

ASSISTED SUICIDE – LEGAL ASPECTS AND ETHICAL DILEMMA

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Abstract: The concept of “assisted suicide” dates back a long time ago in a particular form - in ancient Greece and Rome there was a fair amount of support for voluntary (and involuntary) “mercy killings.” But, the assisted suicide has taken its place in the legal codes of some of the developed countries in the recent years and has become a newsworthy topic valuable for discussion. Assisted suicide refers to terminally ill patients (with a disease that cannot be cured and will cause death) with pure consciousness and common sense, that want to die before the huge pains begin to occur and according to the law and after previous preparation and support, the medical council of doctors prescribe lethal doses of drugs, which the patients decide by themselves when and whether to use it. It’s a very controversial topic which is not sufficiently elaborated yet and can be analyzed from many aspects. The research focus in the paper is on the legal framework and moral-ethical dilemma in the countries that allow the assisted suicide, by using theoretical, empirical, comparative and cross-discipline researching methods. There are different views and opinions on this issue. A number of theorists accept the concept of assisted suicide as a relief for patients suffering from diseases that inflict enormous pain and which can not be cured, while the doctors do not take an active part in taking away the lives of the patients, believing that their moral responsibility would be reduced to a lower level; and there is a group of theorists, philosophers, doctors, lawyers and others who reject this concept with the explanation that it does not differ in anything from euthanasia and that thus does not reduce the level of responsibility of doctors and when a person's life can end depends only on God's will. This paper will discuss the views of both sides, both the supporters and those who are against assisted suicide. A distinction will be made with euthanasia - when the doctor legally and directly ends the life of the patient in order to relieve pain and suffering. In order to categorize assisted suicide as one of the manners of voluntarily depriving the lives of severely ill patients, several appropriate examples will be indicated in which the right to assisted suicide was used by the patients in countries where this institute is permitted and will briefly consider the legal framework in countries where there is adequate legal regulation on this issue. Medical, religious, psychological, philosophical aspects of the assisted suicide will be also covered briefly in this paper. Of course, the ultimate goal of this research is to determine the benefits, but also the weaknesses of the concept of assisted suicide in the direction of protecting and exercising the rights of patients written in the main conclusions of this paper that show the rightness of implementing the assisted suicide in the legislation of the countries, the legal issues and the potential dangers of abuse.

Keywords: medical law, justice, ethics, human rights.

1. INTRODUCTION

Assisted suicide as one of the categories for taking away the lives of sick patients with the help of doctors is a new concept in the criminal law and in the medical law also, a concept that is gradually developing over the recent years, primarily in the Western countries. Most of the countries that have adopted assisted suicide regulated the overstepping of the authorizations by the doctors and other people included in assisted suicide in their criminal codes, but also this issue is regulated in a separate law, part of the field of medical law, in order to determine the manner and the cases in which this legal tool would be available to patients (for example, for which types of diseases and which drugs could be used to kill the patients).

A patient may request and lawfully be provided with assistance to end his or her own life if the patient suffers from an intractable, incurable, irreversible condition that cannot be reversed or remedied and the prognosis is that his or her life expectancy, even if receiving medical treatment, will not expected to exceed six months; the diagnosis was confirmed by at least one more expert on the condition from which the patient suffers; the patient is aged 18 years or older; the patient expressly wishes to end his or her life and has made a signed declaration to that effect etc.⁹¹

In order to determine more precisely the meaning of assisted suicide a distinction between assisted suicide and euthanasia is also necessary. The term euthanasia was used for the first time by Francis Bacon in his work “Euthanasia medica”. Euthanasia means, from the Greek eu, meaning good, and thanatos, meaning death, some say good death and others bad death. There were many definitions of the term euthanasia over the years. For example, Peter Singer, Australian moral philosopher, defined euthanasia as ‘the killing of those who are incurably ill

⁹¹ Cholbi, M., Varelius, J., *Euthanasia and Assisted Suicide Global Views on Choosing to end Life*, Praeger, An Imprint of ABC-CLIO, LLC. (2017).

and in great pain or distress, for the sake of those killed, and in order to spare them further suffering or distress'. The British House of Lords Select Committee on Medical Ethics defines euthanasia as "a deliberate intervention undertaken with the express intention of ending a life, to relieve intractable suffering". In the Netherlands and Belgium⁹², euthanasia is understood as "termination of life by a doctor at the request of a patient". Despite the different scope, in common for the aforementioned definitions of the term euthanasia is that it means deprivation of life of people who have unbearable pain. Euthanasia may be divided on 5 different types: voluntary active euthanasia, involuntary active euthanasia, non-voluntary active euthanasia, terminating life-sustaining treatments (passive euthanasia) and indirect euthanasia. Each type of euthanasia practically means assistance in taking the life of a person, or assisted death.

