at the killing of the other person, then similarly to murder cases the direct or indirect intent is implied.

Incitement to suicide or support of thereof is very similar to the murder at the victim’s request. However, such concepts as “incitement” and “support” have a much broader meaning, because they include not only the victim’s request, but also the lack of it.

It is important to distinguish from euthanasia a physician-assisted suicide. The decision to commit a suicide is made by the patient himself. Even actions that are aimed at the ending one’s life are made by the patient himself. The physician will only give him recommendations on the use of medication or tools that will ensure his death. In case of the assisted suicide the patient has right of choice.

Euthanasia significantly differs from suicide. The thesis discusses the system of criteria (philosophical, psychological, and legal) that allows to distinguish between these phenomena and to conclude that euthanasia cannot be considered ether a private or specific suicide case. After all euthanasia is an independent form of realization of human right to act with one’s life, which cannon be related to suicide. Euthanasia is a phenomenon that is distinguish by its complex legal nature, for: on the one hand, it is based on the offence that is related to the action with one’s life, on the other hand – euthanasia is an act during which one person kills the other person.

### **3.2.3. Euthanasia and Abandonment**

Given the diversity of the possible forms of euthanasia, and situations similar to euthanasia, murder should be distinguished not only from suicide, but also from abandonment. Analysing and comparing the characteristics of abandonment and euthanasia,

the author shows their essential differences.

Abandonment (section 141 of the Criminal law) and refusal to assist have common characteristics with passive euthanasia: 1. the intentional actions; 2. the objective side (omission to act) may coincide. However, it is not the specific type of expression of passive euthanasia when a person refuses to take the necessary measures to help maintain the patient's life. The subjective side of the deliberate abandonment is characterised by the direct intent. The guilty person knows that a victim is in life or health threatening condition, and that he must help him, but does not wish to do it.

The subjective side of the criminal offence is the distinguishing criteria between euthanasia and abandonment. From the subjective side euthanasia is carried out with the direct intention of killing terminally ill person, by indicating the compassion motive.

Thus, the subjective side of the criminal offence provided by part 2, section 141 of the Criminal law does not provide special treatment (compassion) toward the victim. Furthermore, the killing of the terminally ill patient is carried out only at his explicit request, which is the expression of his true will that differs from the criteria provided in section 141 of the Criminal law.

### **3.3. Euthanasia and Institutes of Criminal Law**

“Euthanasia and institute of criminal law”, explores euthanasia related legal phenomena and institutes, as well as determines their differences and common features.

Taking into account the diversity of types of euthanasia and situations similar to euthanasia, it is important to distinguish it not only from suicide and physician-assisted suicide, but also from such legal institutes as the extreme necessity and justifiable professional risk (under condition which preclude criminal liability).

#### **3.3.1. Euthanasia and Extreme Necessity**

The institute of extreme necessity includes justification of the caused damage. This is a kind of “tool” that helps to protect both personal and socially significant benefits. Analysing and comparing the characteristics of extreme necessity and euthanasia the author of the thesis shows their significant differences:

1. In case of extreme necessity, the interest threat cannot be avoided except by causing damage to other protectable interests. On the one hand, euthanasia is the killing of the person, who asked to be killed, and he does not mind to die. On the other hand, the murder at the victim's request causes harm to protection of human life.

2. In case of extreme necessity all actions are characterized by timeliness, i.e., during the period from the beginning of threat to its elimination. The time limits do not apply to implementation of euthanasia, because it is a question of liberating a terminally ill patient from the unbearable suffering caused by incurable disease that leads to inevitable death. Therefore, there is a moment of threat, but there is no timely termination of suffering.

3. In case of extreme necessity, the prevented threat must be greater than the caused damage. When examining the proportionality of the prevented and caused damage from euthanasia victim's position as a subjective category, it should be agreed that the prevented damage (unbearable suffering) is greater than the action itself (quick and easy death).

When analysing the proportionality of the of the prevented and caused damage as an objective category, taking into account the position of the legislature, the greatest damage that can be caused to a person is death, therefore murder at the victim's request cannot be deemed made in the circumstances of the extreme necessity.

### **3.3.2. Euthanasia and Justifiable Professional Risk**

The concept of justifiable professional risk is provided by section 33 of the Criminal law. Professional risk is considered justifiable if a damage caused by professional activity, which has the features of the criminal offence composition and if this activity is made in order to achieve socially valid goal, which could not be attained in any other way. The risk is not considered justifiable if it is consciously connected to threat of a number of people or the threat of ecological disaster or social calamity (part 2, section 33 of the Criminal law). Hoping that his agony and suffering will end a person takes a desperate step and, risking his life, chooses euthanasia.

