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Ανασκόπηση

Best practices on informed consent procedures in sensitive areas of medical practice

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Abstract

The contribution focuses on best practices regarding informed consent procedures in sensitive areas of medical practice, specifically death with dignity. Initially, attention is given to defining key terms such as active euthanasia, assisted suicide, dignity, and psychological suffering. Subsequently, the paper analyzes the current situation in selected states, examining legislation, draft laws, jurisprudence, etc. Finally, a comparison of the legislation of individual states is provided.

Keywords: euthanasia; assisted suicide; dignified death;informed consent; health law.

Βέλτιστες πρακτικές σχετικά με τις διαδικασίες ενημερωμένης συναίνεσης σε ευαίσθητους τομείς της ιατρικής πρακτικής

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Περίληψη

Η μελέτη επικεντρώνεται στις βέλτιστες πρακτικές που αφορούν τις διαδικασίες ενημερωμένης συγκατάθεσης σε ευαίσθητους τομείς της ιατρικής πρακτικής, συγκεκριμένα ως προς αποφάσεις σχετικές με το τέλος της ζωής. Αρχικά, επιχειρείται ο ορισμός βασικών εννοιών, όπως ενεργητική ευθανασία, υποβοηθούμενη αυτοκτονία, αξιοπρέπεια και ψυχολογική οδύνη. Στη συνέχεια, αναλύεται η τρέχουσα κατάσταση σε επιλεγμένα κράτη, εξετάζοντας τη νομοθεσία, τα σχέδια νόμων, τη νομολογία κ.λπ. και επιχειρείται μια σύγκριση των διαφορετικών καθεστώτων στα κράτη αυτά.

Λέξεις κλειδιά: ευθανασία; υποβοηθούμενη αυτοκτονία; αξιοπρεπής θάνατος; ενημερωμένη συναίνεση; νόμος για την υγεία.

Introduction

The issues surrounding the dignified ending of life, its legalization, and regulation remain highly debated across states, encompassing legal, ethical, and moral considerations. When crafting laws on this sensitive topic, states aim to balance a patient's autonomy and dignity with protections for those in vulnerable situations. States introducing euthanasia or assisted suicide often focus on ensuring access while others emphasize palliative care and improving the quality of life, limiting death assistance to exceptional cases. Conversely, some prioritize patient autonomy and respect for end-of-life decisions. However, adopting such legislation raises numerous practical questions.

This thesis explores the topic of dignified death, providing insights into relevant legislation, court practices, and specific aspects of the debate. Drawing on valid laws, professional articles, literature, and jurisprudence, it aims to familiarize readers with the current legal landscape. Organized from general to specific, the text defines key terms before examining the legal frameworks and judicial practices in various states that regulate dignified death.

The research employs analytical and comparative methods. States were selected based on their approaches to end-of-life legal regulations. The study examines four European countries (Netherlands, Belgium, Luxembourg, Spain) permitting active euthanasia, alongside Canada. It also includes European states allowing assisted suicide (Germany, Austria) and those focusing on palliative care (France, Italy).

The thesis details the legal processes surrounding dignified death in these states, emphasizing patient requests, their requirements, and expectations. These findings are critically compared and evaluated. The research provides a comprehensive overview, analyzing euthanasia-friendly states, those permitting assisted suicide, and others with alternative approaches, ultimately offering a comparative perspective on the legislation and practices surrounding dignified death.

1. General starting points

1. 1 Definitions

Several terms are associated with the issue of dignified death, each with distinct meanings. For this article, certain terms need to be clearly defined, as distinguishing them is crucial for informed discussions and crafting legislation. States differ in their approaches to end-of-life choices, as not all permit active euthanasia. Switzerland, for instance, is well-known for its stance on death with dignity but allows only assisted suicide, not active euthanasia.

1. 1. 1 Autonomy of the will

The first concept that needs to be mentioned is the autonomy of the will. This is one of the fundamental legal principles, allowing individuals to choose their legally significant behaviors. Autonomy of the will can manifest at different levels, including the choice of whether to act, the selection of the act's recipient, and the determination of its content and form.[1]

1. 1. 2 Euthanasia

Štěpán defines euthanasia as an act or omission whose own goal is to shorten life, while the decisive motive is compassion for the sufferer.[2] According to the literature, euthanasia can be further divided into active and passive. Active euthanasia is „*an act in which a person other than the patient, at the*

[1] Oxford Reference. Autonomy. Available at: https://www.oxfordreference.com/display/10.1093/oi/authority.20110803095436282.

[2] School of Medicine University of Missouri. Euthanasia. Available at: https://medicine.missouri.edu/centers-institutes-labs/health-ethics/faq/euthanasia.

request of the patient, intentionally performs the final act leading to the end of the patient's life". Passive euthanasia is an act in which a person other than the patient withholds or withdraws life-sustaining treatment from the patient. [3]

1. 1. 3 Asisted suicide

Another term that requires clarification is assisted suicide. In this scenario, a patient intentionally ends their life but seeks the assistance of others in doing so. It's important to note that the patient must ultimately perform the decisive act themselves.[4]

1. 1. 4 Informed consent

Informed consent is a legal term that refers to a person's voluntary, informed, and usually written consent to a certain medical or research procedure, treatment, or participation in clinical research. This consent requires that the person be properly informed about all aspects of the procedure or treatment, including risks, benefits, alternatives, and possible side effects. Informed consent is an important legal and ethical principle in medicine and research to ensure that a patient or participant has the right to the information needed to make an informed decision about their health and treatment.[5]

1. 1. 5 Dignity

Dignity is defined as the state of being worthy of honor or respect. Human dignity refers to the concept that represents the inherent value of each individual. Every person should be treated with respect and no one should be discriminated against.[6] This is further related at the international level to the guarantees of rights contained in the Universal Declaration of Human Rights[7] (also known as „UDHR"), namely the guarantee of freedom, dignity and equality (Article 1 UDHR) etc. This is related to the mutual respect of the will of each individual. Furthermore, the prohibition of torture, cruel, inhuman and degrading treatment is guaranteed (Art. 5 UDHR). Human dignity, rather than a label for collective law, represents the ultimate source of all rights recognized, equal, and inalienable.[8]

[3] Garrard E; Wilkinson, S. Passive euthanasia. Journal of Medical Ethics, 2005, 31: 64-68. Available at: http://dx.doi.org/10.1136/jme.2003.005777.

