BETWEEN AUTONOMY AND PROTECTION: A COMPARATIVE ANALYSIS OF ASSISTED DYING LEGISLATION ACROSS LEGAL SYSTEMS

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Abstract

This research explores the ethical and legal tension between individual autonomy and the protection of life within the assisted dying frameworks of Italy, Germany, and Switzerland. It observes that the European Court of Human Rights grants states a wide margin of appreciation due to a lack of international consensus, currently refusing to recognize a generalized European right to assisted suicide. Consequently, the legal landscape is characterized by diverse national approaches shaped by distinct legal cultures and judicial interpretations. The comparative analysis reveals a fragmented picture: Italy suffers from legislative inertia, forcing the Constitutional Court to establish specific criteria for end-of-life care in the absence of statutory law; Germany underwent a legal revolution in 2020 when its Federal Constitutional Court recognized a right to a self-determined death ; and Switzerland maintains a liberal model where altruistic assistance is lawful. These systems demonstrate a shift where judicial intervention often fills the void left by silent legislatures. Ultimately, the study underscores that restrictive or absent legislation often leads to "suicide tourism," as individuals seek dignity in more permissive jurisdictions like Switzerland. The authors conclude that legal systems must become more flexible to bridge the gap between static norms and evolving societal needs. There is an urgent need for legislators to provide concrete constitutional guarantees to ensure clarity and protection for those facing end-of-life decisions.

INTRODUCTION

In the literature on medicine, bioethics, criminal law and legal philosophy, there is no unanimous agreement on many ethical issues, or even on the definition of the terms and issues themselves. This is especially true in the case of medically assisted dying. The practice involves a doctor providing a person affected by a serious or terminal illness with the means to voluntarily end their life, typically by prescribing a lethal drug that the patient takes independently. The patient is, therefore, fully responsible for the decision and the final act, unlike what happens with euthanasia, where it is the doctor who decides whether to administer the drug.

However, this definition does not reflect the complexity of the issue. Assisted dying lies at the heart of several fundamental rights, from self-determination to the protection of life and freedom of conscience, making it necessary to examine the legal framework governing its

application in depth.

The issue first appeared before the courts in Strasbourg in the famous case of Pretty v. United Kingdom[1] (2002). The case marked a crucial step forward in terms of the breadth, depth and novelty of the issues addressed by the ECHR in the field of end-of-life care, an area which until then had remained largely outside its jurisdiction.

In addressing this matter, the Court left the decision on whether and how to regulate the matter to individual states. As is often the case with highly controversial issues, the court sought to avoid taking a clear stance on recognising a right to assisted dying.

In the most recent case, Karsai v. Hungary[2] (2023), the Court ultimately confirmed its position. First of all, it noted that the majority of Council of Europe member states continue to prohibit both euthanasia and assisted dying, a situation which, according to Strasbourg case law, justifies granting states a wide margin of discretion in regulating end-of-life issues.

Indeed, a concept often cited by the Court is that of "consensus among states", a key factor determining the margin of appreciation. A wide margin translates into self-restraint on the part of the Court in favour of the discretion of national authorities, while a narrow margin allows the Court to impose a (higher) standard of protection. Consensus, therefore, acts as a watershed between state discretion and evolutionary interpretation, as well as a basis for arguing that the Convention should be seen as a living document.[3]

In the present case, due to the absence in European countries of a broadly similar legislative framework regulating this sphere, the ECHR does not recognise a generalised European right to assisted dying. States may certainly have positive obligations under the Convention – including, in particular, the obligation to ensure access to effective palliative care that respects dignity – but these obligations do not in themselves entail the need to authorise assisted suicide within their legal systems.

Moreover, the international picture is characterised by a range of approaches shaped by profoundly different legal cultures. For instance, the UN Human Rights Committee has never recognised the existence of a right to die, still less a right to assisted dying. In reaffirming the right to life, however, the Committee has stressed—both in its General Comments and in its

[1] *Pretty v. United Kingdom*, Application no. 2346/02, available at: https://hudoc.echr.coe.int/fre?i=001-60448
[2] *Karsai v. Hungary*, Application no. 32312/23, available at: https://hudoc.echr.coe.int/eng?i=001-234151
[3] As reported in *A, B e C v. Ireland, par. 234*: «The existence of a consensus has long played a role in the development and evolution of Convention protections, the Convention being considered a "living instrument" to be interpreted in the light of present-day conditions. Consensus has therefore been invoked to justify a dynamic interpretation of the Convention»

periodic reviews of states that have legalised certain forms of assisted dying, such as Canada - the importance of effective safeguards against potential abuse, with clear and transparent procedures and enhanced protection for the most vulnerable individuals[4]. In order to better understand the complexity of the issue, we will examine the approaches adopted by the Italian, German and Swiss legal systems, thereby providing a broader and comparative picture of the topic.