When comparing euthanasia with justifiable professional risk, it can be stated that a person consciously takes this decisive step, thus freeing himself from physical suffering. A person can achieve this goal only by ending his life. Justifiable professional risk and euthanasia are similar in this respect. When comparing euthanasia with justifiable professional risk it can be concluded that they are similar only externally, but basically, there are several differences, such as:

1. the main feature of the justifiable professional risk is the attainment of socially valid goals; in the case of euthanasia the question is about a particular person and his life;
2. justifiable professional risk cannot be connected to the threat to life. In our case the question is about the threat to life, moreover, a terminally ill person consciously wishes to die;

3. a person who takes a certain action in conditions of justifiable professional risk in order to achieve socially valid goal, shall be exempt from criminal liability. A person who assists a victim in committing the act of euthanasia shall be held criminally liable under the section 116 of the Criminal law. In other words, in the case of euthanasia the justifiable professional risk is considered to be a deadly risk.

From the above it can be concluded that euthanasia and all of its diverse forms differs from the abandonment, extreme necessity and from justifiable professional risk.

### **3.4. Criminal-Legal regulation of Euthanasia in Foreign Countries**

“Criminal legal regulation of euthanasia in foreign countries”, - analyses the structure of legal acts, which regulates the composition of euthanasia, as well as defines the features of imposition of punishment and their dynamics for this offence according to foreign criminal law acts.

#### **3.4.1. Structure of Euthanasia Composition in Foreign Criminal Law Acts**

“Structure of euthanasia composition in foreign criminal law acts”, on the basis of comparative legal research of foreign criminal law acts, as well as on the basis of scientific opinions that are expressed in different sources, examines legislative structure of euthanasia composition in criminal law of Latvia and foreign countries.

Foreign criminal law acts have controversial legal assessment of euthanasia, which in turn determines a large diversity of disposition structures in terms of liability for the killing of the victim at his request. In this connection, a legislative technique arises great interest, and it is implemented to define these standards. The difference clearly shows in composition names (and it is not just a terminological difference). In some countries, the great amount of attention is paid to the victim’s will (demand, request, and consent), while other countries – the compassion towards the victim.

Thus, in Criminal codes of several foreign countries the main difference of legal structures of euthanasia composition are certain obligatory features that are included in the legislative composition of the crime. First of all, the question is about the motive of the offence and the aim setting. The motive and the aim off this offence (though they are not provided in all countries) are the most important elements of euthanasia, because they, unlike the regular murder, determine the reduced harmfulness of this offence. In some cases, the

legal structure covers both the motive and the aim, but in other cases – only the motive or the aim.

Furthermore, in Criminal codes of several foreign countries, which contain a special norm regarding the murder at the victim's request, have no indications of compassion motive, the aim to relieve the victim's suffering or the victim's disease. Moreover, the lack of further guidance on euthanasia specific motives and aims leads to the fact that for the passive form of euthanasia the legislator sometimes fixes a penalty that is more severe than it would be in case of active form of euthanasia. Among the aim, the motive, and the obligatory elements of legal structure quite often is included the objective characteristic of the victim's condition. This additional element narrows down the scope of application of these components of crime.

It is considered that such detailed formulations provided by the foreign Criminal codes are related to the desire to exclude the possibility of falsification of the victim's will, as well as to exclude the possibility that the guilty person will use the victim's reckless, rash decision that was made in the state of frustration. Furthermore, legal acts of several countries include additional protection guarantees under which it is necessary to protect the patient who asks to kill him.

Another feature of the elements of crime provide by the foreign Criminal codes, which is related to the killing of the patient, is the fact that the legislator will almost never takes into account the particular case, when a murder is made out of compassion, but without the victim's request. This legislative approach is consistent with the author's concept of euthanasia, because this type of offence cannot be considered any form of expression of euthanasia.

Finally, it is important to take into account the important element of the objective side of the present offence, which is the type of killing. None of the Criminal codes that provide particular compositions do not indicate the types of killing and do not distinguish between active and passive forms of euthanasia. The exception is the Criminal code of Azerbaijan.

In addition to the above-mentioned, the work provides the comparative analysis of the foreign legislative positions concerning determination of liability for committing euthanasia drawing distinction between euthanasia and the physician-assisted suicide.

The analysis of the composition of the murder at the victim's request provided in Criminal codes of foreign countries shows that the main differences of their legal structure are related to the extent to which the characteristic features of this offence are specified. First, it is a question of the indication of the motives, aims (the specifics of the description of subjective side of the offence) and object, as well as the objective side of the offence.

Finally, it should be noted that the analysis of the foreign acts on determination of

liability for commitment of euthanasia shows that a number of countries in the world qualify murder that is made out of compassion as a crime against life. However, unlike Latvia the legislators of other countries have included separate norms on murder out of compassion in their criminal codes.

In author's opinion, this is a right legislative position. The commitment of the criminal offence out of compassion is an offence that is less harmful to society for which there should be a more lenient punishment not only in certain section of the Special part of the Criminal law, but also within a range of reduction of the standard penalty.