[4] Picón-Jaimes YA, Lozada-Martinez ID, Orozco-Chinome JE, Montaña-Gómez LM, Bolaño-Romero MP, Moscote-Salazar LR, Janjua T, Rahman S. Euthanasia and assisted suicide: An in-depth review of relevant historical aspects. Elsevier, Annals of Medicine and Surgery. 2022, 75. Available at: https://www.sciencedirect.com/science/article/pii/S2049080122001406#section-cited-by.

[5] National Library of Medicine. Inform consent. Available at: https://www.ncbi.nlm.nih.gov/books/NBK430827/.

[6] Andorno R. Human Dignity and Human Rights. In: Henk AMJ ten Have (ed) Handbook of Global Bioethics. Springer Reference, 2014: 45-57. Available at: https://www.researchgate.net/profile/Francis-Masiye/publication/286484913_Toward_an_African_UbuntuologyuMunthuolo-gy_Bioethics_in_Malawi_in_the_Context_of_Globalization/links/5de52d1b4585159aa45c992c/Toward-an-African-Ubuntuology-uMunthuology-Bioethics-in-Malawi-in-the-Context-of-Globalization.pdf#page=68.

[7] United Nations. Universal Declaration of Human Rights. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights.

[8] Andorno R. Human Dignity and Human Rights. In: Henk AMJ ten Have (ed) Handbook of Global Bioeth-

The concept of dignity in the field of bioethics and healthcare has undergone historical development. A significant historical milestone in this area is the Universal Declaration of Human Rights and the Nuremberg Code. After the events and horrifying experiments of the Second World War, it became essential to address human dignity and its associated rights at the international level. The Nuremberg Code is especially important as it is the first document to formally enshrine obligations such as informed consent. This marked a shift in the approach to the individual, emphasizing the importance of respecting their will and dignified treatment. This rule underscores the significance of the individual and their right to have their personality and will respected.[9]

Currently, the primary protected interests in the doctor-patient relationship are dignity and the autonomy of one's will. This marks a shift from earlier times when the focus was primarily on life and health, with less consideration given to individual dignity.[10]

1. 1. 6 Psychological suffering

Psychological suffering related to death with dignity refers to the emotional and mental pain caused or anticipated by the patient's illness or medical condition. This suffering can take various forms, including the subjective perception of life quality. In addition to feelings of loneliness, dependence on others, loss of autonomy, and discomfort, it may also encompass a sense of loss of social contacts.[11]

Firstly, it can involve psychological suffering resulting from physical pain. The patient may no longer have control over the physical pain, and even medication and palliative care may not offer sufficient relief. The prolonged experience of pain exhausts the patient, significantly impacting their mental health.

Furthermore, states of fear, uncertainty, and anxiety can also be included under the term psychological suffering. In such cases, the patient experiences distress due to a diagnosis with a progressive nature, certain to worsen in the future. After entering the terminal stage of the disease, the patient loses control over themselves. This can occur in cases of progressive malignant diseases where the patient may lose consciousness or in situations involving psychiatric degenerative diseases where the patient is no longer able to express

ics. Springer Reference, 2014: 49-50. Available at: https://www.researchgate.net/profile/Francis-Masiye/publication/286484913_Toward_an_African_UbuntuologyuMunthuolo-gy_Bioethics_in_Malawi_in_the_Context_of_Globalization/links/5de52d1b4585159aa45c992c/Toward-an-African-Ubuntuology-uMunthuology-Bioethics-in-Malawi-in-the-Context-of-Globalization.pdf#page=68.

[9] Shuster E. Fifty Years Later: The Significance of the Nuremberg Code. The New England Journal of Medicine, 1997, 337: 1436-1440 Available at: https://www.nejm.org/doi/full/10.1056/NEJM199711133372006?query=recirc_curatedRelated_article.

[10] UNC. Nuremberg Code Available at: https://research.unc.edu/human-research-ethics/resources/ccm3_019064/. And: Pellegrino ED. Some things ought never be done: moral absolutes in clinical ethics. Theoretical Medicine Bioethics, 2005, 26: 469-486. Available At: https://link.springer.com/article/10.1007/s11017-005-2201-2.

[11] Haekens A. Euthanasia for Unbearable Psychological Suffering. In: Devos T (ed) Euthanasia: Searching for the Full Story. Springer, 2021: 39-47. Available at: https://library.oapen.org/bitstream/handle/20.500.12657/48260/9783030567958.pdf?sequence=1#page=55.

their will. In these instances, patients may choose to express their will while they are still able to do so, and the procedure will be carried out in accordance with the expressed will once the condition arises.

Psychological suffering can also stem from a subjective perception of the situation as undignified. These are cases where, for example, the patient becomes paralyzed as a result of an accident. The patient is not brain-damaged, but their body is impaired. The patient cannot move, only talks, and is cared for by others. For some people, this situation is unacceptable, but there are cases where patients want to live.[12] In cases where a person's idea of living consists of an active life, the loss of movement and the inability to take care of oneself can be perceived as undignified, leading to psychological suffering.[13] Here, even though death does not pose an immediate threat, the person remains essentially trapped in their body.