1. ITALY

The issue of assisted dying has always been hotly debated in Italy: on the one hand, there are those who believe, in accordance with Articles 1, 2, 13, and 32 of the Italian Constitution, that life is priceless and inalienable; on the other, there are those who interpret the same articles differently, seeing dignity as the cornerstone of the individual. Regardless of one's opinion on the matter, the issue has generated strong contrasts in public opinion that are not reflected in the nation's politics, resulting in it being broadly ignored by the legislature and relegated to other institutions. In this regard, the legislature has proven to be mostly inert in the face of requests for recognition of this presumed right. The task of responding to these needs has thus passed by default to an actor which at least in theory should be entirely external to the legislative process, namely the *Corte Costituzionale*, in some cases raising doubts about its role[5]. From this situation, a fragmented picture of assisted dying has emerged, a limbo between weak protection of constitutional justice and an almost inert legislature.

1.1. The situation before the „Cappato case''

Before 2017, in Italy the situation was something of a stalemate. Although the right to refuse medical treatment has never been denied in Italy, in accordance with Article 32 of the Constitution, there was no law regulating assisted dying or any interest in passing one. Any intervention on the matter by any Italian institution thus seemed very far off, but two cases in particular helped to break the stalemate: those of Welby and Englaro[6].

The Welby case proved to be fundamental in terms of the procedure for obtaining assisted dying and the related legal consequences. In this case, the rationale for assisted dying was not

[4] Available at: https://www.undocs.org/en/CCPR/C/GC/36, pg. 9
[5] F. Paterniti, *La Corte 'pedagogista' di un legislatore colpevolmente inerte,* Federalismi, Italy, n. 34/2020.
[6] G.U. RESCIGNO, *Dal diritto di rifiutare un determinato trattamento sanitario secondo l'art. 32, comma 2, Cost., al principio di autodeterminazione intorno alla propria vita*, in Diritto Pubblico, n. 1/2008, 102 ss.

active euthanasia, but rather the refusal of therapeutic obstinacy[7] i.e. life-prolonging treatment. Thus, in this case, Welby had withdrawn his consent, subsequently receiving deep sedation before the ventilator was removed, under the supervision of Dr. Riccio. After this incident, Dr. Riccio was charged under Articles 579 and 580 of the Criminal Code with consenting homicide and assisted suicide, but was acquitted on the grounds that he had acted in compliance with the law and the patient's right to refuse medical treatment, falling within the circumstances provided for in Article 51 of the Criminal Code, i.e. fulfilment of duty. The ruling clarified that Articles 13 and 32 of the Constitution had been respected and that interruption of medical treatment cannot constitute active euthanasia[8]. This ruling laid the foundations for the requirement of consent as a key condition of assisted dying[9].

Regarding the second case, Eluana Englaro had been in a permanent vegetative state since 1992 and her father, Beppe Englaro, had requested that his daughter's hydration and artificial feeding be suspended, in accordance with her wishes. The debate revolved around three main points: the existence of informed consent; the reconstruction of her wishes and the capacity of her legal guardian (her father) to express them; and whether the treatments should be classified as medical therapies, hence something that could be refused, or as life support and therefore mandatory. The Court of Cassation recognized all the points previously mentioned[10], giving the green light to the interruption of all health treatments, despite the reservations of some politicians[11]. The case gave rise to a much wider public debate than the previous one cited, but even more importantly, it identified further requirements for the application of assisted dying, resulting in a clearer, more detailed framework[12].

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[7] „Accanimento terapeutico'', so defined subsequently by Codice di Deontologia, art. 14, and l. n. 219/2017, art. 2, co. 1. On merit G. RAZZANO, *La legge n. 219/2017 su consenso informato e DAT, fra libertà di cura e rischio di innesti*

[8] G.I.P.'s ruling n. 2049/2007.

