



EXIT A.D.M.D. SUISSE ROMANDE

ASSOCIATION POUR LE DROIT DE MOURIR DANS LA DIGNITÉ

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Reminder

The "A Propos" group (analysis and political proposals) has been looking at the problem of assisted death since 1990. Assisted death is a global term, which encompasses assisted suicide as well as active direct euthanasia. Victor Ruffy, the national counsellor, considered this issue and in September 1994 he filed a proposal in the following terms:

Faced with the different forms of degrading incurable illnesses, despite the different means available for prolonging life, more and more human beings in our society wish to have the option to take an active role in their final days, in order to die with dignity.

The Federal Council was asked to submit a project for the addition of article 115 b to the Swiss Penal code.

The 28th of November, 1994, the Federal Council proposed transforming the Ruffy motion into the less restraining form of a postulate; this was accepted by the National Council on the 24th of March, 1996 along with a decision to create a work group called "Assisted death" by means of a federal Justice and Police department.

This group, composed of 14 experts, worked from May 1997 to February 1999 and presented its report to the Federal Council and the press on the 29th of April 1999.

Report summary

The report is a very thick 54-page document, from which three essential elements relating to palliative care, assisted suicide and active, direct euthanasia can be drawn.

1. Palliative Care

All the experts underline the role and importance of palliative care as well as the necessity for its subsequent development. Nobody doubts its utility. Good palliative care definitely leads to fewer requests for assisted death, but nonetheless, exceptional situations still exist, where patients deliberately choose independently to ask for assisted suicide or active direct euthanasia. More rarely, patients' physical or psychological suffering may lead to a desire to die.

From a non-exhaustive list of sufferings we would mention:

- Pain that, to our knowledge, can be fought in more than 90% of cases.
- Extreme tiredness in cachectic patients where urinary or faecal incontinence has led to scabs on the back or side.
- Progressive respiratory distress which can accompany suffocation episodes.
- Nausea and incoercible vomiting which is spontaneous or caused by chemotherapy or by other medication.
- The anguish and the awareness of progressive debilitating deterioration, wondering just how far it will progress before death intervenes.
- The feeling of losing one's autonomy and dignity.

During this study the majority of the group of federal experts became convinced that it was an illusion to think that palliative care would eliminate all demands for assisted death.

The "A Propos" group came to the same conclusion, that is to say that palliative care and assisted death must be complimentary and not in opposition to one another. Based on that idea of complementarity the national councillor, Victor Ruffy, intervened and on the 7th of October 1998, challenged the National Council about palliative care and its reimbursement by the medical insurance boards.

2. Assisted suicide

Article 115 of the Swiss penal code deals with inciting and assisting suicide. It stipulates that: "Anyone with a selfish motive who incites a person to commit suicide or who helps that person, to commit suicide, if the suicide is consummated or attempted, will be punished by a maximum of 5 years reclusion or imprisonment."

If there is no selfish motive, the group of federal experts confirmed that assisted suicide is, in such cases, legal and accordingly, not punishable.

As suicide is an act, which is not punishable in the Penal code, why should assisted suicide with no selfish motive be liable to punishment? This legal reasoning led to the non-modification of article 115 by the group of federal experts.

The guidelines of the Swiss Academy of Medical Science are more restrictive but they are not legally binding; only the Penal code has the force of law. That recognition of the application of article 115 of the SPC under certain conditions gives new power and strength to the right to die in a dignified way. However, nobody and, in particular, no doctor can be forced to participate in an act which goes against his personal ethics.

On the other hand, the "A Propos" group hopes that anyone, who agrees that the patient has the right to die in a dignified way, may act without any impediment.

3. Active direct euthanasia

Article 114 of the SPC deals with murder when requested by the victim. It stipulates that:

"Anyone who yields to an honourable motive, notably compassion, and who, when requested seriously and urgently by a person, bestows death on that person will be punished by imprisonment."

This article - which constitutes murder with attenuating circumstances, the punishment is from 3 days to 3 years imprisonment - implies, on the part of the perpetrator, an honourable motive and on the part of the victim, a serious wish to die. However, this disposition was not conceived for the case of an individual who kills another person with an incurable serious illness, that will lead to death in the near future and who is experiencing intolerable physical and mental suffering.

Arguments for new regulations

Both the majority and the minority of the work group recognised and were in agreement as to the intangibility of human life which is at the core of the Swiss Penal Code as is also the case in most foreign legislation. So it fully adheres to the two cardinal principles in relation to the penal protection of life which require:

- That the consent of the victim does not render legal an act, which terminates a human life
- That the penal code must afford its protection to every human life, notwithstanding the quality of that life.

These principles are reflected in the dispositions of the penal code in force, notably those found in article 114 of the SPC.

