Euthanasia and PAS

WMA European Region Meeting on End-of Life Questions

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Introduction

• Euthanasia – an ambiguous concept
• Analytical usage vs. normative usage
• Ethics – Human Rights – (National) Legal Systems
• Common Law Countries – Civil (Roman) Law Countries
• All legal systems differ – Is there one great divide?

Definitions

• Assisted Suicide – intentionally killing oneself with the assistance of another person
• PAS – suicide with assistance of a physician
• Euthanasia – intentionally killing another person in order to relieve this person’s suffering (voluntary, non-voluntary, involuntary)

Overlapping?

• (Physician-assisted) suicide
• Voluntary euthanasia
• Terminating or withholding life-sustaining treatment according to the patient’s will

Human Rights

• European Convention on Human Rights (1950)
• European Court of Human Rights
  — no consensus among Council of Europe member states
  — wide margin of appreciation for member states
  — several complaints declared inadmissible

Definitions

• (rep.) Euthanasia – intentionally killing another person in order to relieve this person’s suffering (voluntary, non-voluntary, involuntary)
• „Letting die“ – limiting, terminating, withholding life-sustaining treatment because it is futile or according to the patient’s will (sometimes also called „passive euthanasia“)
Human Rights

- European Court of Human Rights on (P)AS
  - no violation of ECHR if state prohibits assisting another person's suicide („Diane Pretty“, 29.4.2002)
  - no violation of ECHR if state does not provide access to lethal drug without prescription in order to commit suicide („Haas“, 20.1.2011)

- European Court of Human Rights on (P)AS
  - violation of ECHR if state does not examine the merits of a claim for access to lethal drug in order to commit suicide („Koch“, 19.7.2012)
  - overruling of „Haas“ by Chamber but judgment of 14.5.2013 did not become final („Gross“, Grand Chamber, 30.9.2014)

- Note: German Federal Administrative Court (2.3.2017)
  - access to lethal drug in order to commit suicide granted by German constitution in extreme cases

“Letting die”

- Limiting, terminating, withholding life-sustaining treatment is widely accepted in principle, but conditions vary, e.g.
- Limited to patients who are terminally ill?
- Also for patients incapable to decide? And who is to decide for them?
- Significance of advance directives

Euthanasia

- Most European countries ban all forms of euthanasia by criminal law
- NL, B and L have legalized voluntary euthanasia by a physician for adults, NL and B also for minors (conditions differ)
- The Netherlands also allow (non-voluntary) euthanasia of newborn babies that are terminally ill (under conditions laid down in the „Groningen protocol“)

Physician-Assisted Suicide

- Group 1 (e.g. Austria): Ban on all forms of assisted suicide (and euthanasia)
- Group 2 (e.g. D): Euthanasia and some forms of assisted suicide including PAS are banned
- Group 3 (e.g. CH): Euthanasia is banned but assisted suicide including PAS is legal under certain conditions
- Group 4 (e.g. NL, B, L): PAS is legal under conditions similar to those for voluntary euthanasia
Access to lethal drug

- Access to lethal drug in order to commit suicide
- Access regulated
  - prescription by physician → PAS
  - grant of access by regulating authority → case law of European Court of Human Rights and of German Federal Administrative Court

Thank you for listening!