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Review

"PROVISIONS ON VOLUNTARY MEDICALLY ASSISTANCE IN DYING" BILL: REVIEW AND ANALYSIS OF THE BILL FROM THE HISTORICAL, ETHICAL, AND LEGAL PERSPECTIVE CONCERNING EUTHANASIA IN THE CURRENT ITALIAN AND EUROPEAN CONTEXT.

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ABSTRACT

Euthanasia and physician-assisted suicide have been controversial topics over the last few years both in the medical-health and ethical-legal fields. The restriction on these practices is an issue since it limits the right to self-determination at the point of death. After discussing the historical and ethical changes of euthanasia and analyzing the current European situation, the authors approach the "voluntary medical assistance in dying" bill with a focus on the Italian regulation enforced. The legislative approach in each European state is very different with respect to which some states have been allowing these practices for decades and others have not yet drawn up any bill on the subject. In conclusion, although the Italian bill is certainly a step forward, it is crucial that the government speeds up the approval of the law to allow individuals to exercise the freedom of choice even at the point of death.

1. Introduction

In recent years, significant regulatory changes have been introduced in Italy to protect the right to self-determination in the field of health. [1,2].
Euthanasia and assisted suicide have been controversial topics both from the medical-health and legal point of view over the last few years. Despite the relevance of these issues, a proper and meaningful definition is still required to make an appropriate distinction between the medical practices such as euthanasia and assisted suicide, which are too often mixed up.
The term euthanasia literally means "good death" (from the Greek *eu-thanatos*) or the act of procuring the death of a consenting subject able to express his/her will to die. Euthanasia is, in turn, distinguished in active and passive euthanasia; the term *active euthanasia* occurs when a medical professional intentionally administers a drug or does something that causes the seriously ill patient to die.

In contrast, the term *passive euthanasia* refers to the withdrawal of life-sustaining treatment, that is, when the physician stops from practicing therapies that keep the patient alive on his/her express request in compliance with his/her Advance Provisions for Treatment (APT, or 'disposizioni anticipate di trattamento' DAT for short, in Italian) or shared care plan [1].
Physician-assisted suicide is when patients consciously end their life by self-administrating a fatal dose of drugs in the presence of a physician [3].
Currently in Italy euthanasia is still considered a criminal offence falling within the hypotheses regulated and punished under the Article 579 (Consensual murder *"Anyone who causes the death of a person, with the consent, shall be punished by imprisonment ranging from six to fifteen years…"*) or under the Article 580 (Instigation or assistance to suicide *"Anyone who causes others to commit suicide or reinforces another's intent to commit suicide, or facilitates it in any way, shall be punished, if the suicide occurs by imprisonment ranging from five to twelve years. If the suicide does not occur, he/she shall be punished by imprisonment…"*) of the Criminal Code.

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On the contrary, in specific cases, the physician-assisted suicide (albeit still unlawful) and the withdrawal of life-sustaining treatment – as a kind of passive euthanasia - constitute an inviolable right as per Article 32 of the Italian Constitution (*"The Republic protects health as a fundamental right of the individual and collective interest and guarantees free medical care to the indigent. No one may be obliged to undergo any health treatment except under the provisions of the law. The law may not under any circumstances violate the limits imposed by respect for the human person."*) and under Law no. 219 of 22 December 2017 and the judgement of the Italian Constitutional Court no. 242 of 2019.

2. Historical aspects

One of the first historical references on euthanasia dates back to the Hippocratic oath, which condemns doctors that cause a patient's death stating "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect" [4,5]. In ancient Rome, suicide was a very widespread, ethically acceptable and respect worthy practice often performed with the aid of slaves or relatives. During the Middle Ages, the strong Catholic influence condemned both suicide and euthanasia as despicable and morally unacceptable acts [6]. The Hippocratic and Christian point of view remained in vogue for many centuries until the philosophers Sir Thomas More and Francis Bacon supported a thesis in favor of euthanasia provided by doctors, intended as a "painless death", by which doctors led patients to natural death by reducing pain as much as possible [7]. In 1870, S.D. Williams gave a speech at the Birmingham Speculative Club reporting for the first time in the literature case studies by doctors who intentionally ended their patients' life by using ether and chloroform [8]. At the beginning of the twentieth century, many pro-euthanasia associations were founded in Europe. In the following years, in America a debate began on euthanasia, so much so that in 1906 the state of Ohio proposed a bill to legalize euthanasia which, however, was not approved [9,10]. In Germany in 1920, Hoche and Binding, a psychiatrist and a lawyer, published a study entitled "*The Permission to Destroy Life Unworthy of Life*" [11] in which they supported the lawfulness of euthanasia in patients with incurable, psychiatric diseases and deformed children. In these cases, death would have put an end to both their pain and the waste of their economic resources; this practice was defined *social euthanasia* and was practiced during the years of the Fascist regime [12,13]. After the Nazi period, doctors were involved in many scandals to have committed abuse and murder on patients in concentration camps. In Europe, the concept of euthanasia changed but not significantly. In 1950, Gaville Williams and Yale Kamisar re-introduced the issue concerning the ethics of euthanasia [14,15] and in England a bill to legalize euthanasia was moved in 1969, even though it was not approved [16].