Moreover, the majority of the work group could not ignore the fact that the absolute protection of human life could, in certain exceptional cases, be transformed into an unbearable burden for the person who benefits from this protection. Cases, difficult to define in terms of numbers, of persons who are seriously ill and at the point of death, whose intolerable sufferings cannot be alleviated adequately, were borne in mind. When a human being requests death in such situations, the imposition of a penalty on the person who commits an act of human compassion, who relieves the other person whose life is but useless suffering, presented a problem for the majority of the work group.

These are, without a doubt, extreme and dramatic cases which rarely appear in practice. Moreover, in an area as essential as that of the protection of life and human dignity, every case must be taken into consideration in an appropriate manner even if it seems exceptional.

The majority of the work group, as well as the minority, do not intend to question the fundamental illegality of such acts but it wishes to insure the impunity of the person who helps another person, in the situation described, by an act of direct active euthanasia.

New article 114(2) of the Penal code

The majority of the work group suggested completing article 114 of the SPC (murder at the request of the victim) with a new paragraph 2 in the following terms:

"If the perpetrator helps a person, who is in the final stages of an incurable illness, to die to bring to an end insupportable and incurable suffering, the competent authority will not proceed against this person, will not force him to appear before a court nor inflict a penalty."

Commentary

The proposed disposition establishes a penalty exemption clause which aims, in particular, at the cases of offences contrary to article 114 SPC which is presently in force, the article which would become the first paragraph of the revised article 114, with no modification as to the essential features. It follows that the application of the proposed article 114 paragraph 2 will only enter into consideration if all the constitutive elements of the present article 114 are realised; the perpetrator must have helped a person to

die when seriously and urgently requested to do so, this presupposes that the person was capable of discernment and the perpetrator must have an honourable motive, notably that of compassion.

The new proposed paragraph adds to these constitutive elements special elements that show that the guilt of the perpetrator is strongly mitigated, as opposed to the guilt of the perpetrator aimed at in the basic case of the first paragraph. The supplementary elements are the existence of incurable, fatal, health impairment and the fact that the perpetrator acted in order to bring to end unbearable and incurable suffering.

The notion of health impairment deals with sickness and other impairments, both physical and mental, which occur as a result of an accident, are inflicted by another person, or are due to a suicide attempt. This impairment must be incurable, leading to the death of the patient. In addition the patient must be in the final stage of the illness, a phase which could last days or even weeks.

Article 114 paragraph 2, intentionally, does not express any particular requirements as to the profession of the perpetrator. The majority of the work group decided against, in particular, reserving the application of the punishment exemption clause to the representatives of the medical profession only. Indeed, the situation of personal distress of someone suffering who wishes to die, can also be shared by the persons close to them who, if they carry out the wish of the patient, deserve to be exempted from the penalty just as a doctor would be, their fault is not greater than that of a doctor acting in the same circumstances.

Moreover, limiting the advantage of article 114, paragraph 2 to doctors only would lead to unbearable results in the case of such participation. Indeed, the proposed article is not a justificatory fact, which renders the act legal. Let us suppose that active direct euthanasia was carried out by a doctor in the presence of, or with the agreement of, someone who was not a doctor; the latter would risk being accused of being an accessory to murder at the request of the victim, while the doctor would benefit from the penalty exemption clause. The clause must also benefit all those who participate in the offence with the same aim. Therefore, limiting the exemption clause to doctors only would create the impression that the act was a medical act and therefore a legal act.

From a subjective angle, article 114 paragraph 2, supposes that the perpetrator helped the patient to die in order to bring to an end his unbearable physical and mental suffering, which cannot be alleviated by palliative care. As suffering is subjective, it cannot be precisely quantified. Moreover, the suffering felt must be very great and the palliative measures must be shown to be ineffective in order to understand the act of the perpetrator, in bringing this suffering to an end.

The aim of bringing to an end suffering also constitutes an element that defines active indirect euthanasia considered as justified by the professional duty of the perpetrator. The difference resides in the fact that, in the case of active direct euthanasia, the death of the patient is what is desired by the perpetrator to bring to an end the other person's suffering; while in the case of active indirect euthanasia the fact that death arrives more quickly than expected is only a consequence, not wished for but envisaged and accepted by the perpetrator, by the administration of means to ease the suffering.

When the elements described in article 114 paragraph 2 are united, the guilt of the perpetrator is so slight and his reasons are so understandable that the infliction of a penalty would not appear to be a social necessity. The application of the penalty exemption clause leads the competent authority to renounce proceedings, referrals, or penalties.

