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Patients' rights and assistance to die

# Hope for a merciful end

**"Thou shalt not kill" is one of the Ten Commandments. But what should be done when a person who is seriously ill wishes to leave life early? The main problems concern borderline cases not only in life terms but also with respect to the law. Swiss patients' rights are controversial.**

**I**n Switzerland a seriously ill person or someone who wants to die for any reason has no choice but to commit suicide. Our version of the rule of law does not permit anything else, for

*Alice Baumann*

Mother Helvetia does not at present allow her offspring who are ill with no hope of recovery to end their suffering with the support of their relations and under medical supervision.

## Choosing "merciful death"

Things are different in Australia's Northern Territory, which has recently passed the most liberal law in the world. The voluntary death by injection of a woman there made international headlines recently. Fifty-year old Janet Mills of Darwin was suffering from incurable skin cancer. After three doctors confirmed this the patient was allowed to die. The case has led to a controversy of major proportions culminating in the fear that euthanasia, or death on demand, might soon become not only voluntary but also "on request". In other words, relations might bring pressure to bear.

Similar discussions are taking place amongst Swiss specialists. They were triggered by a film from the Netherlands shown on Swiss television in January 1995. This documented first the suffering then the medically assisted death of a seriously ill man. Discussions on the matter were stoked by a number of prominent suicides and vehement debates in both houses of parliament. Political parties and lobby organisations became excited about the precise significance of expressions such as patients' rights and active and passive assistance to die.

In addition, the organisation known as Exit has repeatedly poured oil on the fire. Its pre-printed forms for patients demand that medical measures should

be stopped if their only purpose is to prolong life and postpone certain death. However, many doctors prefer to be confronted with a declaration of intention drawn up by the patient in question. This makes it easier for them to take decisions which are difficult in borderline cases and in both medical and human terms.

A decade ago the sympathies of public opinion were strongly on the side of Exit, but the complexity of the subject has held back many Swiss people from actually joining. And today its "services" are being questioned. Misuse of an instruction leaflet for committing suicide distributed by Exit has caused anxiety in many places, and its concept of founding houses where people may await death also worries many. A hospice for this purpose which it set up in Burgdorf was closed last year for lack of patients. It is now a maternity clinic!

## The doctor's dilemma

Hope for a merciful end in Switzerland is subject to a number of legal restraints. Passive assistance to die, without actual encouragement, is not a criminal act. This applies specifically to medical treatment which prolongs life. In the definition of "active assistance to die" the determining factor is that the person wishing to die performs the act of death without assistance. It is, for example, permissible to hand him poison but not to help him take it.

If someone becomes depressed because of illness, a doctor must not allow suicide. But how can genuine motivation be distinguished? A further problem area concerns the degree of suffering which may be defined as tolerable. Who can say how much suffering a person must endure before death may be considered? Is it either heroic or admirable to wait for a "natural" death with all modern medical means striving to prevent it?

For some time now the Federal Council has been trying to find acceptable answers to these difficult questions. At present a parliamentary resolution to decriminalise assistance to die is being examined by a commission of experts. If the work of this commission should turn out to be simply a delaying tactic, the "A Propos Association" in Canton Vaud proposes to launch a popular initiative.

## Freedom for patients the objective

A draft by Zurich lawyer Robert Kehl gives us an idea of what a liberal law on patients' rights and assistance to die might look like. He has worked out in detail a possible federal law taking into account a number of variants with regard to patients' desires – for example, whether they wish simply that life-prolonging measures should be stopped or whether they wish to take action to end their lives. In the latter case they may wish to take the necessary steps themselves or they may wish to have another person help them. In all cases the primary condition is that the person wishing to die should be suffering from a serious and incurable illness, a serious physical disability or a form of depression which returns at regular intervals. Briefly stated, Kehl would like to include in the constitution the idea of "free disposal of one's own body and the right to self-determination of ill people". This would compel doctors to enter into a new type of partnership with their patients.

According to the draft law, doctors would have the right to provide assistance for dying, but they would not be obliged to do this. Legally speaking, as things are now a doctor must refuse to help satisfy the wish of a patient to die even if he has full understanding for it. If he nevertheless decides to help, he is breaking both the law and his professional oath.

In view of this dilemma it would be pleasant to return to the original meaning of euthanasia. Schopenhauer understood it as a "gradual disappearance and floating away from existence". How wonderful it would be if dying were as easy as that!