Assisted death is a model that includes both what has been called physician-assisted "suicide" and voluntary active euthanasia. It suggests a difference in the degree of involvement and behavior. Physician-assisted suicide entails making lethal means available to the patient to be used at a time of the patient's own choosing. By contrast, voluntary active euthanasia entails the physician taking an active role in carrying out the patient's request, and usually involves intravenous delivery of a lethal substance. Physician-assisted suicide is seen to be far easier emotionally for the physician than euthanasia as he or she does not have to directly cause a death; he or she merely supplies the means for the patient's personal use. Supporters of physician-assisted suicide say that it carries the added benefit of allowing the patient to determine the time of death and provides the opportunity for the patient to change his or her mind up to the last moment. This possibility equally exists in cases of voluntary active euthanasia, and may even enable a physician to discuss topics of motives and options with the patient one last time. The use of self-administered oral lethal drugs, while it provides a certain freedom of timing, does carry the risk of error, however, and needs to be completed while the patient is still well enough to swallow, hold down substances, and metabolically absorb these drugs. Fear of this risk is widespread among patients and, because of this, some may act earlier than necessary to avoid it. Euthanasia contains a much smaller chance for mistakes and may be necessary in cases where a patient is too sick for self-administration, or no longer capable of swallowing, holding down food, or absorbing oral medication. If a patient knows that a physician can always intervene, the act of assisted death may be permanently postponed.⁹³ It's important to emphasize that in some countries non-physician-assisted suicide is also legal (Switzerland).

Therefore, the main difference between euthanasia and assisted suicide is that when we talk about euthanasia it means that the authorized person actively participates in taking the life of the patients and when there is assisted suicide the patients decide to end their life by their own with assistance of the authorized person.

2. LEGAL ARRANGEMENTS OF ASSISTED SUICIDE

The need for legalization and proper regulation of assisted suicide arises from the large number of people who suffer from severe illnesses that cause them great pain and they are not allowed to seek assistance from doctors in order to end their life. The following examples confirm the above-mentioned:

In Britain, Tony Nicklinson, a 58-year old man was unable to speak and paralyzed from the neck down after a stroke in 2005. He consistently expressed the wish to die because he felt his life is 'dull, miserable, demeaning, undignified and intolerable'. In 2012 the High Court gave him permission to proceed with a full hearing on his case. Nicklinson contended that a 'common law defense of necessity' could be used to protect his loved ones or doctors from prosecution if they helped him end his life. However, the court refused Nicklinson's request to die with assistance, saying that it was a matter for Parliament. After the judgment, he refused food and died of pneumonia. Nicklinson wanted the existing law on assisted dying to change so that, on a case-by-case basis, a court can decide that a doctor will be immune from prosecution. At present in Britain, if a doctor assists a suicide, he or she is liable to 14 years' jail.⁹⁴

Professor Sean Davison, a 50-year-old microbiologist based in South Africa, was charged in New Zealand with attempting to murder his terminally ill mother, in 2006. His mother had summoned Davison back to New Zealand when she learned she had very little time left. She was diagnosed with cancer in 2004 and he gave her a lethal dose of morphine in 2006 when she could no longer move unaided. Davison pleaded guilty to a charge of procuring and inciting attempted suicide and was given a suspended sentence.⁹⁵

⁹² Jones, D., Gastmans, C., MacKellar, C, *Euthanasia and Assisted Suicide: Lessons from Belgium*, Cambridge University Press, (2017).

⁹³ Yuill, K. *Assisted Suicide: The Liberal, Humanist Case against Legalization*, Palgrave Macmillan UK, (2013).

⁹⁴ [Nicklinson v Ministry of Justice \[2014\] UKSC 38](#)

⁹⁵ Yuill, K. *Assisted Suicide: The Liberal, Humanist Case against Legalization*, Palgrave Macmillan UK, (2013)

In Canada in June 2012, a terminally ill woman Gloria Taylor, won the right to die after a judge in British Columbia struck down parts of Canada's law banning the practice. The judge ruled that Canada's ban on doctor-assisted suicide infringes on the rights of the disabled. The judge gave a year to give the Canadian Parliament time to amend the law, while granting an exemption for Taylor. In this case we can see the implications of the common law system to the power of the judges in such systems who may initiate amendments to the legal acts.⁹⁶

Let's take a look at some of the countries that have legalized assisted suicide.