The proposal of the majority of the federal work group is more restrictive than that requested in the Ruffy motion. It certainly maintains the fundamental illegality of direct active euthanasia, but it recognises the exceptional circumstances that require exemption from penalty. With this perspective, the "A Propos" group can be satisfied with this original solution which improves and clarifies the end of life choices of certain patients and which is appropriate in view of the different moral values which exist in our society.

THE ARGUMENTS ABOUT ACTIVE EUTHANASIA AND ASSISTED SUICIDE

Against: allowing active euthanasia would be a fatal slippery path leading to involuntary euthanasia imposed upon the weakest members of our society. Handicapped and old people could feel compelled to rid society of their existence.

For: if that argument is founded then the same reasoning could be used against passive euthanasia and discontinuing medical treatment allowed by the ASSM (Swiss Academy of Medical Science); a practice which is accepted now would have to be prohibited. When life support treatment for patients with incurable illnesses in the final stages is discontinued, sometimes it takes several days before the patient dies.

In these circumstances, an act of compassion should be allowed to shorten the period of agony and dying, at the request of the patient. Prolonging useless suffering by non-treatment is not the most compassionate act that a patient could hope for. It would seem more logical and coherent that the patient could choose a death that is quicker and gentler rather than a slower, more difficult one. Stopping treatment by closing the perfusion to end life support measures is not different or any less serious than that of opening wide a perfusion which would rapidly give the patient a fatal dose of medication.

Against: allowing euthanasia might lead to loss of confidence in the medical profession.

For: certain patients lose confidence in the medical profession because they fear, and justifiably so, that neither assisted suicide nor active euthanasia can be obtained and they will be subject to a medical guardianship measure.

Since abortion has become possible, gynaecologists who carry out this practice have not lost the confidence of their patients. On the contrary, gynaecologists with patients who want an abortion lose their patients if they refuse to carry out this act.

Against: allowing euthanasia will lead to economic pressure to reduce costs relating to health.

For: it is the present situation that is dangerous because it can mask "economic" euthanasia in the guise of passive euthanasia and can stop treatment without the consent of the patient. Assisted suicide or active euthanasia where the request is controlled and verified by the competent authority would avoid any malpractice in the future and would also avoid any economic malpractice.

Against: euthanasia is unnecessary because all suffering can be alleviated thanks to quality palliative care.

For: the evidence of several international studies in relation to palliative care have shown that it is not always sufficient to end either the different physical sufferings or psychological suffering which is even more severe than when the physical suffering is under control.

There are patients who prefer active euthanasia or assisted suicide to any other palliative measure, notably the use of strong sedation, which makes them lose their personality and self-determination. Good palliative care and access to assisted suicide or active euthanasia are not in opposition to each other but the free choice should be left to the patient who alone has sufficient criteria to determine if the quality of life which he has left is satisfactory or not.

Against: depressed patients could ask for assisted suicide or active euthanasia rather than treatment for their depression. A request for euthanasia by a patient in the final stages of illness could be a sign of treatable depression and not of intolerable suffering.

For: patients who suffer could be depressed but the depression does not necessarily explain the request for assisted suicide or euthanasia nor does it render their decision irrational or unfounded. In such situations sadness is to be expected and treatment for depression will not heal the basic organic pathology. On the other hand, it may take several weeks for the antidepressants to take effect and it may be necessary to try several medications. In most cases of euthanasia in Holland life has been shortened by less than a month. Therefore, the treatment for depression does not represent a realistic option and it could even increase suffering due to undesirable secondary effects. Psychotherapy could, perhaps, improve the quality of the last days of a patient suffering from cancer, however it is difficult to use in the case of a debilitated patient in the final stages of illness. A patient reaching the end of life who seems depressed should be encouraged to accept psychiatric help; however a patient capable of discernment must not be obliged to accept this psychiatric help as a condition sine qua non before they can benefit from assisted suicide or active euthanasia.

Against: doctors must never practice active euthanasia or assisted suicide and/or contribute to taking the life of someone.

For: the most important ethical law of doctors must be to provide care and accompany the patient in the best way possible without imposing on him an ethical concept that he does not share. The doctor must serve his patient and not the theoretical ethical commandment to preserve life at all costs, even against the patient's will.

Against: the patient does not need active euthanasia or assisted suicide. If he is determined, he can do it alone.

For: this is a shameful argument against euthanasia or assisted suicide because many patients at the end of their lives are physically incapable of committing suicide. Others do not have the medical resources to do so. This argument abandons the patients to their suffering and forces them to use violent methods to commit suicide. It is indecent for a society to oblige a person to choose violent death rather than peaceful death. If a patient can choose the hour of his departure by assisted suicide or even by active euthanasia, he will not be compelled to kill himself in a violent way while he is still capable of acting alone. He could put off his departure and continue to live, all the while confident that his wish, as to the moment of his departure, will be respected.