From the perspective of expressing a valid will, it is crucial to carefully distinguish between psychological suffering and psychological illness. Psychological illness does not necessarily equate to psychological suffering for the patient. A patient may have a form of psychological illness that can be controlled with appropriate medication, allowing them to live life according to their subjective experience with dignity and reasonable autonomy.

However, physicians must be cautious with patients who seem capable of making decisions for themselves but whose choices might be influenced by a long-term transient condition. For instance, a patient may exhibit signs of psychological suffering for an extended period, which could be attributed to conditions like depression. In such cases, it is essential to explore all therapeutic options and ensure that the patient's condition genuinely cannot be changed, even if it has persisted for a relatively long time. The patient's situation must be static, lacking any prospect of improvement. The doctor should, therefore, rely on the diagnosis, follow proper procedures, and consider available treatment options rather than solely relying on the patient's subjective state, which can be challenging to ascertain, especially in the case of psychological illnesses.[14]

Last but not least, it should be mentioned that certain mental and psychiatric illnesses inherently prevent the ability to make a valid will. One example is mental disability.

2. Situation in individual states

2. 1 Netherlands

The Netherlands became the first country in the world to legalize euthanasia; until then, only a few states allowed assisted suicide. Currently, the Termination of life on request and assisted suicide law (also as „TLRaASL“)

[12] For example Paul Alexander. The Guardian. The man in the iron lung. Available at: https://www.theguardian.com/society/2020/may/26/last-iron-lung-paul-alexander-polio-coronavirus.

[13] For example Ramón Sampedro case. University of Minnesota, Human Rights Library. Manuela Sanlés Sanlés v. Spain. Available at: http://hrlibrary.umn.edu/undocs/html/1024-2001.html.

[14] Haekens A. Euthanasia for Unbearable Psychological Suffering. In: Devos T (ed) Euthanasia: Searching for the Full Story. Springer, 2021: 41-43. Available at: https://library.oapen.org/bitstream/handle/20.500.12657/48260/9783030567958.pdf?sequence=1#page=55.

is valid from 1 October 2021.[15] Art. 1 letter b) TLRaASL provides a definition of assisted suicide, stating that it is intentional assistance to another person in committing suicide or provision of means for the act referred to in Art. 294 par. 2, second sentence of the Dutch Penal Code (also as „DPC“)[16].

The DPC provides that if the act is committed by a doctor in accordance with the TLRaASL it is not a criminal offence. Assisted suicide must be carried out by a qualified medical professional, specifically a doctor (Art. 2, par. 1, lett. f) TLRaASL). It is not permissible for assisted suicide to be performed by a non-medical person.

This law allows for a decision to be made regarding one's death if it is the voluntary request of a patient, made after due consideration (Art. 2 par. 1 lett. a) TLRaASL). The doctor will objectively assess whether the patient is experiencing hopeless and unbearable suffering, and if they are convinced that this is the case, they may consider such a procedure (Art. 2 par. 1 lett. b) TLRaASL). In connection with this, the Supreme Court of the Netherlands addressed the case involving the criminal prosecution of a doctor who performed active euthanasia on a patient with advanced dementia.[17] Among other issues, the court examined whether it is feasible to honor a written statement, such as a previously expressed wish, requesting end-of-life measures in the event of dementia. According to legislation, it is necessary for the doctor to be convinced of the fulfillment of all legal requirements. Considering advanced dementia, it's crucial to acknowledge that the patient's condition at the time of the request may differ significantly from when the request is granted. Dementia is a progressive condition that can markedly alter the patient's state and personality over time. Generally, such cases require extreme caution and should only proceed when there is no doubt about the occurrence of the condition. These are indeed exceptional circumstances.

The Supreme Court established several principles. If adhered to, a written request for euthanasia from a patient with advanced dementia can be granted. The patient must submit a written request that meets all legal requirements, applicable only when the predicted state occurs. The doctor must proceed with extreme caution and must be convinced that the patient is indeed in a state of advanced dementia where they cannot express their will. Furthermore, euthanasia should only be granted in cases of hopeless and unbearable suffering. While such suffering typically involves physical pain, there are special instances, like advanced dementia, where the patient's condition may qualify as unbearable suffering. In this case, the court acquitted the doctor because he acted with care and caution.The doctor is required to properly inform the patient about their situation, treatment options, alternatives, and their health prognosis (Art. 2 par. 1 lett. c) TLRaASL). Assisted suicide is only permitted when there are no other solutions available in the given situation (Art. 2 par. 1, lett. d) TLRaASL).

To ensure objectivity, it is necessary to have the situation assessed by another independent doctor. This doctor thoroughly examines the patient and subsequently formulates their opinion on the aforementioned requirements in writing (Art. 2, par. 1, lett. e) TLRaASL).

The law also addresses situations in which patients under the age of 18 request assisted suicide. If a person under the age of 18 can

[15] Original: *Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding*. Available at: https://wetten.overheid.nl/BWBR0012410/2021-10-01.
[16] Original: *Wetboek van Strafrecht*.
[17] Decision of the Supreme Court of the Netherlands, Case No. 19/04910 CW, dated April 21, 2020. Available at: https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:HR:2020:712.

express their will and simultaneously evaluate their condition, a doctor can grant their request to end their life. The minimum age for this is 12 years. Additionally, consent from the parents or guardian is required (Art. 3 and Art. 4 TLRaASL). From the age of 16, natural persons can make a previously expressed wish. For persons aged 16 to 18, parental consent is required (Art. 2 TLRaASL).