In **Netherlands**, assisted suicide is legal under the same conditions as euthanasia. Assisted suicide became allowed under the Act of 2001 which states the specific procedures and requirements needed in order to provide such assistance. Assisted suicide in the Netherlands follows a medical model which means that only doctors of terminally ill patients are allowed to grant a request for an assisted suicide. The Netherlands only allows people over the age of 12 to pursue an assisted suicide when deemed necessary.⁹⁷

In Luxembourg in March 2003, the possibility to legalize assisted suicide was lost by a single vote (at the time, assisted suicide was not illegal, as suicide was permitted under the criminal code, but a person assisting someone to take their own life could face prosecution). After again failing to get royal assent for legalizing euthanasia and assisted suicide, in December 2008 Luxembourg's parliament amended the country's constitution to take this power away from the monarch, the Grand Duke of Luxembourg. Assisted suicide was legalized in the country in 2009.⁹⁸

In Germany and Switzerland, active assisted suicide – i.e. a doctor prescribing and handing over a lethal drug – is illegal. But German and Swiss law does allow assisted suicide within certain circumstances.

In **Germany** to kill somebody in accordance with his/her demands is illegal under the German Criminal Code.⁹⁹

Assisting with suicide by, for example, providing poison or a weapon, is generally legal. Since suicide itself is legal, assistance or encouragement is not punishable by the usual legal mechanisms dealing with complicity and incitement (German criminal law follows the idea of "accessories of complicity" which states that "the motives of a person who incites another person to commit suicide, or who assists in its commission, are irrelevant"). There can however be legal repercussions under certain conditions. If the suicidal person is not acting out of his own free will, then assistance is punishable by any of a number of homicide offences that the criminal code provides for, as having "acted through another person". Action out of free will is not ruled out by the decision to end one's life in itself; it can be assumed as long as a suicidal person "decides on his own fate up to the end and is in control of the situation,"¹⁰⁰ which means that assisted suicide is legal as long as the lethal drug is taken without any help, such as someone guiding or supporting the patient's hand. (free vs. manipulated will).

In **Switzerland** it is illegal to assist a patient in dying in some circumstances, but there are others where there is no offence committed. Assisted suicide is allowed as long as there are no "self-seeking motives" involved. The relevant provision of the Swiss Criminal Code refers to "a person who, for selfish reasons, incites someone to commit suicide or who assists that person in doing so will, if the suicide was carried out or attempted, be sentenced to a term of imprisonment of up to 5 years or a term of imprisonment."¹⁰¹ A person brought to court on a charge could presumably avoid conviction by proving that they were motivated by the good intentions of bringing about a requested death for the purposes of relieving suffering rather than for "selfish reasons. In order to avoid conviction, the person has to prove that the deceased knew what he or she was doing, had capacity to make the decision, and had made an "earnest" request, meaning he/she asked for death several times.

Switzerland has tolerated the creation of organizations such as Dignitas and Exit, which provide assisted dying services for a fee.

In Switzerland non-physician-assisted suicide is legal, the assistance mostly being provided by volunteers, whereas in the Netherlands as was previously accentuated, a physician must be present. In Switzerland, the doctors are primarily there to assess the patient's decision capacity and prescribe the lethal drugs. Additionally, unlike cases in the United States, a person is not required to have a terminal illness but only the capacity to make decisions. Interestingly, 25% of people in Switzerland who take advantage of assisted suicide do not have a terminal illness but are simply old or tired of life.¹⁰²

In **United States** there are a few states that institutionalized assisted suicide (Oregon, Montana, Washington, Vermont, Hawaii, California, Colorado etc). It is an option given to individuals by state law or via court decision.

⁹⁶ Carter v Canada (AG), 2015 SCC 5

⁹⁷ Termination of Life on Request and Assisted Suicide (Review Procedures) Act of Netherlands, (2001).

⁹⁸ [A46: Act of 16 March 2009 on euthanasia and assisted suicide](#) in Luxembourg.

