A Jurisprudential Analysis of the Euthanasia Legality: Based on a Comparative Study Between China and Other Countries

Liangxian Li *

Law School, Dalian Maritime University, Dalian, China

* Corresponding Author Email: lawschool20llx@dlmu.edu.cn

Abstract. With the development of society, people's understanding of the right to life goes deeper and deeper. In order to alleviate the pain, people seek euthanasia more and more strongly. Through the methods of case analysis and comparative analysis, this paper summarizes the legal norms of China, the Netherlands, Belgium and other countries, studies the theories of the value of life, the source of rights, freedom of will, moral ethics, social development and other aspects. This paper also analyzes the practical obstacles to the legalization of euthanasia in combination with Chinese Confucianism, professional ethics and legal ethics, provide modest suggestions for the implementations of euthanasia in China from four dimensions of subject, subjective, objective, procedure.

Keywords: Euthanasia, jurisprudence, legalization.

1. Introduction

Within the legal framework of a democracy, citizens assert their own human rights and freedoms. In most countries, however, the provision of life-related rights often runs counter to the legal context of rights liberalization. Understandably, the right to life is the basis of all other rights, which urges legislators to think more carefully about the attribution of the right to life. According to *Wash. v. Glucksberg* case, for example, several doctors petitioned the Supreme Court of Appeals to rule that the euthanasia ban was unconstitutional. However, assisted suicide is a very serious criminal act in the United States. Euthanasia is closely related to criminal law. Legalizing euthanasia will inevitably bring about legal conflicts with the provision of assisted suicide. In the end, the U.S. Supreme Court rejected the appeals to preserve the existing legal framework and social order. Of course, not all countries absolutely prohibit euthanasia. The Netherlands passed a law in support of euthanasia in 2002. However, there are many problems in the implementation of euthanasia. In the Netherlands, doctors in the case of a 74-year-old woman who was injected with a lethal dose of drugs three years ago have been accused of not doing enough to ascertain the patient's true wishes. Therefore, no matter in the countries that oppose euthanasia or legalize it, they fail to properly solve the problems it brings. The author will start from the problems faced by euthanasia and analyze it in jurisprudence.

2. The Legal Attitude To Euthanasia In The International Perspective

2.1. Definition of Euthanasia

The provisions of euthanasia varies in different countries and regions. Euthanasia comes from the Greek words "Eu" and "Thanatos," meaning "good death [1]." It is often defined as "an act that has a definite purpose of ending life and which, when performed, actually alleviates the patient's suffering [2]."

2.2. Legal Attitude Towards Euthanasia in China

Assisted euthanasia is not legally recognized in China. According to Article 232 of the Criminal Law of the People's Republic of China, whoever intentionally kills shall be sentenced to death, life imprisonment or fixed-term imprisonment of not less than 10 years; If the circumstances are relatively minor, he shall be sentenced to fixed-term imprisonment of not less than three years but not more

than 10 years. Among these situations, helping others to commit suicide is a relatively minor situation, the act of aiding in euthanasia is identified as assisted suicide, will be punished by criminal law. In the case of *Pu Liansheng and Wang Mingcheng*, they were convicted of intentional homicide after injecting a dying patient with medicine to speed his death.

Of course, there are scholars who oppose the verdict, arguing for a strict distinction between assisted suicide and euthanasia. However, in any case, Chinese law does not support active euthanasia, nor does it explicitly oppose passive euthanasia [3]. For example, patients with terminal cancer undergo painful chemotherapy. For those who have no hope of survival, doctors can use conservative treatments to ease the suffering, but aggressive measures to hasten death will be punished.

2.3. Legal Attitudes Towards Euthanasia in the Netherlands

The Netherlands became the first country in the world to recognize euthanasia when it passed its euthanasia law back to 2002. While, this does not mean that euthanasia is unconditional and absolute. Under article 293 of the Dutch Criminal Code, a person who takes the life of another person at his express and sincere request commits a serious crime. Obviously, the description of the article is consistent with the public's belief in the concept of euthanasia. Therefore, even in the Netherlands, people may commit crimes by practicing euthanasia. In order to further standardize the implementation of the euthanasia, Dutch law has strict limits on it. According to the relevant provisions of Dutch law, euthanasia is reasonable under certain conditions.

The basic substantive conditions of legal euthanasia include the request of the patient, the patient's suffering and the identity of the implementer. First, the patient's request must be "explicit and serious". In the absence of such a requirement, the act in question is not euthanasia but murder. The requirements are as follows: The requirements must be made by the person concerned explicitly and voluntarily; The idea must be put forward thoughtfully and based on an abiding desire to end one's life; Requests are recorded in writing or otherwise if the conditions are allowed. Second, the patient's suffering must be "unbearable" and "desperate", with no prospect of being cured. Third, only doctors can legally carry out euthanasia [4]. In principle, this doctor should be the one who has established a moderate relationship with the patient.