2. 2 Belgium

In Belgium, legal euthanasia has been possible since 2002 when the Euthanasia law (also as „EL“) came into force.[18] Prior to this, euthanasia was considered a crime and the Belgian criminal code had strict penalties for cases of euthanasia upon request, without allowing for lighter punishment.

Belgian law is more detailed than Dutch law. In principle, the legal provisions are similar. The fundamental difference is that, unlike Dutch legislation, Belgian law distinguishes between adult and minor patients, without setting a specific age limit for the latter. Belgian law also includes specific formal requirements for submitting a euthanasia request, either by the patient themselves or through their representative. Additionally, this law explicitly requires the request to be repeated after a certain period of time and provides the option to withdraw it.

For minor patients, the procedure is the same as for adults, but consultations with a doctor in the field of child psychiatry and psychology are also added. This specialist examines the patient and finds out his distinguishing abilities, then gives a written report. The patient and legal representatives are then informed of the results. The attending physician will provide the legal representatives with the same information as the patient. Legal representatives must agree to the procedure. (Art. 3 par. 2 point 7 EL)

Although the law expressly regulates active euthanasia, practice and research show that assisted suicides are also being carried out.[19]

In connection with the legal regulation of dignified death in Belgium, the European Court of Human Rights dealt with the case of Mortier v. Belgium concerning a Belgian citizen seeking euthanasia for incurable depression.[20] The request, initially rejected, was later approved after the patient donated to an organization linked to the attending physician. The patient's son raised concerns about a conflict of interest. The court ruled Belgium violated the right to life by failing to adequately investigate the circumstances. Criticism highlighted insufficient oversight and independence in Belgium's euthanasia legislation. The ruling emphasized the need for robust regulations and independent scrutiny to address ethical dilemmas, prevent conflicts of interest, and ensure effective oversight of euthanasia cases.

[18] Original: *Loi relative à l'euthanasie*. Available at: https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2002052837&table_name=loi.

[19] Parlament of Victoria. Voluntary Assisted Dying Bill 2017, Research Papers. Available at: https://www.parliament.vic.gov.au/publications/research-papers/download/36-research-papers/13834-voluntaryassisted-dying-bill-2017.

[20] Judgment of the European Court of Human Rights in the case of Mortier v. Belgium, No. 78017/17. Available at: https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-13802%22]}.

2. 3 Luxembourg

In 2009, Luxembourg enacted the Euthanasia and Assisted Suicide Law, which allows patients to request active euthanasia and assisted suicide.[21] The legislation is similar to Belgian law regarding the formal requirements for such requests and the related procedures. However, unlike Belgian law, Luxembourg law explicitly regulates the possibility of both active euthanasia and assisted suicide. The key distinction is that Luxembourg law does not permit minors to submit such requests.

2. 4 Spain

The case of Manuela Sanlés Sanlés v. Spain sheds light on Spain's legal stance regarding assisted suicide and the right to die with dignity.[22] Ramón Sampedro, quadriplegic since a 1968 accident, sought medical assistance to end his life, but Spanish courts rejected his plea under Article 143 of the Penal Code, which criminalizes assisted suicide. His constitutional complaint was denied, and he died by assisted suicide in 1998. His sister-in-law, Sanlés, attempted to continue the case but was deemed ineligible as a non-affected party. The European Court of Human Rights also dismissed her claim as inadmissible.[23] Sampedro's story sparked public debate on euthanasia in Spain, highlighting societal divisions and inspiring literary and cinematic works. His case played a pivotal role in Spain's 2021 euthanasia legislation, with Sanlés later admitting her involvement, emphasizing its lasting impact on attitudes toward death and autonomy.[24]

Current Spanish law allows for euthanasia. With the adoption of Law No. 3/2021 on March 24, 2021, regarding the regulation of euthanasia (also as „RoE“),[25] Spain became the fourth country in the European Union to permit active euthanasia. The law explicitly states that its aim is to protect individuals who find themselves in a serious condition due to a chronic, severe, incurable disease, enduring intolerable suffering that cannot be relieved under appropriate conditions (preamble RoE).

Spanish legislation is similar to Luxembourg law. Overall, the laws are very similar and explicitly include the possibility of both active euthanasia and assisted suicide. However, Spanish law imposes concreater requirements on the formal procedure, particularly regarding the obligation to submit repeated requests for euthanasia within a specified time interval.

Another requirement compared to Luxembourg law is the applicant must be a Spanish citizen, resident, or a person with

[21] Original: *Loi sur l'euthanasie et l'assistance au suicide.* Available at: https://legilux.public.lu/eli/etat/leg/loi/2009/03/16/n2/jo.

[22] University of Minnesota, Human Rights Library. Manuela Sanlés Sanlés v. Spain, Communication No. 1024/2001. Available at: http://hrlibrary.umn.edu/undocs/html/1024-2001.html.

[23] University of Minnesota, Human Rights Library. Manuela Sanlés Sanlés v. Spain, Communication No. 1024/2001. Available at: http://hrlibrary.umn.edu/undocs/html/1024-2001.html.

[24] Esanum. The faces and laws behind the euthanasia debate in Spain. Available at: https://www.esanum.com/today/posts/the-faces-and-laws-behind-the-euthanasia-debate-in-spain.

[25] Original: *Ley Orgánica 3/2021, de 24 de marzo de regulación de la eutanasia*. Available at: https://www.boe.es/buscar/act.php?id=BOE-A-2021-4628.

permanent residence or confirmation of residence in Spain for a period longer than 12 months. An adult (i. e. aged 18) who can understand the submission of an application may apply (Art. 5, par. 1, lett. a) RoE). The patient must submit two voluntary applications, with at least 15 days between them. The procedure itself, including the deadlines associated with individual submissions, must be followed by the responsible doctor and is further specified in Art. 8 RoE.