⁹⁹ Section 216, Killing at the request of the victim; mercy killing, German Criminal Code (1998),

¹⁰⁰ Wolfslast, G. *Physician-Assisted Suicide and the German Criminal Law*, Springer, (2008).

¹⁰¹ Article 115, 'Inciting and assisting someone to commit suicide', Swiss Criminal Code 311.0 of 21 December 1937

¹⁰² Andorno, R., *Non-physician-Assisted Suicide in Switzerland*, Cambridge Quarterly of Healthcare Ethics (2013)

Individuals must have a terminal illness as well as a prognosis of six months or less to live. Physicians cannot be prosecuted for prescribing medications to hasten death. The specific method in each state varies, but mainly involves a prescription from a licensed physician approved by the state in which the patient is a resident. The content of the regulation of some of the states in USA that legalized assisted suicide will be displayed briefly.

Oregon requires a physician to prescribe medication who must be a doctor of medicine or licensed to practice medicine. For the patient to be eligible, the patient must be diagnosed by an attending physician as well as by a consulting physician, with a terminal illness that will cause the death of the individual within 6 months. In order to participate, a patient must be: 18 years of age or older, a resident of Oregon, capable of making health care decisions for him/herself, and diagnosed with a terminal illness that will lead to death within six months. It is required the patient orally request the medication at least twice and contribute at least one written request which 'shall be signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request'. No less than fifteen days shall elapse between the patient's initial oral request and the writing of a prescription. No less than 48 hours shall elapse between the patient's written request and the writing of a prescription. The physician must notify the patient of alternatives; such as palliative care, hospice and pain management. Assuming all guidelines are met and the patient is deemed competent and completely sure they wish to end their life, the physician will prescribe the medication.¹⁰³ The Law was passed in 1997. Since its enactment, there has been a steady increase in both prescription recipients and the number of deaths. According to the 2016 Data Summary, as of January 23, 2017, prescriptions have been written for 1,749 people, and 1,127 patients have died from ingesting the drugs that were legally prescribed to them under the law.¹⁰⁴

Washington's rules and restrictions are similar, as Oregon's. Not only does the patient have to meet the above criteria, they also have to be examined by two doctors licensed in their state of residence. Both doctors must come to the same conclusion about the patient's prognosis. If one doctor does not see the patient fit for the prescription, then the patient must undergo psychological inspection to tell whether or not the patient is in fact capable and mentally fit to make the decision of assisted death or not. Health care providers are not required to provide prescriptions or medications to qualified patients.

In November 2016, the citizens of Colorado approved the Colorado End of Life Options Act and legalized medical aid-in-dying. The Act contains similar provisions like the above mentioned laws of Oregon and Washington.¹⁰⁵

In **Canada**, the House of Commons passed a Bill C-14 in June 2016 that declared assisted suicide as legal across the country. Since the passing of Bill C-14, over 2,149 medically assisted deaths were documented in Canada.¹⁰⁶

The assisted suicide data cannot be taken for granted because of the incomplete records, even for important issues like complications such as regurgitation, seizures, or waking up; and prolonged deaths.

Also, it's important to note that the enforcement of the law that regulates assisted suicide is crucial in order to avoid cases like in California, where a woman died, one of the first to take advantage of the new law. She had ALS and since she was too weak to drink the lethal drugs herself, she was propped up by friends and someone, following instructions from a doctor, held the cup for her – which was illegal. The standard lethal drug was not available, so her friends mixed up a cocktail of drugs, hoping that they would work properly. She took four hours to die, which is not the instant death that most people expect.¹⁰⁷

3. PROS AND CONS OF ASSISTED SUICIDE

In the analysis of the strengths and weaknesses of the assisted suicide two opposing sides exist, one that is against legalization of assisted suicide and other that supports assisted suicide. Most of these views are based on the perceptions of the moral values of both groups. We will take a look at some of them.

The main argument asserted in favor of assisted suicide is that every person should have decision-making authority over his or her life and should have the autonomy to decide the timing and manner of his/her death. Patient autonomy is argued to have a 'pivotal role' in end-of-life decision making: "...permitting people the opportunity to decide the timing and circumstances of their own demise if that is what they wish"¹⁰⁸

¹⁰³ See Turanjanin, V. Banović, B., Ćorović, E., *Euthanasia and Physician-Assisted Suicide in South-East Europe*, Lambert Academic Publishing, (2017).

¹⁰⁴ Oregon Public Health Division DWDA Report, Oregon Health Authority, (2013).