3. Comparing European Countries

The Switzerland, in 1942, was the first country in the world to legalize assisted suicide by a law that decriminalized the assistance to suicide previously regulated as per Article 115 of the Criminal Code.

A particular situation that has arisen in the country as a result of this law is so-called "suicide tourism", or rather, the migration of foreigners to Switzerland in order to end their lives since physician-assisted suicide is still an illegal practice in their states. However, in Switzerland, active euthanasia is still illegal to the present day. According to the data reported by the Swiss Confederation, the number of assisted suicides (Swiss Confederation residents only) per year increased from 187 in 2003 to 928 in 2016. The data collected show that, in Switzerland, the most of assisted suicides occurred in individuals aged over 65 years, resulting in 802 cases out of 928 in 2016 compared to 822 out of 965 cases in 2015; moreover, it can be seen that women resort to assisted suicide more frequently than men (in 2016, out of 928 reported cases, 529 were women and 399 men, in 2015, 539 out of 965 women and in 2014, 422 out of 742 women) [17].

In Europe, the countries where active euthanasia is legal since 2002 are Belgium and the Netherlands, Luxembourg since 2009 and Spain since 2021. Since 2020, physician-assisted suicide has been decriminalized in Germany [18].

The Netherlands was the first country to legalize active euthanasia in order to allow physicians to put an end to life of their patients suffering from incurable and painful diseases, on their express request, acting according to the law enforced. In 2019, according to the Regional Euthanasia Review Committees (RTE) of the Netherlands, 6361 people died because of euthanasia, with 95.8% of cases by active euthanasia, 3.9% by physician-assisted suicide and 0.4% by a combination of the two practices [19].

In Belgium, in 2019, there were 2656 cases of euthanasia [20], while in Luxembourg 71 cases since 2009 [21].

COUNTRY	ACTIVE EUTHANASIA	PHYSICIAN-ASSISTED SUICIDE
Switzerland	illegal	legal since 1942
Belgium	legal since 2002	legal since 2002
Luxembourg	lawful since 2009	legal since 2009
Germany	illegal	legal since 2020
Austria	illegal	legal since 2022
France	illegal	illegal
Spain	legal since 2021	legal since 2021
Portugal	illegal	illegal
Italy	illegal	illegal
Norway	illegal	illegal
Finland	illegal	illegal
Sweden	illegal	illegal
Denmark	illegal	illegal
Greece	illegal	illegal
UK	illegal	illegal
Ireland	illegal	illegal
Netherlands	legal since 2002	legal since 2002

Table 1. The regulatory framework of European countries on euthanasia and assisted suicide

In several European states, laws providing for partial decriminalization of practices such as passive euthanasia and assisted suicide has been passed. As an example, in France, despite euthanasia being illegal, in 2013 a law allowing terminal sedation until the death for patients with no hope of improvement was moved, even if an acceleration of death can occur. Passive euthanasia is legal in the United Kingdom, Sweden, Norway and Finland, while assisted suicide and active euthanasia remain unlawful. In Austria, a law legalizing physician-assisted suicide decriminalized by a judgement of the Constitutional Court will come into force in January 2022. A law for the approval of euthanasia is currently debated in Portugal.

In general, there are many countries in the world that have decriminalized passive euthanasia and / or assisted suicide, but not active euthanasia. In table 1 the current situation in some European countries is summarized.

4. Italian legal developments

Currently, Italy is more backward than other European states as there is no law legalizing either euthanasia or assisted suicide; the latter are punished by the Italian Criminal Code, respectively, as per Article 579 (Consensual murder) and Article 580 (Instigation or assistance to suicide). According to current legislation, in cases of active euthanasia on a consenting patient, the hypothesis of the crime of murder are realized as referred to in Article 579 of the Criminal Code. However, according to this Article, the provisions relating to 'voluntary manslaughter' laid down in Art. 575 of the Criminal Code shall be applied in the event that the act is committed "*against a person who is mentally ill, or who is in a state of mental deficiency due to another illness* ". In addition to the Italian Criminal Code, euthanasia is also condemned by the Italian Code of Medical Ethics, whose Article 17 states " "*Doctors shall not pursue any form of treatment or intervention aimed at causing their patients' deaths, even if so requested by the patients themselves* ". Therefore, the Italian Code of Medical Deontology is against euthanasia [21]. On the other hand, this situation changes if related to passive euthanasia – intended as the withdrawal of life-sustaining treatment - and to terminal sedation, which in Italy are legalized and regulated by Articles 2.4 and 5 of law no. 219 of 22 December 2017. Article 2 of this law is expressed on pain management treatment, the absolute ban on unreasonable obstinacy in therapies and end-of-life dignity and it allows physicians, upon the informed consent of the patient suffering from pains that resist treatments, to resort to terminal sedation until the time of death. Advance Provisions for Treatment (APT) are regulated by Article 4 according to which any adult person capable of understanding and free will, in anticipating a possible future inability to make decisions on their own, can express their will on refusing or foregoing any treatment or diagnostic assessments. Through the APT, the doctor, who is required to comply with them except in specific circumstances, is entitled not to undertake or to suspend treatments even if these could save the patient's life. The same happens with Article 5 of Law 219/2017 which regulates the shared care plan between the patient, who in this case has already become patient, and the doctor; as in the case of APT, they require the doctor to comply with the patient's will, discharging him from any possible medical professional liability [22]. On the other hand, the legislative position on physician-assisted suicide is thornier since in Italy it is not actually regulated by any law. In 2019, the Italian Constitutional Court's Judgement no. 242 *" states the constitutional illegitimacy of Article 580 of the Italian Criminal Code, in the part in which it does not exclude the punishment of those who, in the manner provided for by Articles 1 and 2 of Law no. 219/2017, ..., facilitates the execution of the suicide intention, autonomously and freely elaborated, of a person kept alive by life-sustaining treatments and suffering from an irreversible disease, source of physical or psychological pains that the patient deems unbearable, on condition that he/she is fully capable of making conscious decisions, provided that these conditions and the methods of execution have been verified by a public facility of the National Health Service, after obtaining the approval of the territorial Ethics Committee"* [23].

