

Scottish Council on Human Bioethics

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Briefing to UK Parliamentary Assembly Members of the Council of Europe

Mr Dick Marty's Euthanasia Proposals (Doc. 9898) for the Parliamentary Assembly of the Council of Europe - 27 April 2004

A new report drafted by the Council of Europe Parliamentary Assembly's Social, Health and Family Affairs Committee (Rapporteur: Mr. Dick Marty MP, Switzerland) on euthanasia proposes that different kinds of end of life decisions should be analysed and discussed in order to consider whether to exempt from prosecution physicians who agree to help terminally-ill patients, undergoing constant, unbearable pain and suffering without hope of improvement in their condition, to end their lives.

1. However, the relevance of this report is doubtful since the suggested analysis of end of life decisions and the corresponding discussions are already taking place in Europe. Indeed, in February 2003, the Committee of Ministers of the Council of Europe considered the Steering Committee on Bioethic's report on laws and/or practices of member states with regard to the issues raised by Parliamentary Assembly Recommendation 1418 (1999) on the protection of the human rights and dignity of the terminally ill and the dying. [1] And in this document the Committee of Ministers concluded that:

"aspects of end of life decision making are discussed in a number of member states both within official and professional bodies and among the public."

"in respect of some aspects, such as the validity of advanced directives, legislation amongst the member states varies considerably."

"in a very large majority of member states, active euthanasia ... as well as assisted suicide ... are illegal. The Committee takes note that both the partisans and the opponents often hold strong and articulated positions, and that there seems to be little possibility, at the present time, for a consensus."

Thus, it is questionable whether this new report on euthanasia would provide any added value to the debate without also undermining the relevance of the provisions set out in the recent Council of Europe Parliamentary Assembly Recommendation 1418 (1999).

2. Furthermore, the following omissions and misconceptions are, unfortunately, present in Mr Marty's euthanasia proposals which raise questions as to their objective content:

In a document covering euthanasia and assisted suicide, prepared by the Council of Europe and published on 20 January 2003, containing the replies to a questionnaire from 34 countries of the Council of Europe and the USA, the majority of Member States, including Belgium and the Netherlands, stated that they did not define "passive euthanasia" in their country. [2]

Indeed, when the primary intention was to end the life of a patient through an intervention (including the withdrawal of life-sustaining treatment), then this practice would be prohibited in most member states, in the same way as euthanasia.

If, on the other hand, a physician followed good medical practice for the benefit of the patient and this practice had, as a side effect, the shortening of the patient's life, then no objections would be normally brought against the physician in all the countries concerned. Indeed, the doctor's intention is the critical distinction between euthanasia and good palliative care. And indications that this distinction cannot be appropriately defined, as suggested in these proposals, are not substantiated by any evidence.

- **The proposals are inaccurate and ill-advised in assuming that assisted dying may be a solution to the fears relating to suffering as a patient approaches death.** Indeed, they do not take proper consideration of developments in the hospice movement and palliative care which allow pain and distressing symptoms of disease to be adequately alleviated in all but the most extreme cases. Experience shows that once people are comfortable and their fears concerning suffering have been addressed, they often change their minds about wanting to end their lives. And even in the extremely rare cases where suffering does not respond to treatment there is the possibility, with the informed consent of the patient, of using artificial transient sedation. Thus, there is absolutely no reason for anyone to die in pain.

- As far as alleged incompatibility of euthanasia with Article 2 ("right to life") of the European Convention on Human Rights is concerned, Mr Marty's report is right in pointing out that euthanasia has never been submitted to the judgement of the

European Court of Human Rights. [3] However, it should be noted that in the recent case of *Pretty v. The United Kingdom* (Application no. 2346/02), the European Court of Human Rights indicated that the UK government, in refusing to give prior confirmation that the law on assisted suicide would not be applied in this case, had not violated any of the articles of the European Convention on Human Rights.

3. The near unanimity of European countries do not accept euthanasia or assisted suicide.

In the aforementioned document covering euthanasia and assisted suicide and containing the replies to a questionnaire from 34 countries of the Council of Europe and the USA, only Belgium and the Netherlands indicated that active euthanasia was permissible in their legislation (though it remains unlawful).

With respect to assisted suicide, only three countries (The Netherlands, Estonia and Switzerland) indicated that their legislation would not regard such an undertaking as an offence provided certain conditions were met. [4]

4. Since euthanasia and assisted suicide are devolved matters for the Scottish Parliament under the Scotland Act 1998, Schedule 5 (Reserved Matters), Part II (Specific Reservations), Head J (Health and Medicines), it would be appropriate for the UK Parliamentary Assembly Members of the Council of Europe to consult the Scottish Parliament prior to any representations being made in Strasbourg.

¹ *Ministers' Deputies*, CM Documents, CM(2003)21 Addendum 2, 12 March 2003, Steering Committee on Bioethics - Report on laws and/or practices of member states with regard to the issues raised by Parliamentary Assembly Recommendation 1418 (1999) on the protection of the human rights and dignity of the terminally ill and the dying. [link](#)

² See footnote 1.

³ The European Commission of Human Rights examined inter alia the following cases: *Adler v. Germany* (No. 1371/87), decision by the Commission on 4.10.1989; *Widmer v. Switzerland* (no. 20527/92), decision by the Commission on 10.2.1993. The European Court of Human Rights examined inter alia the following cases: *Sanles v. Spain* (no. 48335/99), decision by the Court on 26.10 2000; *Pretty v. the United Kingdom* (no. 2346/02), decision on 29.4.2002.

⁴ See footnote 1.