### **3.4.2. The Comparative Characterization of the Penalties Provided by Foreign Criminal Law for Commitment of Euthanasia**

“The comparative characterization of the penalties provided by foreign criminal law for commitment of euthanasia”, examines the determination of penalty amount for commitment of euthanasia in foreign countries.

Excluding different legal structures of the criminal offence (murder out of compassion), there are significant differences in sanctions for this criminal offence, which reflects particular country's prevailing idea about harmfulness of this offence.

The study found out that in today's world the amount of penalty for committing euthanasia varies greatly depending on the criminal law traditions and to a lesser extent on cultural characteristics of the particular countries. In some cases, a person who commits murder out of compassion or at the victim's request can be sentenced to a more stronger higher, but in other cases he may be fined, or even exempted from serving a sentence.

To summarize this section it should be noted that euthanasia qualification related issues exist in almost all countries of the world. In several countries, the negative attitude of legislature towards euthanasia equates euthanasia to murder, the intentional killing of the other person. However, about a quarter of all countries consider the victim's request (as a murder motive) to be a mitigating circumstance.

The different approach of legislatures of various countries to criminalization of euthanasia and imposition of penalty is connected to society's negative attitude towards this way of leaving one's life, which is not consistent with moral and religious beliefs, as well as with national traditions.

## **4. Foreign Experience of Legalization of Euthanasia**

“Foreign Experience of Legalization of Euthanasia”, analyses the trends of legalization of euthanasia and legal regulation of various countries, as well as legal practice in regard to issues of implementation of euthanasia in the U.S. and European countries.

### **4.1. Euthanasia Legalization Trends in Foreign Countries**

“Euthanasia legalization trends in foreign countries”, studies the main trends of legal regulation of euthanasia.

Euthanasia is new legal phenomenon, which actively used in practice of some foreign countries. Each country implements its policy that concerns the issue of euthanasia. On this basis, the country either legalizes euthanasia, by regulating it according to legal acts (Netherlands, Belgium and Luxemburg, some of the states in the U.S), or denies it altogether. The legalization of euthanasia in one country directly contributes to its abuse and problems in other countries, and one of them is so-called “death trade”. The people who wish to commit euthanasia are being illegally transported to the countries that have legalized euthanasia. The conducted study views the legislation of the countries, where euthanasia is allowed at the legislative level, and countries, where euthanasia is permitted with certain restrictions (partial euthanasia), and the countries where these issues are regulated by judicial decisions (leading case). Each country chooses its own policy of human life protection, at the same time upholding his rights for a decent life and death. In this connection, the countries either legalize euthanasia, regulating it by legal acts, or forbid it altogether.

The frequency of euthanasia, contrary to the popular belief, does not correlate with the level of socio-economic development of the countries. It is supposed that this is due the fact that in countries with medium high level of socio-economic development the value of human life is not yet large enough and there is not yet enough opportunities for personal development in different areas of life. Only by reaching a certain quantitative threshold in life of society, begins a new a new qualitative condition that is characterized by the increase of value of human life and the increase of diversity of forms and possibilities of realization of human personality.

Nowadays no way or form of euthanasia cannot be considered as sufficient legal basis for the killing of a person and termination of his right to life. First of all, this due to prevailing philosophical, ethical, religious, medical, legal and other world views relating to this issue. It

should be noted that in spite of negative attitude towards euthanasia that exists on European level, there has been developed a clear trend, which is related to legalization of passive euthanasia in some economically developed countries.

Without denying this factor, it should be noted that if the state will have to decide “for” or “against” the legalization of euthanasia, it should be taken into account that before such a major decision it is important to make a fundamental public discussion with a large number of lawyers, as well as medicine, bioethics, philosophy, sociology, culture and religion experts. Particular attention should be paid to prevention of euthanasia abuse.

#### **4.2. Implementation of Euthanasia in the U.S. and European Countries; the Analysis of the Issues of Legal Regulation**

“Implementation of Euthanasia in the U.S. and European Countries; the Analysis of the Issues of Legal Regulation”, - notes that euthanasia practice adopted by this countries is an attempt to overcome, or at least to mitigate the irreconcilable conflict between the law medical ethics in relation to admission of the voluntary euthanasia. The initial position of the law is an equivalent and identical assessment of life in all its phases up to the moment of death. Life is an absolute good, and regardless of the circumstances, death cannot be better than prolongation of life. In the Benelux countries and in some U.S. states (Oregon, Washington, etc.) both physician-assisted suicide and active voluntary euthanasia are openly performed.

The physician or other medical person gives the terminally ill patient who wishes to part with his life, a sedative that will help him to get into a state of unconsciousness, and then he is injected with muscle paralyzing agent, most often curare poison; morphine and other injections are implemented as well.