[9] For further information: N. VICECONTE, *Il diritto di rifiutare le cure: un diritto costituzionale non tutelato? Riflessione a margine di una discussa decisione del giudice civile sul "caso Welby"*, in Giur. Cost., 2007, 2359 ss.; A. NICOLUSSI, *Al limite della vita: rifiuto e rinuncia ai trattamenti sanitari*, in Quaderni Costituzionali, n. 2/2010, 269 ss.

[10] *Corte di Cassazione*'s ruling n. 21748/2008.

[11] The government repeatedly attempted to block the judge's decision with emergency decrees. However, the President of the Republic blocked all attempts, believing such interventions to be *ad personam*. The affair created a clash between the executive and judiciary branches. For more information, A. RUGGERI, *Il caso Englaro e il controllo contestato, in www.astrid-online.it, n. 86/2009, ID., Il testamento biologico e la cornice costituzionale (prime notazioni)*, in Forum di Quaderni Costituzionali, 2009, 1 s.

[12] For further information on the case, C. ANNECHIARICO, E. GRIGLIO, *Il caso Englaro: profili costituzionali*, in Amministrazione in Cammino; A. D'ALOIA, *Al limite della vita: decidere sulle cure*, in Quaderni Costituzionali, n. 2/2010, 237 ss.; S. GAMBINO, *Diritto alla vita, libertà di morire con dignità, tutela della salute. Le garanzie dell'art. 32 della Costituzione*, in Revista de la facultad de ciencias Juridicas, n. 14/15 2009/10, 101

1.2. Law n. 219/2017 and the Cappato case

Although the facts discussed here are of contemporary relevance, the initial focus will be on Italian law number 219/2017 (*Norme in materia di consenso informato e di disposizioni anticipate di trattamento*), as it is fundamental to the final decisions in the Cappato case. That the intervention came from the legislative body rather than the judiciary, as in the Englaro case, represented a change of approach. The law protects the dignity and self-determination of the individual[13], affirms the importance of informed consent[14] and reaffirms the right to refuse medical treatment[15].For those who are legally incapacitated, their legal guardian is responsible[16]. Also envisaged are AHDs (advance healthcare directives), i.e. documents drawn up by subjects while in full possession of their faculties that set out what treatment should or should not be applied in the event that they lose the ability to make their own decisions[17]. It is easy to see how this law is the result of previous jurisprudence. However, it provides insufficient protection for those who wish to resort to assisted dying in Italy[18].

In 2017, Fabiano Antoniani was in a vegetative state and a quadriplegic. He therefore decided to seek the help of Marco Cappato, who proceeded to assist him in ending his life in a Swiss clinic. Cappato then reported himself to the authorities, pursuing a litigation strategy with the aim of exposing the inadequacy of the relevant legislation and pressuring lawmakers to act[19]. Once indicted under Article 580 of the Criminal Code, he appealed to the Constitutional Court, which duly issued an initial ruling[20] suspending the proceedings. In a subsequent ruling, it urged Parliament to legislate on the matter, an appeal that went unheeded, leaving the task of deciding the merits to the Court itself. Thus, for the first time in the history of this affair, criteria

[13] Art. 1, co. 1.
[14]Art. 1, co. 2-3-4.
[15] Art 1, co. 5-6.
[16] Art. 3.
[17] Art. 4.
[18] G. RAZZANO, *La legge n. 219/2017 su consenso informato e DAT, fra libertà di cura e rischio di innesti eutanasici*, Giappichelli, Torino, 2019, G. RAZZANO, *Dignità nel morire, eutanasia e cure palliative nella prospettiva costituzionale*, Giappichelli, Torino, 2014, spec. 13 ss.; ID., *Sulla sostenibilità della dignità come autodeterminazione*, in BioLaw Journal-Rivista di Biodiritto, special issue n. 2/2019, 95 ss., F. PIERGENTILI, A. RUGGERI, F. VARI, *Verso una "liberalizzazione" del suicidio assistito? (Note critiche ad una questione di costituzionalità sollevata dal Gip di Firenze)*, in dirittifondamentali.it, n. 1/2024, 219 ss., spec. 224-227, M. RODOLFI, C. CASONATO, S. PENASA(a cura di), *Consenso informato e DAT: tutte le novità*, in Il civilista, 2018; AA.VV., Forum: *La legge 219 del 2017*, in BioLaw Journal-Rivista di Biodiritto, n. 1/2018; AA.VV., *Il Biotestamento. Prime regole sul fine vita. Riflessioni a margine della legge 219/17*, in Dirittoesalute, n. 4/2018, 30 ottobre 2018; G. BALDINI, *Prime riflessioni a margine della legge n. 219/2017*, in BioLaw Journal-Rivista di Biodiritto, n. 2/2018, 97 ss.
[19] A. Pisanò, *Crisi della legge e litigation strategy,* Giuffrè, Italy, 2017.
[20] *Corte Costituzionale*'s order n. 207/2018.