2.4. Legal Attitudes in Other Countries

In the world, most countries or regions do not support euthanasia. The laws in Singapore, for example, are clear that they protect living people and it is illegal to consent to serious bodily harm or to be killed [5]. Countries or regions that support euthanasia mainly include the Netherlands, Japan, Switzerland, Australia, Germany, Belgium and Canada. For example, the euthanasia Act of Belgium stipulates that euthanasia is only applicable to adults over 18 years old, and minors under 18 years old cannot enjoy the right to euthanasia [6]. However, in 2014, euthanasia in Belgium was extended to severely ill minors. The regulation is significant because it breaks the traditional age limit for euthanasia [7].

3. Brief Analysis To Theories Between China And Other Countries

Throughout China and abroad, opinions on the legalization of euthanasia vary. Different scholars have different concerns on this issue, which can be roughly divided into the value of life, the source of rights, freedom of will, moral ethics, and social development.

3.1. A Theoretical Review of Supporting the Legalization of Euthanasia

The first theory in favor of legalizing euthanasia is the theory of entitlement. This theory holds that the right to life is the most important component of individual rights. The exercise of the right to life should not be limited to survival. People have the right to end their lives according to their own will. More precisely, the right to life includes being alive and going away. At the same time, the right to life, like other rights, should be fully handled by citizens without undue restrictions.

The second is the theory of life value. The theory emphasizes that life itself includes not only the length of time, but also the quality of life. The value of life can be reflected through people's happiness. As people get older, they are more likely to suffer from pain. If they are in a state of constant pain and cannot be recovered, the happiness of living will disappear, and life itself will lose its value [8].

The third theory is about economy. This doctrine emphasizes economy and efficiency. For all incurable diseases, treatment will be meaningless. It is better to let him die in a proper and comfortable way than to waste precious human and medical resources. In the author's opinion, it is controversial that applying economic rationality to solve problems in the field of human ethics.

The fourth theory is about sympathy. The theory holds that when patients are suffering from disease, people should show humanitarian care to help them get rid of their pain. On the contrary, it is cruel for people to repeatedly accept pointless treatment for their own sake [9].

The fifth theory is about freedom. As Tagore once said, "Let life be beautiful like summer flowers and death like autumn leaves." Whether the life or the death, it could be the right answer. To deal with the problem of life, people should respect the real will of the parties. The law should give equal weight to the freedom to approve or disapprove [10].

3.2. A Theoretical Review of Opposing the Legalization of Euthanasia

The first theory against the legalization of euthanasia is the moral decline theory. This theory mainly refers to the phenomenon that people's morals and thoughts regress over time. If the legality of voluntary euthanasia is recognized in today's society, there is a risk that involuntary euthanasia will be accepted in disguise in the future [11]. The bottom line of euthanasia is to follow the will of the parties themselves. Euthanasia against the will of the parties is tantamount to murder, which is unacceptable in any country. Therefore, the theory holds that in order to prevent the adverse consequences of moral regression, the legalization of euthanasia should be prohibited from the source. Of course, as long as the law can always pay attention and care to the problem, the moral decline will be controlled.

The second theory is about life sanctity. The theory holds that life is Paramount and should not be taken away easily by anyone. The value of life is above all else. People should not end their lives because of suffering or other things. Euthanasia not only disrespects life, but also goes against the laws of nature.

The third theory is about hindering medical development. Since ancient times, human beings have been fighting against diseases, and medical technology is constantly developing. Advances in medical science and technology are driven by the need to save lives. Once people choose to actively give up life, there will be a conscious inertia of medical development, because the need will no longer exist.

4. Obstacles To The Legalization Of Euthanasia In China

4.1. Meme of Confucianism and Death Awe View

Just like those countries influenced by Islam and Christianity, China also has its unique cultural genes, among which Confucianism is the most profound influence on China. Confucian representative Mencius once said, "Life is what I want, death is what I hate." It is not difficult to see that Confucianism values life and detests death. To live is human's instinctive desire, while to die is what people try to avoid. Confucius also said, "If you don't know life, how can you know death?" It's a reminder to live in the moment and not speculate about death. As a result, the Chinese have a natural reverence for death. In addition, there is a strong emphasis on family values in China. Just as "filial piety is the first of all good deeds", people are usually admonished if they disobey their parents. Out of "filial piety", people will not allow doctors to end the lives of their loved ones, but will try to save them [12].