However, it is very difficult it is very difficult to identify what is “unbearable suffering”, but it is a mandatory precondition for implementation of euthanasia. Euthanasia opponents are concerned about the issue whether the “unbearable suffering” is just a mental phenomenon. Dutch model is based on the assumption that the patient’s will to part with his life is the basis of physician’s actions, but has no binding force. In any case, the physician must act in accordance with his professional responsibilities and noncompliance with these responsibilities does not except him from liability, even if he act in accordance with the will of the patient.

Pain, the loss of interest in life, and the desire of a decent death are the main motives of patients who request euthanasia. In the Netherlands and other countries that have legalized

euthanasia, the physicians are more often faced with the decision-making that relates to the issue of life termination. Euthanasia or termination of life at the victim's request, or assistance in committing suicide are still the punishable offences, if the physician does not inform about performance of euthanasia or the fact that he helped a patient to commit suicide, or if he does not meet all the requirements in connection with due diligence established by law.

After termination of the patient's life, the physician's medical actions are verified by the control commission appointed by the Minister of Justice and by Minister of Health, Welfare and Sport. During verification the focus is on the medical aspect of physician's actions and a manner in which the decision to perform euthanasia is made. If the physician, after terminating patient's life, informs about his action and the control commission after reviewing the case concludes that his action were performed with due care, in this case, he is not subject to criminal prosecution.

In this case, the information is not provided to the office of public prosecutor. If, however it is found that the physician's actions were not carried out with due care, because he has not fulfilled the essential requirements in regard to necessary diligence, the case is submitted to the office of public prosecutor to the Health Inspectorate. Both authorities consider the question of the physician's prosecution.

The analysis of the euthanasia legalizing legal acts of the Benelux countries and some U.S. States allowed to reveal some shortcomings, which, in author's opinion, could become a possible cause of euthanasia abuse.

The possible shortcomings may be:

1. The law does not provide a mechanism for determination of obligatory conditions to allow euthanasia:

1.1. considered decision. The law does not answer the question in what way the physician can make sure that the patient's decision is circumspect, although it is an obligatory condition of the law, in order to allow the procedure of euthanasia.

1.2. the patient's decision was made without any external influence. The law does not provide any legal mechanism that would guarantee the exclusion of the external influence; it only indicates that a physician has to be sure of it. The reasonable doubt arise regarding the physician's ability to inspect the possible external pressure independently. The law also does not provide the physician's opportunity to seek help from authorities regarding process of verification.

The lack of such mechanism can lead to formal attitude of physician towards the process of verification and compliance with conditions provided by law.

2. The law has the provision, which states, “the physician must carry out multiple negotiations with the patient with reasonable breaks depending on the patient’s condition”. The provision does not contain specific deadlines and their determination procedure that we believe allows for formal or abusive attitude of physician. The provision has been created in order to ensure so that a patient would make a conscious and final decision. However, given the fact that the determination of the period between negotiations is based solely on the physician’s subjective assessment, these guarantees actually lose their meaning.

3. The law has a provision that states that the consulting physician has to be independent of the patient and the treating physician. The law has no legal mechanism that would allow to follow the interest in decision-making in regarding euthanasia, and there are no provisions, which would impose an obligation on a person to control the “interest” of the persons performing euthanasia at the stage of its preparation and implementation. In our opinion, it is unacceptable when it comes to human life and death.

Meanwhile, the main argument of supporters and opponents of euthanasia is the principle of humanism. The opponents of euthanasia stress that “to kill people (even at their request) is not humane”, the supporters of euthanasia argue, that “it is not humane to prolong the suffering of a dying person”. This situation creates the dilemma of the lesser evil.

#### **4.3. The Analysis of the Legal Practice on Killing of a Person at his Request (Euthanasia)**

Nowadays euthanasia is one of the most controversial issues of national and international law. The international law does not have neither a clear name nor a clear attitude towards this phenomenon. However, many countries around the world discuss the issue of legalization of euthanasia, because the lack of legal practice leaves several issue unresolved.

Europe has become a region the issue of legalization of euthanasia is being discussed the most. It is significant that the countries that have adopted European Convention on Human Rights and fundamental Freedoms, as well as ratified its several protocols, which abolished the death penalty to any circumstances, which try to give the fullest possible protection of human rights and, above all, human life slowly, but confidently are moving towards legalization of euthanasia.

In today’s world euthanasia ceases to be something illegal and perverse. The only question is the extent to which a person can act with his life. The public and national interests are also being discussed. In author’s opinion, in exceptional cases the above-mentioned measure may be applied to people who experience suffering and have no hope of recovery.

However, if such a procedure is available at any time, it could lead to unjustified sacrifices. Currently there is no common opinion as to whether the life to life includes the right to death. One of the means of realization of this right is euthanasia.