for the regulation of assisted dying were finally established, albeit by the wrong body. These are: 1) the inability of the patient to survive without life-sustaining treatments; 2) incurable disease; 3) intolerable physical and psychological suffering; 4) the ability to make free and informed decisions; and 5) power of veto by the ethics committee[21]. After many years, this case provided a framework for the issue, but at the same time, it represented a unique role for the Italian judiciary. In particular, contrary to what one might expect, it was the Constitutional Court rather than Parliament that protected the needs of individuals in this situation, paving the way for its potential intervention in this and other fields, amid the silence of the legislative body[22].

1.3. Subsequent developments

The situation today remains essentially unchanged from the events described above. There have been several Constitutional Court rulings that have attempted to declare Articles 579 and 580 of the Criminal Code completely illegitimate[23]. Nonetheless, the Court has remained firm on the position it took in the Cappato case, while remaining open to the possibility of reevaluating the criteria identified in the previous ruling and once again inviting the legislature to take action to fill this legislative gap. Meanwhile, campaigners have sought alternative ways to enforce the right to assisted dying. Having virtually ruled out legislative action while deeming judicial action to be logically insufficient, they have promoted referendums[24] and regional[25] approaches, which, however, have proven particularly unsuitable in this context given the sensitivity of the issue. In conclusion, in the light of current developments, the situation appears to have reached a dead end, the regulatory vacuum condemning potential users of this right to a situation of incomplete uncertainty. What

[21] *Corte Costituzionale*'s ruling n. 242/2019.
[22] G. D'ALESSANDRO, O. DI GIOVINE (a cura di), *La Corte costituzionale e il fine vita. Un confronto interdisciplinare sul caso Cappato-Antoniani*, Giappichelli, Torino, 2020, 221 ss.; M. VILLONE, *Il diritto di morire*, Scriptaweb, Napoli, 2011; G. MANIACI, *Perché abbiamo un diritto costituzionalmente garantito all'eutanasia e al suicidio assistito*, in Rivista AIC, n. 1/2019, 262 ss.; G. GEMMA, *Dignità ed eutanasia: non c'é antitesi. Note a margine di un'opera recente di una costituzionalista cattolica*, in Materiali per una storia della cultura giuridica, n. 1/2016, 253 ss.
[23] *Corte Costituzionale*'s rulings n. 135/2024, 66-132/2025.
[24] G. BRUNELLI, A. PUGIOTTO, P. VERONESI (a cura di), *La via referendaria al fine vita, ammissibilità e normativa di risulta del quesito sull'art. 579 c.p.*, in Amicus Curiae, Nuovi Seminari Preventivi Ferraresi, 2022
[25] E. GROSSO, *Una legge regionale per disciplinare forme e limiti del suicidio medicalmente assistito, in Il Piemonte delle Autonomie*, n. 1/2024, 1 ss.

emerges from the current context is a "consistent lack of consistency"[26].

2. GERMANY

As in the Italian case, Germany has regulated the issue of end-of-life matters primarily through constitutional jurisprudence. Indeed, in this case too, the framework appears fragmented, and individuals appear to be left, at least in the first instance, without sufficient legislative protection.

2.1. The context before the ruling of February 26, 2020

Before the 2020 ruling, assisted dying was theoretically possible, though difficult to enforce. *Tötung auf Verlangen*[27] was a criminal offence, while aiding and abetting suicide was not punishable. However, in 2015, Article 217 StGB was amended, thus introducing this category under the name of *Geschäftsmäßige Förderung der Selbsttötung*[28] (commercial aiding and abetting suicide). The word *Geschäftmäßigkeit* can be understood as referring more to a form of organization aimed at assisted suicide than to commercialization, effectively excluding from this process organizations and associations that would be more caring and sensitive towards such procedures, rather than leaving the issue to private individuals.[29] As can be easily understood, this provision has totally blocked the possibility of resorting to assisted dying, leading to its inapplicability, which, although not expressly foreseen, is nevertheless guaranteed.