4.2. Reflection on Human Nature -- the Risk of Criminal Behavior Breeding

As the moral decline theory worries about, in the future, the implementation of euthanasia is likely to be from voluntary to involuntary, which will bring great threat to people's life and health. Even leaving aside the moral decline of mankind, it is possible for people to use euthanasia as an excuse to murder those with whom they have great contradictions. In the case of improper supervision, euthanasia is likely to become a tool of crime, which obviously goes against the original intention of euthanasia. Even in countries that have legalized euthanasia, such as the Netherlands, there are still strict restrictions on its practice. Moreover, the criminal code does not remove the provision on assisted suicide. It can be seen that the implementation of euthanasia is not only a test of legislators, but also a test of humanity and ethics.

4.3. Jurisprudence and Medical Ethics -- the Supremacy of Life

The legalization of euthanasia is in conflict with the legal principle and the professional ethics of doctors. On the one hand, the duty of doctors is to save the dead and heal the wounded, people have only one life, what they can do is to try their best to save. If doctors perform euthanasia for patients, it will break citizens' trust in the profession. Because most people will not agree to be euthanized, even if a small number will do so voluntarily. According to statistics, euthanasia in the Netherlands has a major problem in the implementation process, 41% of euthanasia is carried out without the patient's knowledge. About 30,000 elderly Dutch people fled the country within four months to avoid being euthanized [13]. In addition, the current level of medical care is still too limited to accurately judge the complexity of a diseases. Doctors will inevitably make wrong diagnoses. The emergence of euthanasia may lead to the innocent death of some patients who can be cured. On the other hand, the supremacy of the right to life in Chinese law can also be used to explain the Chinese government's measures to protect people's lives during the pandemic, even if it is mistaken for contempt for personal freedom. Euthanasia is not easily recognized by Chinese law because it would break the existing legal framework.

5. Suggestions On The Legal Norms Of Euthanasia In China

5.1. The Subject Criteria for the Legalization of Euthanasia

In the concrete implementation process of euthanasia, it involves two subjects, the implementer and the person be euthanized. There is no doubt that only the patient is qualified, and the patient can only express his intention to perform euthanasia for himself according to his own will [14].

For implementer, its scope shall be limited to the workers in the field of medical. First, doctors should have the necessary medical knowledge. For the vast majority of doctors, they will not be required to perform euthanasia, nor will they have the knowledge and skills to do so. The purpose of euthanasia is to relieve the pain of patients. Doctors should undergo intensive training and tests before euthanasia, evaluate their professional quality and psychological quality at the same time.

Second, doctors should have a close relationship with patients. Euthanasia can only be performed by the attending physician or a physician who knows the patient well. On the one hand, the patient's own physical state should be carefully evaluated, and only doctors who fully understand the patient's condition are more likely to avoid misdiagnosis. On the other hand, most patients still want someone they trust to do the job.

5.2. Subjective Criteria for the Legalization of Euthanasia

As mentioned above, euthanasia requires the cooperation of two subjects. Most of the previous studies only discussed the willingness of patients themselves, but rarely considered the subjective mentality of doctors themselves. However, the subjective attitude of doctors is likely to influence the choice of patients themselves. In this part, the author will discuss from the implementer and the subjective standard of the implementer.

5.2.1 The Criterion of the Implementer -- Good Faith

Whether because of professional ethics or the spirit of the law, doctors must act in good faith when carrying out euthanasia. Objectively speaking, the approval of euthanasia is completely decided by the patient himself, and the attitude of the doctor is not very important. However, this does not rule out the risk of doctors giving bad guidance and incitement to patients. Doctors may actively support patients to adopt euthanasia due to their limited capacity or medical resources. Scholars have been trying to distinguish assisted suicide from euthanasia, because euthanasia represents goodwill, while assisted suicide represents malevolence. If the doctor is full of malevolence, then what he does should not be called euthanasia, but murder. Therefore, in the system design, people should try their best to avoid moral decline and prevent voluntary euthanasia from becoming involuntary euthanasia.

5.2.2 The Criterion of the Patient -- True Declaration of Will

The true declaration of the patient's will should be understood as the explicit and serious expression of the patient's will in a completely voluntary situation. According to this interpretation, patients should not be influenced by any outside factors in making decisions, including the inducements from their doctors described above. At the same time, "very clear expression" is an essential condition, which can easily be mistaken for an intention to end one's life. In the case of a district court in the Netherlands, the defendant claimed that the act performed by the doctor was not murder, but this view was rejected by the court. The reason is that the patient only expressed his will to end his life, but did not express it verbally. Therefore, the doctor could not interpret it as a request for euthanasia. In addition, the patient must make a serious choice, and this requirement is reflected in the patient's decision must be fully understood, fully considered, and expressed to others to help them end their lives.