Due to the above, the author is convinced that in order to avoid the spontaneous development of this institute in various forms, as well as potential contradictions and conflicts, the international community should define the international legal status of euthanasia. The cooperation of countries in this area would allow to avoid misunderstandings and contradictions, as well as it would allow to develop maximally circumspect position of the present phenomenon and its interaction with other legal institutions. In the near future it would be necessary to adopt international legal act, which would explicitly identify what is euthanasia (both active and passive).

There is a clearly expressed opinion that this concept should be used in creation of new laws, as well as in national and international legal practice. In this case the possibility of false assessment of the offence will be lower than at present. This act should note international institutions that will issue the act, as well as it is necessary to express clearly reasoned attitude towards euthanasia (to clarify its forms, if necessary). In a number of countries around the world such controversial phenomenon as euthanasia is regulated by the national legal acts, by law or legal analogy, or is not regulated at all.

This situation may create a possible abuse, and become a cause of legal conflict, if it affects countries that have different opinion regarding this issue. The exchange of documents and views between subjects of international law, as well as between representatives of legislative and judiciary power will allow to create a common international public opinion in regard to euthanasia, in order to minimize potential abuse, as well as ambiguity of the existing practice and shortcomings of theory.

The issue of euthanasia requires a comprehensive solution, which would eliminate the contradictions of the mentioned institute and varied interpretation of normative acts, and which would formulate the position of law enforcement and public institutions, as well as international organizations, religious institutions and associations. Only in this case there is a possibility of finding solution that would completely satisfy the interested parties. Of course, it is very difficult to develop a position that would be equally consistent with all existing opinions.

This means that this international act cannot be binding, but only be of an advisory nature. On the one hand, this means that some countries will be able to practice euthanasia without taking into account the views of international institutions, whereby there will be an opportunity and obligation to address these issues via legal process; on the other hand, it will

help to avoid continuous and fruitless exchange of views and confrontation. That is why the position of international law should cover as many views as possible, creating a model that would reflect as accurately as possible the positions of the confronting parties.

## CONCLUSIONS AND PROPOSALS

The results of this research confirm the proposed hypothesis and, upon achieving the aims and objectives set in the Doctoral Thesis, have allowed to formulate certain positions and conclusions that are **set for the defense**:

1. The author proposes the definition of euthanasia according to which euthanasia is the intentional killing, that is made at the terminally ill patient's request and that is executed by a medical worker or by another person out of compassion for the patient with the aim to end patient's physical and mental suffering caused by the end-stage of the terminal illness.
2. Analyzing forms of euthanasia the author proposes the following classification:
  - 2.1. **The nature of actions made by physician** (active and passive euthanasia).

The active form of euthanasia means the intentional, quick and painless killing of the terminally ill person at his request with the aim to end his physical and mental suffering. The motive of such form of euthanasia is mercy.

The following actions cannot be considered an active form of euthanasia:

- 1) "mercy killing" it is when a physician without the request of a terminally ill patient, observing agonizing suffering that is leading to a certain death, and being unable to prevent it, commits an offence resulting in death;
- 2) "PAS- physician assisted suicide" it is when a physician only helps a terminally ill patient to commit suicide, for example, gives the patient pills. After taking a certain amount of these pills patient dies. The decisive action is made by the patient himself.

The passive form of euthanasia (Passive euthanasia). The passive euthanasia is an intentional termination (refusal to provide) or limitation (abstention) of medical assistance for the terminally ill patient, out of compassion, at his request with the aim to end his physical and mental suffering in order to accelerate his natural death.

2.2. **During the act of euthanasia the patient's will** may be voluntary and compulsory.

**"Voluntary euthanasia"** is based on the will of the legally capable, responsible incurable patient, which he, in order to avoid his own suffering, expresses to terminate his own life that may occur with or without the physician's assistance. The patient himself starts (or unplugs) a device that helps him to die quickly and painlessly. The obligatory feature of

the voluntary euthanasia is the patient's awareness of the consequences that will occur at his request.

**“Compulsory euthanasia”** is carried out without the will of the terminally ill patient. “Compulsory euthanasia” is when someone affects the patient's will (the relatives, the authorized persons or the physician); and also if a patient is in a grave condition or in unconscious state and is unable to express his will via usual means – verbally, in writing or otherwise;

2.3. **According to the motivating criteria of the physicians' decision** – by performing actions that can be formally described as euthanasia; **it can be defined as direct and indirect euthanasia.**

**The direct euthanasia** is an act by which a physician intentionally kills a patient or shortens patient's life.

**The indirect euthanasia** is when death is accelerated as a result of certain actions made by physician; as a result of manipulations of the medical nature that were made for a different purpose;

2.4. **According to criteria of liability to legal provisions** euthanasia can be divided into non-voluntary (involuntary) and legal euthanasia.