2.2. The 2020 ruling

The 2020 ruling[30] marked a revolution in the understanding of assisted dying.[31] First of all, the *Recht auf selbstbestimmtes Sterben* (the right to a self-determined death) was guaranteed, since otherwise it would represent a limit on a very personal decision of the

[26] F. G. Campodonico, *Fine vita e suicidio medicalmente assistito: dalla sentenza n. 242 del 2019 alla recentissima sentenza n. 132 del 2025. Tra (presunti) diritti, perdurante necessità di tutela degli individui fragili e vulnerabili, possibili interventi legislativi e rischio di un progressivo deterioramento costituzionale*, Federalismi, n. 30/2025, Italy.
[27] Art. 216 StGB.
[28] Art. 217 StGB.
[29] M.T. RÖRIG in Comp. 259, *Decisioni di fine vita ed ausilio al suicidio.*
[30] 2 BvR 2347/15.
[31] S. K. GÖRÜCÜ, *Assistierter Suizid in Deutschland*, BVerfGE 153, 182 *als Ausgangspunkt für eine gesetzliche Regelung*, Peter Lang, Berlin, 2023; A. J. WEISSBRODT, *Etwas Besseres als den Tod - Aktuelle Regelung der Suizidbeihilfe und ihre Auswirkungen auf die Ärzteschaft*, de Gruyter, Berlin, 2022.

individual and would therefore be in contrast with the concept of dignity. In this context, the limit set by Article 217 StGB appears to be a violation of the principle of proportionality and therefore does not meet the potential needs (***Erforderlichkeit***) of individuals. In this case, the *BVerfG* (German Constitutional Court) does not recognize the connotation of *Geschäftmäßigkeit*, since the situation in which an individual could find themself certainly does not depend on their decision, thus removing the basis of Article 217 StGB. It therefore declared the illegitimacy of the provision and invited legislators to draw up suitable procedural guidelines but not to concern themselves with the material criteria with which the subject must comply. Nevertheless, the sentence was heavily criticized. The first objection was to the recognition of *innere Festigkeit* as the only material criterion for the evaluation of certain cases, since jurisprudence had already established certain requirements such as age and illness.[32] Consequently, the concept of self determination (*autonome Selbstbestimmung*) was also held to be too similar to the concept of dignity, not taking account of their intrinsic difference in the eyes of some critics.[33] Finally, the court was criticized for entrusting a primary role to the legislature, trapped between inertia and the impossibility of expressing itself fully[34].

2.3. Subsequent development

Having laid the foundations for further applications of assisted dying in Germany, cases influenced by the 2020 ruling have begun to emerge. The *BVerwG* ruling from 2023[35] involved the illegitimacy of the use of Pentobarbital for the purposes of assisted dying, as it was incompatible with the available medical resources[36]. The *BGH* expressed itself[37] along similar lines in the *Insulin-Beschluss* case, deeming the person who assisted the death not punishable under Article 216 *StGB*, since the accused was merely a facilitator of her husband's will[38]. Finally, it is worth mentioning the case of the Kessler twins, who recently decided to resort to assisted dying simultaneously. Although at the time of writing the investigation is ongoing, the

[32] S. RIXEN, *Suizidale Freiheit*, cit., 399 s.
[33] U. VOLKMANN, *Gras im Wind?*
[34] A-B. KAISER, I. REILING, *Der Lebensschutz am Lebensende – Handlungsauftrag und Gestaltungsspielräume des Gesetzgebers nach dem Suizidhilfe-Urteil des Bundesverfassungsgerichts*, in A. UHLE, J. WOLF (a cura di) Entgrenzte Autonomie?, cit., 120 ss.
[35] BVerwG'r ruling 3 C 8.22 et al.
[36] For more information, S. SCHURZ, *Vier Perspektiven auf das Grundrecht auf selbstbestimmtes Sterben*, cit., 556 ss.
[37] BGH, Beschluss vom 28.06.2022 - 6 StR 68/21.
[38] V. IBOLD, *Recht auf selbstbestimmtes Sterben und Realität*, in GA 2024, 16.

criteria followed appear to be perfectly compliant with the relevant regulations, as this is not a case of active euthanasia, which is prohibited under German law. In conclusion, the German situation, like the Italian, is not yet entirely clear. We are still waiting for legislative intervention and there have been several proposals since 2020, albeit with no outcome.[39]

3. SWITZERLAND

The Swiss context stands out from the regulatory contexts examined above. Swiss legislation on medically assisted dying is the result of a combination of heterogeneous sources such as criminal law, cantonal decisions and Federal Court case law.