2. 5 Canada

Current Canadian legislation allows both euthanasia and assisted suicide. Decision-making at the end of life is governed by Act No. C-14 of 2016, An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)[26] (also as „MAID“). This law was enacted following the Supreme Court of Canada's 2015 decision in Carter v. Canada. In Carter v. Canada, the court ruled that provisions in the Canadian Criminal Code that make it a crime to assist a person to commit suicide violate the Canadian Charter of Rights and Freedoms. Specifically, the court identified violations of the rights to life, freedom, and security, which prompted a legal review. As a result, in April 2016, the Canadian government introduced Bill C-14 on medical assistance in dying, which was adopted in June 2016.[27]

MAID establishes exceptions and criteria for assisted suicide, emphasizing patient autonomy and vulnerability protection. It exempts healthcare professionals from criminality but penalizes laypeople for aiding suicide. According to this law, medical assistance in dying means administering a substance that causes death at the patient's request, or prescribing it and providing it so that the patient can administer it themselves (Art. 241.1 MAID).

The law allows individuals who meet an exhaustively defined list of conditions to decide on their own death (Art. 241.2 MAID). These individuals must be eligible for government-funded public health services in Canada (Art. 241.2 par. 1 lett. a) MAID).

Regarding the formal requirements for processing the application and its form, Canadian legislation is similar to Spanish law. However, the process explicitly requires that at least 10 days must pass between the submission of the application and the actual provision of care for the dying person.

2. 6 Germany

In recent years, Germany has seen considerable development in connection with the issue of dignified death and related legislation. The crime of participation in suicide was enshrined in the Criminal Code in 2015. It follows from the facts that the act

[26] Canada, Justice Laws Website. An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying). Available at: https://laws-lois.justice.gc.ca/eng/annualstatutes/2016_3/fulltext.html.

[27] Tiedemann M. Executive Summary - Assisted Dying in Canada After Carter v. Canada. Library of Parliament, 2020. Available at: https://hillnotes.ca/2020/01/27/executive-summary-assisted-dying-in-canada-after-carter-v-canada/.

must be long-term, repeated and with the intention of killing the patient. It must be emphasized that participation in suicide continued to remain unpunished for family members and loved ones without commercial intentions.[28] The opinion that the patient should have the right to decide to end his life in extreme cases was also expressed in 2017 by the German Federal Administrative Court.[29] However, this decision did not change the position of the German Ministry of Health, which continued to refuse patients their requests for drugs that will end their lives.[30]

On February 26, 2020, the German Federal Constitutional Court in Karlsruhe[31] annulled § 217 of the Criminal Code, which criminalized professional assistance in suicide.[32] The court ruled that the right to decide on one's own death is a fundamental personal right rooted in the German Constitution[33], combining the right to free personality development with the principle of human dignity. This includes the right to self-determination over life and death, reflecting personal definitions of a meaningful existence.

The decision also affirmed the right to seek and use assistance in ending one's life. However, the court acknowledged the conflict between this right and the state's duty to protect individual autonomy and life itself, which remains a priority. In light of the above, legislative proposals are being prepared in Germany to address assisted suicide.

2. 7 Austria

In 2021, Austria is experiencing a development similar to what occurred in Germany. In 2014 and 2015, the issue of dignified retirement and euthanasia was addressed by a parliamentary commission of inquiry.[34] Several discussions on specific issues took place, but after analyzing the situation and having discussions, the council did not reach a conclusion on the legalization of euthanasia.[35] Instead, it focused on expanding options for the terminally ill and those nearing the end of life in terms of

[28] Deutscher Bundestag. Geschäftsmäßige Hilfe zum Suizid wird bestraft. Available at: https://www.bundestag.de/webarchiv/textarchiv/2015/kw45_de_sterbebegleitung-392450.

[29] Original: *Bendesverwaltungsgericht*.

[30] Soliman T, Schiele K. Sterbehilfe: Vom Gericht erlaubt, vom Minister verhindert. Available at: https://daserste.ndr.de/panorama/archiv/2018/Sterbehilfe-Vom-Gericht-erlaubt-vom-Minister-verhindert,sterbehilfe272.html.

[31] Original: *Bundesverfassungsgericht*.

[32] Judgment of the Federal Constitutional Court dated February 26, 2020, case no. 2 BvR 2347/15. From: Bundesverfassungsgericht. Urteil vom 26. Februar 2020 - 2 BvR 2347/15. Available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2020/02/rs20200226_2bvr234715en.html.

[33] Bundesministerium der Justiz und für Verbraucherschutz. Grundgesetz für die Bundesrepublik Deutschland. Available at: https: https://www.gesetze-im-internet.de/gg/.

[34] Original: *Die parlamentarischen Enquete-Kommission*. And also: Republik Österreich Parlament. Enquete-Kommission zum Thema "Würde am Ende des Lebens" (491 d.B.). Available at: https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_00491/index.shtml.

[35] Republik Österreich Parlament. 491 der Beilagen zu den Stenographischen Protokollen des Nationalrates XXV. GP. Bericht der parlamentarischen Enquete-Kommission. Available at: https://www.parlament.gv.at/PAKT/VHG/XXV/I/I_00491/fnameorig_386917.html.

palliative care, which it recommended expanding.

On November 12, 2020, the Austrian Constitutional Court[36] issued a decision declaring the criminal act of participation in suicide unconstitutional.[37] The decision thus nullifies § 77 of the Austrian Criminal Code, which had criminalized active euthanasia (killing on request),[38] and § 78 of the Austrian Criminal Code, which had criminalized assisted suicide.[39]

The Constitutional Court asserts that no fundamental right obligates the state to prohibit euthanasia or requires individuals to endure suffering. It prioritizes an individual's right to self-determination over the state's duty to protect life, emphasizing that the right to life does not imply an obligation to live. Decisions regarding euthanasia must reflect free will and be permanent, not temporary. The Court highlights the importance of regulating euthanasia, setting requirements for expressing one's will, ensuring patient integrity, and evaluating doctors' competence. It argues that patients, as part of their autonomy, should have the freedom to end life actively, just as they can refuse or discontinue treatment.