*“Involuntary non voluntary euthanasia”*. It is possible to talk about the involuntary non voluntary euthanasia in two different cases. *“Involuntary”* euthanasia is when euthanasia is carried out without the consent of the patient, even though he was able to express his will. *“Non voluntary”* euthanasia is a form of involuntary euthanasia when a patient, due to his condition, (for example, due to state of coma or an irreversible vegetative condition) is unable to express his will in relation termination or continuation of the treatment.

These are two fundamentally different forms of involuntary euthanasia, which lead to the issues of different nature that also should be treated differently.

The legal form of euthanasia is admissible only by observing conditions stipulated by law (for instance, the Benelux countries where euthanasia has been legalized).

3. A different approach to evaluation of active and passive euthanasia shows the complexity of the problem in finding the solution. The solution of this problem involves the personal and public interests, the interests of different religious and philosophical directions, as well as the interests of legal systems and medical ethics. When addressing the issue of euthanasia, it is necessary to try to find a common ground for different public interests and resolution of cross-border situations, as well as decision-making in life and death situations.

4. The human's right to life is a natural, inalienable human right guaranteed by legal provisions that are connected with death threats, arbitrary deprivation of life, the way the life is treated and the promotion of its continuation.

5. The medical-biological aspect of euthanasia includes the system of certain medical-biological preconditions such as physical and mental suffering, which are assessed by the patient as intolerable medication, medication treatment period, the presence of an incurable illness, all available medical resources have been exhausted.

6. The treatment refusal complies with international human right norms and provides the opportunity to implement euthanasia legally by discontinuing life-support measures.

7. Only one form of realization of euthanasia can be considered under the Criminal Law, in relation to a person who is conscious and who independently makes a decision on parting with his life. Only a person who has legal capacity and who is legally capable to act can execute the rights, when a person whose biological death has not occurred, but whose brain is dead (a person who is in coma), and who can no longer execute his rights because of the irreversible loss of personality, and it results in loss of legal capacity.

From a medical point of view, this kind of state excludes any degree of pain sensation. Therefore, in author's opinion, the disconnection of life-support equipment in this case actually is not euthanasia, because it does not meet the definition, i.e. essentially it is not the "alleviation of suffering". The aim of this "disconnection" is not intended to alleviate the suffering of the dying person, so in fact it is not euthanasia neither in classical sense nor in the sense of Criminal Law. It follows that the need to establish independent composition of murder, which has been committed out of mercy. It is also important to distinguish euthanasia from other similar compositions of offenses, including murder for which according to Section 116 of the Criminal law of Latvia (CL) criminal liability is provided.

8. The main characteristics of euthanasia:

8.1. The object of the criminal offence – **human life (the possibility to be alive)**.

The criminal law equally protects the right of every human from criminal threats regardless of his race, national identity, nationality, age, type of occupation, the function he performs in society, health condition, etc.

8.2. **The objective side** – the criminal offence may be committed **both by affirmative action and by omission to act**; the necessary **consequences** of euthanasia – **killing; the casual connection** between the affirmative action (omission to act) of the guilty person and the victim's death; the existence of the victim's **request**.

8.3. **The victim's request to be killed**

The victim's request must be made before the committed actions. Furthermore, the will must be expressed by the person, who is able to understand the meaning and consequences of his request. Finally, the request must be expressed freely.

8.4. Unlawfulness.

8.5. Euthanasia is always an intentional criminal offence.

8.6. The subjective side is **only a deliberate intent** that is when an offence indicates that the guilty person was aware of the harmful consequences and has foreseen the ensuing of harmful consequences, the death of another person, and wished it to happen. The motive and the aim are obligatory characteristics of subjective side of the killing at a victim's request; and they play a key role in classification of the offence. The execution of euthanasia with indirect intent, that is, when a guilty person was aware that his action can result in a victim's death, and has knowingly allowed such consequences, is impossible.

8.7. **Subject of crime** is a person, who has executed euthanasia. It is a physical person, who by the day of commitment of the criminal offence has reached **fourteen years** of age. The subject may be either general or specific.

9. When separating euthanasia from murder it has been found out that in many respects it is similar to murder, namely:

1. the object of euthanasia is the patient's life;
2. the objective side is expressed in affirmative action or in omission to act;
3. the subject can be any person, who has reached the age of criminal liability and is criminally sane;
4. the subjective side consists of direct intent that is directed to the killing of an ill person.

However, the killing out of compassion should be classified according to the specific provision that stipulate a less restrictive liability than liability stipulated under the section 116 of the Criminal Law.

Thus, presumably, it would be useful to single out from the common norm about murder, the killing out of compassion.

Euthanasia cannot be considered suicide.

Euthanasia and suicide differ according to several criteria:

**1. Philosophical criterion.** Euthanasia is not a choice between life and death. It is choice between a painful death and an easy and quick death. A self-murderer, rejecting the opportunity to live, still wishes to live. He protests against the intolerable life, but the terminally ill patient is against the intolerable approaching death. A hopeless patient has no alternative but death.