¹⁰⁵ Proposition 106 Article 48 of Title 25 'Access to Medical Aid In Dying', Colorado End-of-Life Options Act, C.R.S (2016).

¹⁰⁶ Bill C-14 Act to amend the Criminal Code of Canada, (2016).

¹⁰⁷ Cook, M. 'Behind USA Assisted Suicide Stats' BioEdge (2016).

¹⁰⁸ Cholbi, M. and Varelius, J., 'New Directions in the Ethics of Assisted Suicide and Euthanasia' Springer International Publishing Switzerland, (2015).

Moreover, the sacredness of life is dramatically diminished when an individual's condition is terminal and death is imminent.

The second main argument for the legalization of assisted suicide is that people should be permitted to die with dignity. A person's last months of life should not be consumed suffering from severe physical pain. Family members, relatives, and friends should not have to witness the deterioration and suffering of a loved one.¹⁰⁹

The arguments that accept the concept of assisted suicide in some way are related to the utilitarian theory for maximization of happiness, which means that people should act in accordance to what brings them greatest pleasure and satisfaction.

However, it has been alleged, for instance, that although the availability of assisted suicide is promoted as necessary for respecting dignity, in fact it can be motivated by a desire to dispatch those considered undignified. In other words, though promoted as a human-rights-and-dignity-respecting approach to other people, assisted suicide can reflect a narcissistic response.¹¹⁰

One of the main arguments opposing assisted suicide is the sanctity of human life. God is the creator of life, and thus, only God has the right to take it. Life should not be terminated or shortened out of considerations for a patient's convenience or usefulness, or even out of sympathy for a patient's suffering.¹¹¹

The opponents of assisted suicide say that some individuals may feel pressured to terminate life because of a misperception of their diagnosis or prognosis; because of depression; or because of a concern for the burden they place on others and the depletion of family assets. Likewise, some individuals may be pressured to end life by selfish family members or caregivers.

Also, it is considered by those that are against assisted suicide that it transforms the relationship between doctor and patient, in a way that it would be harmful to the doctor-patient relationship. Allowing doctors to kill patients invalidates the Hippocratic Oath, the defining document of medical practice for over two thousand years.

We mustn't forget the affect assisted suicide has on persons participating in the act and the society. The persons involved in the execution of that act may experience adverse mental health consequences. Eventually, the society will accept assisted suicide as a natural act and as a normal phenomenon, as a rule rather than as an exception.

If assisted suicide is legalized there is a possibility of abuse of this right. A potential danger exists for the elderly people to be pushed into an assisted death by hospitals, anxious to reduce the financial outlay for the final months of life, or relatives either waiting for inheritances or simply tired of a drawn-out dying process. Disabled groups point out that to allow assisted suicide for those with physical conditions cheapens their lives.

In the end, from philosophical standpoint there are also opposite opinions on assisted suicide. Aristotle for example, states that people seeking death are weak and depraved: 'To seek death in order to escape from poverty or the pangs of love or from pain or sorrow is not the act of courageous man, but rather of a coward.

Although Plato states that those who commit suicide should be buried in unmarked, solitary graves in deserted areas, he is tolerant of people who suffer from insurmountable pain. He recognizes the right of the desperate individual to commit suicide, when faced with unavoidable misfortune due to having led a less than good life.

4. CONCLUSION

There are many supporters of assisted suicide but also many who are against. The arguments of both parties on accepting or rejecting assisted suicide are relevant. It's a matter that should be regulated in the penal code, and even in a separate law or rulebook within the criminal law and medical law. Also, in the medical law when regulating this matter, much care should be taken on the scope and the way of performing the assisted suicide (which individuals can be permitted to get assistance in killing themselves, in which cases, under what conditions, who can prescribe the medications for taking away the life of the patients, what kind of medications may be used, etc.). Precise and strict regulation of assisted suicide will contribute to avoiding the misuse of this institute and to be used exclusively when patients suffer from incurable diseases that cause unbearable pain.

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¹¹⁰ Somerville, M., *Death Talk -The Case against Euthanasia and Physician-Assisted Suicide Second Edition*, McGill-Queen's University Press, (2014).

¹¹¹ See Ziebertz, H. G., Zaccaria, F., *Euthanasia, Abortion, Death Penalty and Religion - The Right to Life and its Limitations: International Empirical Research*, Springer International Publishing, (2019).

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