3.1. The federal point of view

The legal system considers life to be the most important legal right, which is why the prohibition on killing is absolute. Among the provisions that cover crimes against life and personal integrity is Article 115 of the Criminal Code[40], entitled "Instigation and assistance in suicide", which punishes assistance or instigation to suicide when the person involved acts for selfish reasons[41]. Conversely, it can be said that any action that facilitates suicide, if done for altruistic purposes, is fully lawful.

It is precisely around this latter interpretation that the regulations governing assisted dying and the procedures adopted by clinics for end-of-life care have developed over time. Beyond the article analysed, there are no further federal provisions on assisted dying, and all attempts at reform aimed at clearer and more explicit legislation have failed. A report published by the Federal Department of Justice and Police[42] states that there is no need for legislative action at federal level in the area of assisted dying. Both the Federal Council and Parliament have decided not to regulate organised assisted dying directly, concluding that the existing legal framework already makes it possible to prevent abuse or at least identify it in advance.

3.2. Cantonal legislature and SAMS

At the cantonal level, cantonal legislators have jurisdiction over assisted dying, primarily based on the original public law powers granted to the cantons, particularly in the areas of health

[39] BT-Drs. 20/904, 20/2332, 20/2293, 20/7624. 41 and 20/7630.
[40] An English version of the Swiss criminal code: https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en
[41] Reason satisfied when the subject acts to satisfy personal interests
[42] Available at: https://www.news.admin.ch/en/nsb?id=5336

and social services. Aware of their limited competence in specific areas, many cantons have adopted their own regulations governing the practice of assisted dying, with particular regard to its feasibility within healthcare institutions[43].

The intervention of the Swiss Academy of Medical Sciences (SAMS) was also fundamental. In its guidelines, the SAMS states that if a request for assisted dying is made to a doctor, on the one hand, assisted dying is not a duty of the doctor[44], as it is contrary to the objectives of medicine, and on the other hand, respect for the patient's wishes is of central importance in the relationship between doctor and patient.

Therefore, assisted dying cannot be considered a duty of medical personnel, who may, however, freely choose to provide assistance in dying, provided that five conditions are me[45].

3.3. The role of the Federal Court and the ECHR

In the case "Haas v. Switzerland"[46], a man suffering from bipolar disorder challenged the requirement under Swiss law to obtain a medical prescription in order to access a lethal dose of medication, arguing that it was contrary to Article 8 of the ECHR (right to respect for private life).

The Federal Court recognised that the right to self-determination is part of a citizen's private life, but stated that the State also has an obligation to protect life, especially that of vulnerable people. It therefore concluded that the state is not obliged to guarantee easy access to a lethal substance and that the mandatory medical prescription is a reasonable restriction.

Haas then appealed to the ECHR, arguing that Article 8 of the ECHR gave him the right – in practice – to obtain access to a drug to kill himself safely and with dignity. Nevertheless, in its judgment of 20 January 2011, the ECHR upheld the Federal Court's approach, recognising Switzerland's margin of appreciation and declaring that there is no right to the provision of lethal substances by the state.