**2. Psychological criterion.** The act of euthanasia may be based on two motives: unbearable physical and mental suffering that are caused by the terminal stage of the incurable disease. Suicide differs from euthanasia by diversity of psychological factors, such as an unexpected reaction to a very unfavorable situation, which did not occur suddenly, but the awareness of the deadlock of the consequences arises momentarily. The wish to commit suicide does not leave the time to think about painless means of death.

**3. Legal criterion.** Euthanasia is always an intentional act that has been committed according to the terminally ill patient's request, executed by a medical worker or by another person out of compassion for the patient with the aim to end physical and mental suffering caused by incurable illness. Suicide is also a conscious and voluntary action intended to kill oneself.

When comparing euthanasia with the other criminal law institutions, that is, with extreme necessity and justifiable professional risk, there have been found their different characteristics. The difference between euthanasia and an extreme necessity:

1. In the event of extreme necessity the interest treat can be prevented only by inflicting harm upon other protected interests. On the one hand, by executing the act of euthanasia, someone kills a person, who asked to be killed, and this person does not mind to die. On the other hand, the killing at the victim's request inflicts harm upon the protection of human life.

2. In the event of extreme necessity all actions are characterized by good timing, i.e., the time period between the beginning of the harm and its prevention. When it comes to execution of euthanasia, the time limits cannot be applied, because here the issue concerns endless unbearable suffering caused by incurable illness that leads to a certain death. Therefore, there is a moment of threat, but there is no timely cessation of suffering.

3. In the event of extreme necessity the prevented damage should be greater than the offence itself. When considering the ratability of the prevented damage from the position of euthanasia victim as subjective category, it should be agreed that the prevented damage (intolerable suffering) is greater than the offence itself (quick and easy death).

The difference between euthanasia and justified professional risk:

1. the main characteristic of the justified professional risk is the socially suitable goal achievement; in case of euthanasia, it is a particular person and his life;

2. the justified professional risk cannot be associated with the risk to life. In our case, it is referred specifically to the risk to life; even more so – the terminally ill person consciously wishes to die;

3. the person, who carried out the certain actions in the circumstances of the justified professional risk in order to achieve socially suitable goal shall be exempt from criminal liability. A person, who assists the victim to execute the act of euthanasia, shall be held criminally liable under the section 116 of the Criminal Law. Therefore, the actions made in case of euthanasia shall not be considered as those that are made in the circumstances of the justified professional risk.

10. In this work is examined the criminological aspect of euthanasia, are found out the reasons and circumstances of the killing at the person's request and are developed the measures of prophylaxis and prevention of euthanasia. The grounds for killing at the person's request are:

1. incurable illness;
2. a person's consent to be killed.

11. During the analysis of the foreign legal acts on designation of liability for euthanasia, it has been found out that in a number of the countries of the world the killing out of compassion is classified as a crime against life. However, unlike Latvian, the legislators of other countries have included in their criminal codes the certain norms regarding the killing out of compassion.

In author's opinion, it is a right legislative position. The criminal offence that was made out of compassion is a type of offence that is less harmful to society and in this case a lenient punishment should be applied.

12. At present, only the Netherlands, Belgium and Luxembourg are the countries that fully and unreservedly have recognized human right to death, they have reinforced by law the possibility to implement this right, as well have established the mechanism of this implementation and guarantee protection system against possible malevolence.

13. On January 25, 2012, the European Council adopted the Resolution (No.1859/2012) "On Protection of Human Dignity and Rights, taking into Account Patients' Prior Negative Attitude towards Euthanasia", by stating that "euthanasia, as an intentional killing of the terminally ill person with the aim to alleviate his death by action or omission to act should be prohibited". The aim of the Resolution (No.1859/2012) is to determine principles, which would help to govern the practice of the "*Living Will*" (life testament) in Europe. This Resolution is a "sign" that more and more Europeans are against euthanasia. Many malfeasances occurring in countries, which allow implementation of euthanasia, raise concerns and represent the violation of true human rights.

### **The Approval of Issues Viewed in the Thesis**

1. The problem of euthanasia is located at the contact point of the several social sciences. That is why the study of euthanasia needs a systems approach. Its meaning in the research and comprehension of euthanasia is not only in the fact that this phenomenon is viewed as a way of resolving conflicts, but primarily already as an independent systematic phenomenon that is a dependent component of the general system of human relations.

2. Nevertheless, euthanasia, unlike suicide, is regarded as an independent form of realization, which is related to the “civil rights to act with one’s life”. Euthanasia is a phenomenon that is characterized by a complex legal nature, because, on the one hand, it is based on handling one’s life, on the other hand, euthanasia is an act that is made by a one person killing the other person.

