Assisted suicide under Swiss law

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1. Introduction

Contrary to most European countries, assisted suicide is not *per se* illegal in Switzerland. Indeed, article 115 of the Swiss penal code provides:

“Every person who shall for selfish motives encourage or assist another person to commit suicide shall be liable to imprisonment for a term not exceeding five years.”¹

In the German-speaking part (especially around Zurich) of Switzerland,² private organizations such as EXIT offer to assist people who want to commit suicide, within the framework of the law. They extend their offer even to people not residing in Switzerland, which has prompted a so-called “death tourism” in the last years from countries such as the United Kingdom towards Zurich. As long as those organizations can show that they do not have any self-serving motive, they are not criminally punishable under Swiss law. But strong reactions abroad as well as within the country have resurrected the political debate on regulating more tightly euthanasia and assisted suicide.

In this short paper, we will first recall the historical context that led to the adoption of article 115 of the Swiss Penal Code in 1943. Then we will explain the scope of this criminal provision in more details and stress some of the legal questions it has raised in recent times. Finally we will discuss present proposals and future perspectives on regulating assisted suicide as well as euthanasia in Switzerland. But as a preamble, we ought to define a few notions that are commonly used in the Swiss legal literature about end-of-life decisions.

2. Assisted suicide and euthanasia

Words are important: they express the values and cultural sensitivity of a nation.³ It is, therefore, important to highlight the meaning given in Switzerland to a
number of concepts sometimes falling in other countries under the general heading “euthanasia”.

Assisted suicide is usually defined as any action taken to encourage or help somebody to kill oneself. It may consist of providing a lethal substance or any other means to the person planning to commit suicide. The final gesture (e.g. taking and swallowing the pills) must be made freely by the person committing suicide.

Assisted suicide is different from active euthanasia as well as from passive euthanasia. In the Swiss legal literature, active euthanasia is itself separated into two forms: direct and indirect active euthanasia. Direct active euthanasia is commonly defined as the deliberate killing of another person in order to shorten his or her suffering. For instance, a doctor or any third party deliberately injects a lethal substance into the veins of the suffering person, thus directly causing his or her death. The death-causing act is not made by the suffering person but by the mercy-killer.

By contrast, indirect active euthanasia is widely defined as the use of means to relieve suffering (e.g. morphine) which may have as a side effect to shorten a patient’s lifetime. The possibility that death might occur earlier than it would otherwise has been recognized and accepted by the person administering the pain relievers who, however, acts with a view to relieve suffering and not to kill.

Passive euthanasia consists of the renunciation or discontinuation of life-prolonging measures (e.g. a life-support machine is switched off or antibiotics are not administered). In such cases, death is not specifically caused by the act of non-initiating or stopping life-prolonging measures but by the underlying illness.

The four practices that we just defined are not treated on a same footing by the law. As we will see in more details, assisted suicide is not prohibited as long as it is not made for selfish reasons (article 115 of the Swiss Penal Code a contrario). On the contrary, direct active euthanasia is punishable under article 114 of the Swiss Penal Code which provides that

“Every person who shall for honourable reasons, especially mercy, kill a person on his or her serious and pressing request, shall be liable to imprisonment”.

Depending on the circumstances of the case, it might even be punished under article 111 (murder), article 112 (aggravated murder) or article 113 (manslaughter) of the Swiss Penal Code. Most legal writers have argued that Swiss criminal law does not deal with indirect active euthanasia nor with passive euthanasia; both practices are deemed permissible, not only from the criminal law perspective but also in civil law (art. 28ff of the Civil Code on the protection of personality) and in constitutional law (provisions of the federal Constitution on fundamental rights, especially art. 10 Cst.).