Effective January 1, 2022, the Federal law, which introduces a death warrant provision and amends the Narcotics Drugs Act and the Criminal Code,[40] known as the Death Directive Act (also as „DDA"),[41] has come into effect in Austria.[42] This law not only alters existing regulations but also stipulates requirements that must be met for a death decision to be considered valid.

Austrian legislation is similar in basic aspects to Spanish law. However, the key difference is that patients who meet the criteria can request assisted suicide but not active euthanasia. The formal requirements for the application and process are comparable to those in Spanish law. Assisted suicide is only available to adults, and the decision must be made in person (Art. 4 DDA). Additionally, it can only be requested by Austrian nationals or

[36] Original: *Verfassungsgerichtshof Österreich.*

[37] Judgment of the Austrian Constitutional Court dated December 11, 2020, case no. G 139/2019-71. Available at: Verfassungsgerichtshof Österreich. Ausgewählte Entscheidungen 2020. VfGH 11.12.2020, G 139/2019: Tötung auf Verlangen und Mitwirkung am Suizid. Available at: https://www.vfgh.gv.at/rechtsprechung/Ausgewaehlte_Entscheidungen.de.html.

[38] *Killing on Demand: „Who kills another at his earnest and urgent wish.."* Original: Tötung auf Verlangen § 77 des Bundesgesetzes vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch - StGB), BGBl. 60/1974: *„Wer einen anderen auf dessen ernstliches und eindringliches Verlangen tötet, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen."*

[39] *Participation in suicide: „Who induces or assists another to commit suicide..."* Original: Mitwirkung am Selbstmord § 78 des Bundesgesetzes vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen (Strafgesetzbuch - StGB), BGBl. 60/1974: *„Wer einen anderen dazu verleitet, sich selbst zu töten, oder ihm dazu Hilfe leistet, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen."*

[40] Parlament Österreich. Regierungsvorlage. Bundesgesetz, mit dem ein Sterbeverfügungsgesetz erlassen wird sowie das Suchtmittelgesetz und das Strafgesetzbuch geändert werden. Available at: https://www.parlament.gv.at/dokument/XXVII/I/1177/fnameorig_1012536.html.

[41] Original: *Sterbeverfügungsgesetz* .

[42] Parlament Österreich. Sterbeverfügungsgesetz; Suchtmittelgesetz, Strafgesetzbuch, Änderung (1177 d.B.). Available at: https://www.parlament.gv.at/gegenstand/XXVII/I/1177.

individuals with habitual residence in Austria (Art. 1, par. 2 DDA). The patient's decision to end their life cannot be finalized earlier than 12 weeks after the first medical opinion (Art. 8, par. 1 DDA). The Austrian cabinet introduced a 12-week waiting period for patients to maintain a consistent decision on assisted suicide, based on a study showing this duration helps patients overcome the worst phase of a crisis. If the patient remains firm after this time, it is likely a mature and considered decision. Exceptions apply for patients in severe suffering, allowing the waiting period to be shortened.[43]Among other things, the law also prohibits the commercial provision of assistance for assisted suicide.

2. 8 Italy

2. 8. 1 Eluana Englaro case

The case of Eluana Englaro was a landmark legal battle in Italy over end-of-life decisions. After a 1992 accident left Eluana in a permanent vegetative state, her father, Beppino Englaro, fought for 17 years to respect her previously expressed wish to end life-prolonging treatment. The Corte di Cassazione ruled in 2007 that life-sustaining treatment could be withdrawn if two conditions were met: the patient is in a permanent vegetative state, and clear evidence shows they would not wish to be kept alive artificially. Unlike the Sampedro case (where it was a „living" head attached to a „dead body"), this is an unresponsive being. [44] This condition is assessed according to scientific standards that are internationally recognized. Furthermore, it is necessary to provide clear and convincing evidence that the patient would not wish to be kept alive by artificial means. Information about the patient's personality, lifestyle, and beliefs can be used as evidence.[45] After appeals and constitutional challenges, the courts allowed Eluana's disconnection from artificial nutrition,[46] and she passed away on February 9, 2009. The case sparked widespread debate in Italy, highlighting ethical and legal issues around the right to a dignified death.

2. 8. 2 Ruling of the Constitutional Court 242/2019 on the Cappato-Antoniani case[47]

Italy recognizes the right to refuse life-prolonging treatment and informed consent withdrawal. A 2019 Constitutional Court decision affirmed that, under certain conditions, medically assisted suicide aligns with the rights to self-determination and

[43] Bundesministerium Justiz. Sterbehilfe. Available at: https://www.bmj.gv.at/themen/Fokusthemen/Dialogforum-Sterbehilfe.html.

[44] Moratti S. The Englaro Case: Withdrawal of treatment in Italy from a patient in a permanent vegetative state. European University Institute, 2012, 04. Available at: https://cadmus.eui.eu/bitstream/handle/1814/21757/MWP_2012_04_Moratti.pdf?sequence=1&isAllowed=y.

[45] Corte suprema di cassazione, Sentenza 16 ottobre 2007, n. 21748. Available at: https://www.law.nova.edu/files/CassazioneOctober2007Italian.pdf. In english available at: https://www.law.nova.edu/files/CassazioneOctober2007English.pdf.

