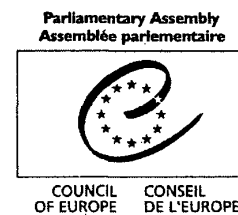


Parliamentary Assembly
Assemblée parlementaire



AACR12AD1_2005

AS (2005) CR 12
Prov. Addendum 1

2005 ORDINARY SESSION

(Second part)

REPORT

Twelfth sitting

Wednesday 27 April 2005 at 10 a.m.

ADDENDUM 1

Assistance to patients at the end of life

The following texts were submitted for inclusion in the official report by members who were present in the Chamber but were prevented by lack of time from delivering them.

Ms KUCLER-DOLINAR (*Slovenia*) - Debates on euthanasia have been going on for centuries, and the present one continues to open new, difficult questions to which it is impossible to find a fast and simple solution. Debates, including the one here, are indeed welcome, as they allow us to face and discuss the relevant ethical arguments. We hope such discussions will lead to changes in the perception and organisation of public health care and to solidarity among the people, and that the wish and demand for euthanasia will finally become a rare exception.

Regardless of its appearance and different explanations, the new document – compared with Recommendation 1418 – represents a step back in the protection of the dignity of terminally ill or dying patients. Any additional liberalisation in terms of euthanasia is an extremely delicate issue. This is particularly true when certain applications are generalised, which means that the number of marginal norms moving from the prohibited to the allowed is increasing exponentially. First there is an exception which may be allowed in some cases, then it is applied in more cases, and the activity is practised by an increasing number of people. Finally, the exception becomes a rule, or a more or less mandatory practice. More legalisation will inevitably bring increasing pressures on the old and the sick, so that they themselves demand to die.

Mrs ABURTO (*Spain*) - At the present stage of medical science, the number of patients who die with unbearable suffering is rising. It is also true that medical technology is now able to alleviate almost every case of these sufferings through adequate palliative care. And this is the biggest problem. All of us agree with the need to improve and extend palliative care as much as needed, but what does palliative care mean? If the treatment used to alleviate a patient's suffering may shorten his or her life, can we consider this as euthanasia or not? In my opinion, euthanasia is a much wider concept.

In any case, it is necessary to make very clear the difference between palliative care and assisted suicide, which indeed has very different moral implications. In addition, a great debate about these issues should be carried out among citizens and, for this purpose, it could be useful to promote initiatives like living wills or advance decisions.

Mr TOSHEV (*Bulgaria*):- Today we are debating the new version of the report of our distinguished colleague, Mr Dick Marty, presented on behalf of the Social, Health and Family Affairs Committee.

In principle, I think that such debates are of importance for our society because they promote discussion about the core values of our world today.

In this way we will be able to rediscover or reconfirm the fundamentals on which are based the humanity and morality of our society. I like the slogan which reads "The main thing in the main thing is to keep the main thing – main thing".

As an outcome of the debate today, we should reconfirm the willingness our world not to be changed dramatically and to keep the human aspects in our human society. This is something which is indeed difficult to be determined or defined but it is our "everything". The "human quality" is our main value. Fukuyama's post-human future is not a desirable option in my opinion.

The most important human right, the natural right which is superior to the other rights, is the right to life. The European Court of Human Rights decided on the case *Pretty V. Great Britain* that the universal right to life cannot be interpreted by contraries – as a right to death or a right to die. In other words, the right to life does not legitimate euthanasia.

Article 2 of the European Convention on Human Rights does not include the right to self-determination and creates only a positive obligation which means that the right to life should be protected by law.

The active termination of somebody's life or assisted suicide are subject to criminal prosecution in most of our member states. I think this system should be kept. It is impossible to oblige physicians to terminate somebody's life or to kill him or her, in other words. The Hippocratic oath, which medical doctors have been swearing, says "primus non nocere" – first do no harm.

We should be merciful to the physicians and to their conscience, which is impossible to be ignored. That is why, the signal which the Assembly should produce today is to call those of our member states which have recently decided to introduce euthanasia in their legal system, legitimising the termination of the patient's life, to reconsider their decisions. Personally, I am saying no to euthanasia and this time I am even more convinced than during the previous debate.

D'AMATO (*Malta*) - This is a very sensitive and controversial issue and I am sure we all agree that it is difficult to come to a final decision.

This report has gone back and forth several times. However, notwithstanding the changes that feature in the Marty report, which make this final draft softer, the general thrust aims to encourage the legalisation of euthanasia.

What is disturbing in this resolution is that it strives to regulate procedures leading to euthanasia on the basis that various forms of euthanasia are practised in a clandestine manner.

Another disturbing issue is that this resolution mentions the idea that we should be legalising euthanasia to prevent it from developing in a shroud of secrecy. So what do we mean to say? That since we cannot curb these illegal practices, we should in turn legalise euthanasia? Many people speed, but do we remove speed limits?!

The issue of transparency is also raised. Where euthanasia has been legalised it seems that it has not produced the transparency that it meant to achieve and here I quote from the memorandum that Mr McNamara prepared for the Legal Affairs Committee.

In the Netherlands, only 54% of cases of euthanasia were reported to the regulatory authority and life terminating treatment without explicit request of the patient is still seldom reported, less than 1%.

What is of more concern is that – again I quote the McNamara report – 10 to 15 infants a year are put to death. Why? Because they are perhaps disabled? Where this is happening, it is illegal to practise euthanasia on those aged under 12, so with the same logic as before, should we be preparing reports and resolutions to legalise it so that it does not develop in a shroud of secrecy? Surely not!