Conversely, in the case of Gross v. Switzerland[47], concerning a woman in good health

[43] In 2013, the Canton of Vaud introduced a specific law regulating the conditions for the implementation of assisted suicide in public hospitals and nursing homes: https://www.vd.ch/sante-soins-et-handicap/patients-et residents-droits-et-qualite-de-soins/les-droits-des-patients-des-residents-et-des-personnes-en-situation-de handicap/assistance-au-suicide
[44] Available at: https://www.samw.ch/dam/jcr%3Aefba20dd-6b7d-429b-a522-cc3de3092a06/guidelines_sams_patients_in_the_end_of_life_2004.pdf?utm_source=chatgpt.com, para. 4.1
[45] For those requested conditions: https://www.samw.ch/dam/jcr%3A25f44f69-a679-45a0-9b34-5926b848924c/guidelines_sams_dying_and_death_2018.pdf?utm_source=chatgpt.com, par 6.2.1
[46] Available at: https://hudoc.echr.coe.int/fre?i=001-102940
[47] Available at: https://hudoc.echr.coe.int/eng?i=001-119703

who had been denied a prescription for pentobarbital, the ECHR held that the request fell within the scope of Article 8 of the ECHR and found a violation of the Convention. This was because, although Article 115 of the Swiss Criminal Code allows the prescription of lethal drugs if duly issued by a doctor, the SAMS guidelines governing such prescriptions have no legislative value and do not clearly define the cases in which they are authorised, creating uncertainty and potential deterrent effects on doctors. On the basis of this development, the Federal Court stated that the right to self-determination allows everyone to choose the manner and timing of their own death when they are capable of discernment, specifying, however, that there is no actual "right to assisted dying", but rather a freedom to die within the limits set by the law.

Since 2021, the Federal Court has once again been called upon to rule on cases involving the prescription of pentobarbital to healthy individuals. In a case involving a doctor who had prescribed the drug to a healthy 86-year-old woman, the Federal Court overturned the conviction handed down by the cantonal judges. It clarified that when the desire to die stems from an illness, the prescription may serve a therapeutic purpose; however, if it comes from a healthy person, the application of the Later[48] is excluded and it must be assessed whether there is liability under the Narcotics Act.

In a subsequent review in February 2023, the Geneva Cantonal Court acquitted the doctor, stating that the mere prescription of pentobarbital to a healthy person who is capable of discernment and wishes to die does not in itself constitute a criminal offence. The Public Prosecutor's Office appealed the decision and the case is again pending before the Federal Court.

Switzerland has a liberal legal framework applicable to assisted dying. In the opinion of the Federal Council, the regulations currently in force represent a satisfactory and adequate arsenal for controlling abuse, provided that the authorities intervene firmly and decisively. However, as the analysis of the most recent case law shows, judges at different levels have ruled differently, thus creating a legal grey area in relation to assisted dying and generating ambiguity in the underlying relationships.

CONCLUSION

This paper delves into the complex issue of the right to die with dignity, focusing on

[48] Federal Act on Medicinal Products and Medical Devices, English version available at: https://www.fedlex.admin.ch/eli/cc/2001/422/en

assisted dying practices within the legal frameworks of Italy, Germany and Switzerland. It examines the emerging challenges and contradictions that this right presents, particularly in relation to the fundamental right to life. By highlighting the delicate balance between the self determination of individuals and the sanctity of life, the study confirms the necessity for legal systems to remain flexible and adaptable, bridging the gap between static legal norms and dynamic real-world applications.

This coordinating role is mainly carried out by national and European case law, which repeatedly—and often unsuccessfully—urges state legislators to take a clear position on the matter.

The absence of specific legislation in positive law forces citizens not only to rely on uncertain judicial protection, but also to travel from one country to another in order to exercise a right that their own legal system does not recognise or expressly denies.

A significant example of this phenomenon is called "suicide tourism"[49]. In Switzerland, assisted dying is accessible even to non-residents, and for this purpose, every year many people fly to this destination.

Most of the Swiss organisations operating in the field of assisted dying publish their own statistics independently. For instance, Dignitas[50] publishes its statistics on its website, showing that the association provides assistance to people from all over Europe and the world, with numbers steadily increasing from year to year[51].

This is a circumstance that should prompt legislators in all countries to reflect seriously on the issue. While the sensitivity of the matter requires extreme caution, society appears to be calling for concrete and timely responses to an issue that has remained without constitutional guarantees and recognition for far too long.

[49] Suicide tourism' can be interpreted as a specific form of the broader phenomenon of 'forum shopping', whereby individuals travel from one country to another in order to obtain recognition of a right that their own legal system denies them.
[50] It is the organization that received Fabiano Antoniani — assisted by Marco Cappato — and accompany him toward assisted suicide.
[51] Available at: http://dignitas.ch/wp-content/uploads/2025/10/FTB-nach-Jahr-und-Domizil-1998-2024-.pdf

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