[46] Corte Costituzionale, Ordinanza 8 ottobre 2008, n. 334. Available at: https://www.law.nova.edu/files/ConstitutionalCourtOctober2008Italian.pdf. In english available at: https://www.law.nova.edu/files/ConstitutionalCourtOctober2008English.pdf.

[47] Original: *Sentenza della Corte costituzionale 242/2019 sul caso Cappato-Antoniani.*

health. The case involved Marco Cappato, who assisted his friend Fabiano Antoniani (DJ Fabo), left paralyzed and blind after a 2014 accident, in traveling to Switzerland for assisted suicide in 2017. Cappato knowingly faced legal consequences, aiming to challenge the law and pave the way for legalizing assisted suicide in Italy.[48]

The Italian Constitutional Court ruled that assisted suicide is not a criminal offense under Article 580 of the Italian Criminal Code, provided certain conditions are met. The request must come from the person themselves, who must be kept alive by life-saving treatment, fully autonomous, and capable of understanding the consequences of their actions. They must also suffer from an incurable and serious physical or mental condition. Assisted suicide is not allowed if the individual cannot self-administer the lethal substance, such as in cases of ALS.[49]

Article 580 of the Italian Penal Code regulates complicity in suicide, which can take three forms. Article 580 of the Italian Penal Code reads: *„Whoever induces another to commit suicide, strengthens another's intention to commit suicide, or in any way facilitates its execution shall be punished. If the suicide occurs, the punishment is imprisonment for five to twelve years. If the suicide does not occur, and the suicide attempt causes serious or very serious bodily harm, the punishment is imprisonment for one to five years.“* The Constitutional Court, therefore, determined that assisting suicide is not a crime, but only under the above-mentioned conditions. In Italy, criminal acts still apply when: 1) a person incites another to commit suicide, and 2) a person strengthens another's intention to commit suicide. The same applies to the criminal act of performing active euthanasia.[50]

2. 8. 3 Informed consent and regulation

Ruling of the Constitutional Court 242/2019 effectively binds Law No. 219/2017 on informed consent and advance directive for treatment (also as „ICADT“)[51] also known as the End of Life Act.[52] Italian law allows passive euthanasia or deep and continuous sedation (note: unintended hastening of death). Similar to previous laws on dignified death, it imposes comparable requirements on the form of the request and any previously expressed wishes. Strict conditions also apply to the process related to the request. The decision is not age-restricted; however, stricter conditions apply to minors. A representative may decide on behalf of the patient, but only if the patient has previously expressed their wish. The decision is not dependent on nationality.

[48] Associazione Luca Coscioni. Il processo a Marco Cappato, punto per punto. Available at: https://www.associazionelucacoscioni.it/processo-marco-cappato-punto-punto.

[49] Corte Costituzionale. Sentenza n. 242, anno 2019. Available at: https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2019&numero=242.

[50] Quotidianosanità.it. Il suicidio assistito come diritto costituzionale. Un’analisi della sentenza della Consulta. Available at: https://www.quotidianosanita.it/studi-e-analisi/articolo.php?articolo_id=79083.

[51] Original: *Norme in materia di consenso informato e di disposizioni anticipate di trattamento*.

[52] Ministero della Salute. Norme in materia di consenso informato e di disposizioni anticipate di trattamento. (18G00006). Available at: https://www.trovanorme.salute.gov.it/norme/dettaglioAtto?id=62663.

In situations where the patient's prognosis is poor and short-term, or the patient is in imminent danger of death, the doctor must refrain from obstinate futile treatment. At this stage, with the consent of the patient, they can resort to so-called continuous deep palliative sedation, which, in conjunction with therapy and pain relief, will lead to the patient's death (Art. 2 par. 2 ICADT).

2. 9 France

2. 9. 1 Informed consent and regulation

In 2005, the Law relating to the rights of patients and the end of life was enacted in France, also known as Leonetti Law (also as „LL“).[53] This is the first law in France that explicitly addresses the end of a patient's life and allows the patient to refuse treatment when they believe it no longer has any effect. The purpose of the law is to prevent the practice of euthanasia and hastening death, while also aiming to prevent the continuation of futile treatment for patients. A key aspect is prioritizing care over patient suffering and comfort. The law was later amended in 2016. The amendment expanded and improved the law, strengthening patients' rights and dedicating efforts to improving the availability of palliative care. Together, these two laws form the framework for medical care at the end of life in France. There is an increasing emphasis on respecting the autonomy of patients' will, dignity, treatment of suffering, and patient information, with decision-making maximally transferred to the patient.[54]

The Leonetti Law in 2005 introduced a ban on what is known as unreasonable obstinacy. In cases where the doctor concludes that the actions they are performing appear to be useless, unreasonable, and have no other effect than the artificial maintenance of life, such actions can be suspended or not performed. In such situations, the doctor focuses on preserving the dignity of the dying patient and ensuring a quality of life that aligns with the care provided (Art. 1 LL).

The Leonetti Law (2005) prohibits unreasonable obstinacy in treatment, allowing doctors to suspend futile actions that merely artificially sustain life (Art. 1 LL). Doctors must inform patients if the side effects of treatment during the terminal phase of an incurable illness might hasten death (Art. 2 LL). Patients have the right to limit or stop treatment, with doctors obliged to explain the consequences and respect their decision (Art. 6 LL).

Patients can record advance wishes for situations where they cannot decide for themselves, retaining the right to revoke these wishes at any time. Advance wishes are binding if made within three years before the patient becomes unconscious (Art. 7 LL). Patients may also designate a trusted person to

[53] Original: *Loi relative aux droits des malades et à la fin de vie*. Available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000446240/.