Basically, by this judgement, the jurisprudence removes the criminal act of assisting suicide, making it fall entirely within that of instigation, since the assistance to suicide in favor of those who have autonomously self-determined the exercise of this constitutional freedom would be a harmless conduct in any case.

5. "Provisions on voluntary medically assisted dying" Bill

Since 2019, following a great popular interest, a first bill was drafted to regulate physician-assisted suicide. Subsequently, in July 2021 the draft of the "Provisions on voluntary medically assisted dying" bill was drawn up and consisted of 8 articles. The first article defines that a person may ask for medical assistance in order to voluntarily and autonomously end his/her life provided that the person in question is suffering from an irreversible disease or a poor prognosis. In the second article, voluntary medically assisted dying is defined as "*...death caused by an autonomous act by which, as a result of the path regulated by the rules of this law, the patient may end his/her life in a voluntary, dignified and conscious way with the support and supervision of the National Health Service".* The third article lists the prerequisites and conditions for which it is possible to resort to medically assisted suicide: adulthood, capacity of understanding and will, incurable illness or poor prognosis, being kept alive by life-sustaining treatments, being assisted by the network of palliative care. Article 4 specifies that the request for voluntary medically assisted dying must be "*informed, aware, free and explicit*", revocable at any time and expressed in writing or through a proper device and addressed to the general practitioner or to a trusted doctor. Article 5 describes the methods of the procedure: the first paragraph emphasizes that medically assisted dying *"must be provided with respect for the dignity of the patient ... in order to avoid further suffering and abuse. The patient has the right to indicate who must be informed within his or her family or friend network and who may be present at the time of death* "; the second and third paragraphs state that the doctor who received the request for voluntary medically assisted death is required to draw up a report on the clinical condition and the reasons of the applicant, specifying whether the patient is aware of his/her clinical condition and his/her prognosis and if he/she has been informed about all the existing therapeutic possibilities and the possibility of accessing palliative care. Finally, a comprehensive medical record must be sent to the territorial Ethics Committee of the competent clinic; the fourth paragraph sets out a limit of seven days from receipt of the request by which the Ethics Committee must examine the request for death and must communicate its view both to the requesting doctor and the patient concerned; the fifth paragraph sets out that in case of a favorable opinion and once authorized by the Health Department of the Local Health Authority, the death may occur at the patient's home or at hospital or at a public residential facility; the sixth paragraph specifies that the medical record must be inclusive of the request, the documentation and the authorization by the Ethics Committee; the last paragraph emphasizes that, before the procedure is performed, the attending physician must ensure, if necessary with the assistance of a psychologist, that the will of the patient persists as well as the clinical conditions eligible for medical assistance in dying (MAiD). Paragraph 6 defines the Healthcare Ethics Committees as "*multidisciplinary, autonomous and independent bodies set up by professionals with clinical, psychological, social and bioethical skills*" relevant to assessing the requirements for accessing the procedure.

Paragraph 7 represents the key point of this bill as it excludes the punishment as per Articles 580 and 593 of the Italian Criminal Code for healthcare and administrative professionals, who have dealt with the procedure of voluntary medically assistance in dying and all those who have assisted the patient to undergo the aforementioned procedure if it has been carried out in compliance with the provisions defined by the law in question [24].

6. Conclusions

Euthanasia and physician-assisted suicide represent current bioethical issues around the world. Nowadays, when we talk about the right to a dignified life, the right to a similarly dignified and suffering-free death cannot be excluded; the concept of dignity must be assessed taking into account the individual subjective vision which is why everyone must be given the right to self-determination not only in life but also in death. It is clear that in each single European state the disparity in current regulations concerning these issues is wide both in terms of laws and time. There are countries that faced these debates decades ago by legalizing this type of practice and other countries, like Italy, that have only debated in recent years. Therefore, a decision on these issues is required as soon as possible, decriminalizing doctors and health practitioners, and allowing everyone to self-determine even at the moment of death.

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