

OUTLINE OF THE CAMPAIGN TO DECRIMINALISE ACTIVE EUTHANASIA IN SWITZERLAND

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At the present time, only assisted suicide with no egotistic motive is legal in Switzerland, according to Article 115 of the Swiss Penal Code.

Direct active euthanasia is viewed as intentional homicide, which is illegal in Switzerland, and which is going to remain so for a few more years to come.

In 1994, following the premise put forward by the National Councillor Victor Ruffy, for the decriminalisation of active euthanasia, the Federal Council set up a Federal Commission of Experts to examine this issue, which relates to Article 114 of the Swiss Penal Code.

This article stipulates that: «He or she who, prompted by an honourable motive, notably that of pity, has brought about the death of a person upon the serious and insistent request of this person, will be punished by imprisonment».

This article, which refers to a toned-down murder, punishable by three days' to three years' imprisonment, involves, on the part of the perpetrator, an honourable motive, and on the part of the victim a serious desire to die. However, this clause has not been designed for the case in which an individual kills a person inflicted with a serious, incurable illness which will result in death in the near future, and for whom the physical and mental suffering is intolerable

Following its deliberations, in 1999 the majority of the group of experts proposed an amendment to Article 114 of the Swiss Penal Code, with a new paragraph 2, which was to read as follows:

«If the perpetrator has brought about the death of a person suffering in his/her health from an incurable illness which is in its terminal phase, and this with the intent of bringing an end to his/her unbearable and irremediable sufferance, the competent authority will renounce taking legal action, sending the person to court, or imposing a punishment»

The majority of the working group, as well as the minority, recognises and approves the principle of the intangibility of human life, which is the basis of the Swiss Penal Code, as well as most foreign legislation in this domain. It is for this reason that it adheres fully to the two cardinal principles with regard to the penal protection of life, which require:

1. that the victim's consent does not serve to render licit the act of bringing an end to human life.
2. that penal law must grant its protection to all human life, irrespective of its quality.

These principles are reflected in the clauses stipulated under the penal rights currently in force, notably in Article 114 of the Swiss Penal Code. However, the majority of the working group could not ignore the fact that the absolute protection of human life may, in certain exceptional cases, become an unbearable weight for the person in question. This refers to those cases which are difficult to define quantitatively, in which the intolerable sufferance of a person who is seriously ill at the end of his/her life can no longer be alleviated, even through appropriate measures. When, in such a situation, a human being asks for death, it appears problematic, in the eyes of the majority of the working group, to persecute and impose a punishment on the person who, in relieving another person of a life which is no longer anything other than useless suffering, commits an act of human compassion.

Without a doubt, these are extreme, dramatic cases which in practice occur only very rarely. Nevertheless, in a domain as fundamental as the protection of human life and dignity, each and every case deserves to be taken into account in its own right, even if it appears to be exceptional.

The majority of the working group, as well as the minority, does not intend to question the fundamental illegality of such acts. But what they do want is to ensure the impunity of the person who bestows on another, in the situation outlined, an act of direct active euthanasia.

When the elements described in Article 114, paragraph 2, are present, the guilt of the perpetrator is so weak, and his/her motives are so comprehensible, imposing a punishment no longer appears to be a social necessity. Application of the punishment exemption clause enables the competent authority to renounce legal action, appearance before court, or punishment.

In the summer of 2000, the Federal Council attempted to freeze this burning proposal. To prevent this dilatory manoeuvre, the National Councillor Franco Cavalli submitted a parliamentary initiative which repeated the conclusions of the group of experts.

On 2 July 2001, the Legal Committee of the National Council accepted this initiative, since it recognises that, although good palliative care certainly ensures a decrease in the number of requests for assisted suicide, the fact remains that there are still exceptional situations when, fully autonomously, patients deliberately choose to request assistance with suicide, or direct active euthanasia.

During their lives, some people create a very strong identity for themselves, and they cannot accept resigning themselves to the degradation which is wearing them down. Some would like to preserve their individuality, and to cut their lives short rather than passively suffer a long-drawn deterioration.

During its research, the majority of the legal commission became convinced that it is unrealistic to believe that palliative care could remove all the requests for assisted death. This observation has already been reported in international documentation, for example by DI MOLA (Ann. Oncol. 1996; 72:907-11) in his article «Attitudes toward euthanasia of physician members of the Italian Society for Palliative care». DI MOLA indicates that situations do exist, even in the context of palliative care, in which euthanasia may be ethically correct. He also states that 4 % of palliative care doctors who responded to his survey had effected, at least once, an active euthanasia.