3. The crime commitment out of compassion significantly reduces the level of social risk of the offence. Consequently, the measure of punishment should be reduced not only in corresponding section in the Special Part of the Criminal Code, but also the limit of the standard punishment should be reduced as well.

4. The killing at the victim’s request is an offence that has been agreed with the victim’s will, and in this case should be applied a reduced criminal liability. Therefore, euthanasia should be distinguished into independent structure as a less dangerous murder committed under mitigating circumstances. Supposedly, this solution will help to avoid two extremes, that is, the decriminalization of euthanasia and identification of euthanasia as murder.

5. In case of the killing at the terminally ill patient’s request, it is supposed that the compassion is directed to fulfilment of private interests of the victim. However, the intentional killing of the other person, which manifests itself in form of violence tolerance propaganda relating to some members of society, and in other destructive consequences of the aforementioned criminal offence represents a clear threat to the public interests.

### **Practical Recommendations**

On the basis of the conducted research the author proposes to make a number of amendments in the Criminal law:

1. Taking into account the specific of the above-mentioned criminal offence the author proposes to express the paragraph 8, part one of the section 47 (Liability Mitigating

Circumstances) of the Criminal law in the following edition: “the criminal offence committed due to serious personal or family reasons **or out of compassion, as well as at the victim’s request**”.

2. To include in the Criminal law the section 116<sup>1</sup> in the following edition:

***Section 116<sup>1</sup>. Euthanasia***

***For an intentional killing committed at the incurable patient’s request committed by a medical practitioner out of compassion for the patient with the aim to end his physical and mental suffering caused by the final stage of an incurable disease – punishable by imprisonment for a term not exceeding three years, depriving of the right to engage in medical treatment for up to five years (or without deprivation of this right).***

***(2) For the same acts, committed by the other person – punishable by imprisonment for a term of two to five years.***

3. Currently in Latvia, unlike the majority of foreign legal acts, only leading to suicide has criminal liability under the section 124 of the Criminal law. The specific criminal offence does not include support, encouragement and incitement to suicide; therefore, it is not punishable. Currently the rate of suicide in Latvia is rising. However, it is possible to see the obvious harmfulness of the support or incitement to suicide.

Given the harmfulness of these murder like activity they should be criminalized supplementing the disposition of the section 124 of the Criminal law with the following: ***“for incitement to suicide by persuasion, bribery, deception or by any other way, as well as support of suicide by giving tips, guidance, information, resources or tools shall be punished by imprisonment for a term not exceeding three years”***.

4. However, the Law On the Rights of Patients does not address the relationships issue between medical personnel and a patient in case of passive euthanasia. In order to prevent this shortcoming it is necessary to include to the Law On the Rights of Patients a section that would prohibit the active and the passive euthanasia. Thus, the author proposes to include to the Law On the Rights of Patients a section **“Prohibition of Euthanasia”** as follows: ***“It is prohibited for medical personnel to perform euthanasia, i.e., at the patient’s request by any actions (omission to act) or by any means that may accelerate patient’s death, including switching off the artificial means that support patient’s life”. “A person who knowingly encourages patient to commit euthanasia and (or) performs it, is criminally liable under the Criminal law”***.

The section **“Prohibition of Euthanasia”** should determine the limits of medical treatment refusal that are stipulated in the section 6 of the Law On the Rights of Patients. This limit is passive euthanasia that is carried out in order to satisfy the request of the lawful

representative, which is cessation of life supporting measures under the section 7 of the Law On the Rights of Patients.

5. Given the fact that Latvian legal acts do not have the concept of “palliative aid”, the author proposes to include in the Law On the Rights of Patients another section titled “**Palliative Medical Aid**” as follows:

*1. Palliative medical aid is a combined medical intervention geared towards the cessation of pain and alleviation of other symptoms of serious diseases with the aim of improving life quality of the terminally ill patients.*

*2. Palliative medical aid can be provided by medical personnel that is specially trained to provide this kind of aid both in stationary and in the outpatient setting.*

6. In the near future, it would be necessary to adopt international legal act, which would explicitly identify what is euthanasia (both active and passive).

When recognizing every human’s life as an indisputable value, his freedom and dignity as unique characteristics of personality, it cannot be denied that euthanasia is an intentional killing of the terminally ill person and therefore it is nothing else than a particular form of murder. The law should protect human life up to the last minute.

The conducted study has confirmed that the issue of euthanasia is difficult to solve. This has been also confirmed by numerous opinions regarding its aspects and nuances. It requires a careful, well-considered approach and well-developed legal acts. Before the passage of normative acts, it is necessary to conduct a comprehensive research of public views and positions of different social classes and groups. The great practical importance has the legally and organizationally right decision, which would allow to provide the protection of the human rights and in interests in important stage of life of every individual.

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### **Practical Work Materials**

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