[54] Ministère du Travail de la Santé et des Solidarités. Comprendre la loi Claeys-Léonetti de 2016: De nouveaux droits en faveur des personnes malades et des personnes en fin de vie. Available at: https://sante.gouv.fr/soins-et-maladies/prises-en-charge-specialisees/les-soins-palliatifs-et-la-fin-de-vie/la-prise-en-charge-palliative-et-les-droits-des-personnes-malades-et-ou-en-fin/article/comprendre-la-loi-claeys-leonetti-de-2016.

make decisions on their behalf (Art. 8 LL). If no wishes are recorded, doctors may stop futile treatments while ensuring the patient's dignity and quality of life are preserved (Art. 9 LL).

Leonetti Law was amended in 2016 by Law no. 2016-87 creating new rights for the sick and people at the end of life, also as *Claeys-Leonetti Law* (also as „CLL").[55] This law ensures patients the right to a dignified end of life in cases of persistent suffering, emphasizing respect for their wishes (Art. 1 CLL). It abolishes the time limit for previously expressed wishes (Art. 8 CLL) and strengthens the role of a trusted person chosen by the patient to make decisions on their behalf if they become incapacitated (Art. 9 CLL).

In addition, the law now allows patients to request deep and continuous sedation, causing an alteration of consciousness maintained until death, along with analgesia. In essence, deep continuous sedation can be understood as inducing a state of unconsciousness with the aim of relieving pain, and death typically occurs within hours to days.[56] Deep continuous sedation can have several variants, such as light (superficial) or deep (the patient is truly asleep and not restless). It can also be administered continuously or temporarily and intermittently until death.[57] The medical board must approve deep and continuous sedation for patients with serious, incurable conditions, short-term prognoses, and visible suffering, upon the patient's request. This sedation can be administered at home (Art. 3 CLL). Doctors are required to inform patients about the process and its consequences (Art. 4 CLL).

In practice, there may be cases where the patient believes that the treatment is not providing a positive result and chooses to discontinue it. Patients have the right to refuse or discontinue treatment if they believe it is not beneficial, even if the doctor disagrees. Informed consent is essential for medical care, and a doctor may only act without it in life-threatening emergencies. Patients can withdraw consent at any time, and doctors must inform them of the consequences, but ultimately, the doctor must respect the patient's decision.[58]

Summary

The legalization of a dignified end-of-life remains a debated topic, with euthanasia and assisted suicide gaining attention in the past two decades. Legal frameworks from nine states were analyzed and divided into three groups based on their approach. The first group included countries allowing active euthanasia and assisted suicide: the Netherlands, Belgium, Luxembourg, Spain, and Canada.

[55] Original: *Loi n. 2016-87 du 2 février 2016 créant de nouveaux droits en faveur des malades et des personnes en fin de vie*. Available at: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000031970253.

[56] Fin de vie Soins Palliatifs. Exprimer ma volonté. Available at: https://www.parlons-fin-de-vie.fr/mes-droits/.

[57] Vitale C, Nonneville A, Fichaux M, Salas S. Medical staff opposition to a deep and continuous palliative sedation request under Claeys-Leonetti law. BMC, 2019, 18. Available at: https://bmcpalliatcare.biomedcentral.com/articles/10.1186/s12904-018-0384-3.

[58] République française. Code de la santé publique. Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000041721056.

The basic requirements for requesting euthanasia are similar across states. All require a written application, except the Netherlands, which does not specify the form. Voluntariness and the patient's true will, assessed without external interference, are emphasized, along with clear and proper instruction. Multiple doctors from different specialties must review the case.

To ensure the decision is firm, repeated expressions of will are required, verified by doctors. Spain and Canada mandate minimum intervals of 15 and 10 days, respectively, between consultations, while Belgium requires at least one month between the request and execution.

States differ in their requirements for patients. The Netherlands and Belgium allow requests from minors under 18, with age-specific conditions and the consent of legal representatives. Spain restricts euthanasia to nationals, residents, or those registered in Spain for over 12 months. Canada limits eligibility to patients covered by government-funded health services.

Patients must be in a hopeless health situation, enduring constant, unbearable suffering from a serious and incurable condition. Applications can be revoked at any time. Most states allow medical staff to refuse to perform euthanasia, provided they notify the patient promptly and face no discrimination for their decision.

In Germany (2020) and Austria (2022), assisted suicide was legalized following Constitutional Court rulings. Both states require requests to be made voluntarily, in writing, by an adult, and include patient education about their condition, treatment, and alternatives. The decision must reflect a permanent intention, not a temporary crisis.

Austria mandates a 12-week waiting period for the patient to confirm their decision and restricts eligibility to Austrian nationals or residents. Applications must be filed before a notary or specialized hospital staff. Both states require the patient to suffer from an incurable or severe, permanent illness causing unrelievable suffering and impose similar requirements as the states in the first group. Healthcare worker participation remains voluntary, and patients can withdraw their request at any time.

In the third group of countries, France and Italy focus on improving end-of-life care and palliative medicine. In these states, patients capable of expressing their will can refuse or discontinue treatment. Minor patients also have this right, but final decisions require parental (or legal guardian) consent or court approval.

Only adults can create a previously expressed wish for situations where they cannot articulate their will, such as life-sustaining treatment scenarios. This requires understanding the consequences of their actions. Italian law demands that such documents be notarized or certified to ensure authenticity. Patients may also designate someone to participate in decisions about their care. These wishes must confirm that patients received clear instructions about their diagnosis, prognosis, treatment options, risks, and potential outcomes of refusal or withdrawal of care.

In cases where patients are in a very serious medical condition, with a poor prognosis and imminent death, they may request so-called continuous deep palliative sedation. It must be mentioned here that this is not active euthanasia, as the intended effect is to alleviate pain, not hasten death. Italy's legislation is very similar to France; however, under strict conditions, assisted suicide has been allowed since 2019.