This fact is further reinforced in Switzerland since, in a study presented in May 2001, at the 69th Annual Assembly of the Swiss Society of Internal Medicine, in Lausanne, as part of the Swiss Society for Palliative Care, NEUENSCHWANDER and STIEFEL inform us, surprisingly, that 10% of the members who responded had already practiced assisted suicide or active euthanasia.

On 11 December 2001, a major debate took place within the National Council, concerning assisted suicide and active euthanasia. Assisted suicide, marginally tolerated up until now, is very clearly legitimised by a majority vote, despite the attempts of abrogation by our detractors.

Direct active euthanasia is, on the other hand, rejected despite the opinion of the legal commission, due to a mass mobilisation of the conservative parties.

Our Association, EXIT, is nevertheless going to continue to campaign for the decriminalisation of direct active euthanasia in the future, since it would provide the possibility of being able to help an incurable patient who is no longer capable of self-deliverance, and who has clearly established advance directives in this regard. Paradoxically, decriminalisation of active euthanasia could enable certain patients to live longer and more serenely amongst us.

I shall provide you with an example :

It is the story of a lady, born in 1945, and member of our association since January 2000. This lady sent us a written letter on 16.03.2000, to ask us for assistance with suicide.

«Further to our telephone conversation of 3 March, I enclose the letter from my doctor. The certificate concerning my sight is with ANBA (a specialised centre for the visually impaired) at Peseux. I hope with all my heart that I will be capable of going on my cruise on the Seine from 1st to 7th April, with my twin sister, who will be pushing me in my manual wheelchair, the electric chair being too heavy for travel. Since I have only one useful hand, a splint on the other and a permanent neck brace, she will be an extremely precious aid from all points of view. This will be my last trip before the GRAND VOYAGE which I await with serenity, and with full knowledge of the facts. My doctor wanted to have me hospitalised again at the CHUV, which I refused - I would prefer to throw myself from my 12th floor rather than being used once more as a guinea-pig. Happily I can count on your assistance towards suicide, your help, your support - and I thank you sincerely for this».

I contacted this lady on 12.04.2000. She is suffering from multiple sclerosis, complete paralysis of her lower limbs, with an extremely weak left upper limb, and her right arm is starting to be affected. She is also suffering from a rapid degradation of her vision, due to bilateral macular degeneration. Following a lengthy discussion in the presence of the patient's twin sister and son, she fixed the date for her self-deliverance for Saturday 29.04.2000. I asked her whether there was anything that I could propose which would encourage her to postpone this act. None, she answered me without hesitation. I do not want to finish my life blind and completely paralysed in a bed. I would like to depart whilst I am still able to take the potion myself. The lady added that she is perfectly aware that even if she left advance written directives asking for an active euthanasia later once she had become completely paralysed, I would not be able to give her a lethal injection, since the law would then punish me.

Listening to this story, one can thus understand that decriminalisation of active euthanasia could enable certain patients to live longer amongst us if they had the cer-

titude that they would be helped in their departure, once they were no longer capable of self-deliverance

On 29.04.2000, I visited this lady, who was surrounded by several close relations: her twin sister, her son and his fiancée, the church priest, a long-time friend and confidante. The priest had consulted his ecclesiastic authorities, and had been advised to act according to his heart. This priest had therefore decided to be present on this exceptional occasion. After a last discussion, the patient confirmed her intentions to me, and handed me a short letter containing the following few lines: «Dear Doctor, My suffering having become intolerable and irreversible, I thank you from the bottom of my heart for your assistance, the solution I have chosen being the only viable one in my state. THANK YOU».

We stood around the lady's bed. The priest conducted a farewell ceremony, reading out some psalms. He then offered words of comfort and love, and ended with an invocation that the light of Christ light the valley of death that this traveller was about to traverse.

The lady then drank the mortal potion made available to her, and she fell asleep within a few minutes. Half an hour later, I confirmed the death, and informed the detective division of the police force, who arrived with a forensic surgeon, to certify the facts for the attention of the examining magistrate. The case will be closed with no legal proceedings being instigated, in accordance with Article 115 of the Swiss Penal Code.