Some scholars think that the subjective conditions include the presumption of the declaration of will. But true declaration of will should be distinguished from presumption of the declaration of will. This is different from the way in which the parties' declaration of will are understood in the civil law of various countries. The declaration of will to end life should not be presumptive. When patients lose the ability to express or consciousness, they no longer have the precondition to express their will. Should the law allow others to infer a patient's wishes? The answer is clearly no. No one can make the decision for the patient, even if some people think the patient needs help to end the suffering. However, the author thinks that presumptive declaration of will cannot be used as a basis for euthanasia, because it is likely to go against the patient's own wishes, and the patient certainly does not want his or her life to be decided by others. The situation of this particular group of patients should be excluded from the framework of legalized euthanasia in order to preserve the individual's right to decide on life and death.

5.3. The Objective Criteria for the Legalization of Euthanasia

The objective criteria of euthanasia should consider the external factors of society and the patient's own state. First, euthanasia requires the patient to obtain a disease that is incurable at the current medical level. Second, the pain required of the patient is often unbearable. Only when these two conditions are met at the same time can the objective criteria of euthanasia be met. Furthermore, the pain caused by some acute diseases is often unbearable, but with today's medical level, the disease can be treated, meaning that the patient can be restored to a state of health, which does not allow implementing euthanasia. If the patient's disease cannot be cured, but it hardly affects the patient's normal life, it does not meet the conditions of euthanasia, either.

5.4. The Procedure Criteria for the Legalization of Euthanasia

According to the previous legal experience, when referring to the right to life related disputes, the law cannot give a perfect answer. Legalizing euthanasia is complicated, especially when ensuring the procedure to be fair and rigorous in order to prevent the wrongful killing of patients. It also reveals the importance of procedural standards.

First, on the process of application, the patient must express themselves in the form of verbal or written request, the doctor can't on the grounds that the patients have suggest they accept euthanasia without the consent of the patient to euthanasia. In order to ensure the authenticity and rigor of the patient's intention, the patient should be given an appropriate period of time to decide and the right to retract and withdraw the application. If the patient is conscious, but it is not easy to express, the close relatives can apply on behalf of the patient, and the notarial department should be responsible for the supervision of this process.

Second, in the process of review, people should adhere to the principle of special cases are dealt with specially, and set up expert committee on euthanasia. The committee shall include but not be limited to legal and medical professions. Among them, according to different diseases of different patients, experts from different medical departments should be responsible for reviewing patients' illness and health status. If misdiagnosis is suspected, the examination procedure shall be terminated immediately and the experts shall re-consult and re-evaluate. If there is no error in the examination, the application for euthanasia shall be approved and a time limit for withdrawal shall be set. After the time limit for withdrawal, the procedure for execution shall be entered.

Third, on the process of implementing, implementers can only be the attending physician or the doctor who can fully understand the situation of patients. Doctors who perform on-site should sign a pledge to ensure their own subjective good faith. If there is a breach of promise, the doctors who perform the euthanasia shall bear criminal responsibility, in accordance with the intentional homicide. Before euthanasia is carried out, relatives have the right to meet with patients. Patients also have the right to make last words. Relevant departments should earnestly do a good job of hospice care and after-dying care for patients and their relatives.

Fourth, on the process of monitor, from the beginning of application process to the end of implementing process, it is the responsible for the judicial and public security departments to dispatch supervision. If it is found that related departments do not comply with the procedure, it shall timely to suspend the program.

6. Summary

This paper starts from the case of euthanasia in the Netherlands, studies the controversial theoretical focus on euthanasia by comparing the different provisions on euthanasia in different legal regions. Viewing the theoretical confrontation between the supporter and opposers, the author clarifies the core components of euthanasia and improves the specific procedures in the context of the confrontation. Moreover, the author provides some ideas and suggestions for the legalization of euthanasia in China.

In both Chinese and other countries, euthanasia has been a controversial issue. On the one hand, people's spiritual freedom should be respected. Contrary to traditional cognition, death is also a part of the right to life, and people should be given the right to decide freely whether to live or die. On the other hand, the spirit of the supremacy of life is still guiding people forward, every life should be treated with respect and caution. In the author's opinion, euthanasia never means that people abandon the values of life which they abide by for a long time, but is exploring a new meaning and connotation. It is because people see life as something precious and beautiful that they try to freeze the memories in their own way when they experience unbearable pain. The legalization of euthanasia has a long way to go, but it is the inevitable trend and realistic demand of human jurisprudence and even philosophy development.

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