What we should be doing in our countries is to inform the public of the dangers associated with euthanasia and not legalise it so that it might become the norm and give easy ways out. What we should be reaffirming is that we safeguard the dignity and the rights of people at this very vulnerable stage at the end of life. What we should be doing is making sure that we are offering accessible and adequate palliative care to patients and also to their families and friends.

I feel that this Assembly should not leave any doors, whether wide open or ajar, to encourage the legalisation of euthanasia and I am not being hypocritical or fundamentalist, as was hinted this morning by a number of speakers to those of us who disagree with the thrust of the Marty Report.

Ms HURSKAINEN (*Finland*) - Human life is precious. The report we are discussing today is most typical. Euthanasia has become a widely discussed topic all over Europe. I can therefore endorse the conclusion that we need to clarify the position on euthanasia as it causes conflicts in many countries both among decision makers and those who implement the decisions.

When the report was discussed in the committee many different issues were raised with regard to the consequences of a possible liberalisation of euthanasia. In my mind, human life in itself is valuable. Euthanasia can be acceptable only in cases when the human brain has stopped to function, when the doctors have established that the situation is irreversible and when it can be established without any doubt whatsoever that it is the free will of the person in question.

If pain was accepted as the argument of euthanasia, this would lead to many conflicting situations, the first of which is, the decision taken respecting the patient's own real will or as a result of the pain which has produced a temporary wish to die. Secondly, can the relatives have the right to make a decision regarding the life of the patient? Thirdly, can such a decision made by relatives be purely ethical? Fourthly, might economic interests play a decisive role in making the decision?

It would also be important to discuss why euthanasia, or assistance to patients at the end of their lives, is so widely discussed today, when we also are discussing the future of the welfare state in Europe. In nearly all our countries we are debating the costs of health care and how to respond to the needs of our ageing populations.

I have been involved in politics for many years and I know that different issues are interconnected. For instance, economic arguments have been used both to bring women to the labour, and to push them back into the homes to take care of the children. I am afraid that the discussion on euthanasia can be affected by similar thinking. If the money reserved for health care services is not sufficient, which form of care is given priority: the heart operation of a small patient or the care of an old patient? Are we driven to accept euthanasia in order to help the economic situation?

Mr President, the possibilities to conduct euthanasia should not be over-liberalised. On the other hand, each country has its own tradition, so the final decision should be a national issue.

Life is precious. One life cannot be given priority over another life.

Thank you, Mr President.

Mr McNAMARA (*United Kingdom*) - In response to Mr Jurgens about other rights, the Court said in the *Pretty* case: "The Court is not persuaded that the right to life as guaranteed in Article 2 can be interpreted as involving a negative aspect... It is unconcerned with issues to do with the quality of life or what a person chooses to do with his or her life... nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life".

We are debating the most fundamental of issues and one which we as an Assembly hold most dear: the sacredness of human life. It applies not only to those who believe that human kind is made in the image and likeness of God but to all who see in a human being something special, something worthy of the utmost respect, indeed something sacred. This sacredness is recognised in Article 2 of our Convention which imposes on member states a duty not just to refrain from the intentional and unlawful taking of life but a positive duty to safeguard the lives of those within their jurisdiction, which extends beyond their primary duty to secure the right to life.

In *Pretty v United Kingdom* the Court underlined this principle by stating that "The Court accordingly finds no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article II of the Convention...[and in particular with the regard to United Kingdom legislation and Article 8.]... It does not appear arbitrary to the Court for the law to reflect the importance of the right to life, by prohibiting assisted suicide."

What this report seeks to do is contradict the decisions of the Court and the underlying philosophy of the Convention.

The most profound compassionate and practical statement to assist patients at the end of life was laid down in recommendation 1418 of 1999 on the "Protection of the human rights and dignity of the terminally ill and the dying". It is not my intention to rehearse all the recommendations of that report which anticipated and laid down the principle later accepted by the Court in the Pretty case, but to emphasise the role of good palliative care upon which the Assembly's report concentrated such attention and the urgent call it made upon member states to recognise and act upon their major responsibilities to ensure the provision of effective palliative care in these most moving of cases. Palliative care is the way forward; euthanasia is the counsel of despair. We should reject euthanasia and assisted suicide and reaffirm our belief in the sacredness of human life in all its stages, which no person has the right arbitrarily for whatever motive to snuff out.

Ms SKARBØVIK (*Norway*) - In case of incurable disease and in the terminal phase of life, health services must contribute to that patients and their families can get valuable time together. This kind of service is not adequate today. It is important that we put emphasis on creating mobile health teams, nursing staff and doctors, specialising in palliative care, so that necessary treatment and nursing in the last phases of life can also be given at home. Knowledge of care and nursing at the end of life must be emphasized much more in the education and training of health personnel. I think it is very important also that hospice opportunities be offered to patients in the last phase of life.

A nurse working in a Norwegian hospice with patients who are terminally ill says the following: to spend time with people who are terminally ill and their close family through the process of death gives a knowledge of life that a majority of people in our societies today lack. Insight into this aspect of life has convinced me of the necessity of being guided by the respect of life as the governing norm in our work. The question of assistance to die must be met with assistance to live.

Health personnel have an ethical duty to protect life. Assistance to die violates this fundamental principle. Modern medical technology and our cultural denial of suffering as an intrinsic part of human existence have made it difficult for us to accept the death process as part of life.

