

Euthanasia and Related Problems in Swedish Law

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Summary. The legal position in Sweden concerning euthanasia is that active euthanasia is illegal and regarded as murder. In certain conditions, however, it can get a lenient punishment or go without punishment altogether. Acceleration of death by painalleviating methods is illegal if it accelerates death more than is necessary to alleviate pain. Passive euthanasia in the form of forbearance to initiate life-sustaining treatment in a hopeless case is legal. If such treatment has been initiated, it ought to be legal to discontinue it, when there is no hope of recovery and death seems imminent. The state of the law on this point is not quite clear.

Zusammenfassung. Aktive Euthanasie ist nach schwedischem Recht rechtswidrig und wird als Mord angesehen. Unter Umständen kann sie sehr leicht bestraft oder ganz ohne Strafe gelassen werden. Rechtswidrig ist auch, den Tod durch schmerzstillende Mittel zu beschleunigen, wenn der Tod mehr beschleunigt wird, als das Bedürfnis den Schmerz zu stillen es verlangt. Passive Euthanasie in der Form der Unterlassung, eine lebensstützende Behandlung zu beginnen, wenn der Tod nahe und unvermeidbar ist, ist rechtsähnlich. Es sollte auch rechtsähnlich sein, eine solche Behandlung zu beenden, wenn sie eingeleitet ist, aber der Tod nahe und unvermeidlich erscheint. Die Stellung des Rechts in dieser Hinsicht ist aber unsicher.

Key word: Euthanasia.

The purpose of this paper is to explain the legal position in Sweden concerning euthanasia. To begin with, I can establish that two things are quite clear.

1. Active euthanasia, i.e. killing of a patient by active measures is illegal.
2. Prolonged intensive care of a dying patient is not in principle illegal if the patient does not protest.

The legality of passive euthanasia by a) not initiating life-sustaining treatment or b) discontinuing such treatment is a little more doubtful, as is acceleration of death by e.g. painalleviating drugs. I propose to deal with these questions in some detail.

1. Active Euthanasia

As I said, active euthanasia is illegal. The Penal Code of 1962 regards it in principle as murder (Chapter 3, Section 1) for which the punishment is imprisonment for 10 years or for life. "Mercy killing" can, however, be regarded as second degree murder (Ch. 3, Sec. 2), which is punished with imprisonment for at least 6 and at most 10 years.

Consent of the patient does not make the act legal. On the other hand, suicide and attempted suicide are not crimes according to the Penal Code. Neither is it a crime to help a person to commit suicide. The meaning of the provisions of the Code concerning participation in crime is that it is not a crime to take part in the

suicide of another person as an accessory. Thus it is murder to kill a person at his request or with his consent, but it is normally not a crime to help another to commit suicide. Sometimes it is a subtle legal question to decide whether a person is a murderer or a scotfree accessory to suicide. Active euthanasia can, however, in certain conditions get a lenient punishment or altogether go without punishment. The Penal Code (Ch. 33, Sec. 4) provides, namely, that if very strong reasons dictate it and no obvious obstacle exists with reference to public law-obedience, a milder punishment than that provided for the crime may be imposed, and that a sanction may be completely dispensed with, if because of special circumstances it is found obvious that no sanction for the crime is necessary.

This provision can be used in cases of euthanasia. As far as I know we have, however, not yet had any example of this.

In my opinion the solution which the Swedish legislator has adapted is a wise one. Making active euthanasia legal would create risks of abuse and jeopardize the confidence of the general public in doctors and hospitals.

2. Acceleration of Death

I have reason to believe that it sometimes happens that a doctor through his treatment accelerates an inevitable and imminent death of his patient. If this treatment is necessary to alleviate pain, I think that it is legal. The legality of this situation has not, however, been tested by the courts. If the treatment accelerates death more than is necessary to alleviate pain, it is theoretically illegal. As a rule it is naturally very difficult to prove that the treatment has exceeded the need to alleviate pain. Therefore it is not very likely that such a case is brought before a court. If it were, I think the court would feel extremely uncomfortable. It would be torn between its theoretical legal reasoning and its feeling that such acts ought to be outside the scope of the Criminal Law. In Sweden there is no jury which can relieve the judge of the responsibility of decisively estimating the evidence in the case and thus sometimes indirectly decide also the legal issue.

3. Passive Euthanasia

Passive euthanasia is a term for the cases where the patient does not get life-sustaining treatment, with the result that he dies earlier than if he had got this treatment. One has to distinguish between two kinds of passive euthanasia: a) not initiating life-sustaining treatment and b) discontinuing such treatment. From a doctor's point of view, perhaps, the two kinds of passive euthanasia ought to be regarded in the same way. From the standpoint of Swedish Law I am not quite sure that this is so. I think that legally a doctor has a choice between initiating life-sustaining treatment, e.g. intravenous blood and liquid supply or artificial respiration, and omitting such treatment, if death seems inevitable and imminent inspite of treatment. Not to initiate treatment is under these conditions not regarded as criminal.

If, on the other hand, the doctor initiates life-sustaining treatment and afterwards discontinues this treatment and thus accelerates the death of his patient, his position is somewhat doubtful legally. The act of stopping the application of fluid or of stopping the respirator might be regarded as equivalent

to active killing (e.g. by an injection of a drug). Such an act has been tried by a Swedish district court in 1965. In this case an 80-year-old woman suffering from brain hemorrhage was admitted to a hospital in northern Sweden. She was unconscious upon admission and never regained consciousness. Owing to her condition, fluid by the drip technique was applied for a period of 2 months. Her condition worsened and the doctor in charge ordered the fluid by drip technique to be discontinued. 6 days later the patient died. The case was turned over from the National Board of Health and Welfare to the public prosecutor. As the doctor was a public servant the prosecutor initiated a prosecution for breach of duty consisting of malpractice. He did not try to prosecute for homicide, which he could have done. The court stated that continued treatment in this case would not have served any medical or human purpose. In light of these circumstances the court could not find that the doctor's procedure was contrary to established scientific practice or that the doctor had broken other rules of an ethical or other nature. The doctor was, therefore, acquitted.

The Chief Public Prosecutor of Sweden was, however, of the opinion that the doctor had acted wrongly. He decided, nevertheless, not to lodge an appeal against the judgment, given the uncertainty as to the legal position which was prevalent when the doctor acted. He added, however, that should another doctor act in a similar fashion he might be treated otherwise now that the Prosecutor's opinion had become public knowledge (Thornstedt, 1970).

The National Board of Health and Welfare has expressed its view on the matter in 1969, in the following way: "The board upholds the principle that every sick person shall be given adequate care so long as all hope is not lost. Only in those cases where death can be expected to follow with certainty, as an immediate consequence of the patients condition, and where the condition is such that life-sustaining treatment has no effect other than temporarily to delay the moment of death, can it be said not to be wrong to discontinue treatment."

This statement, coming as it does from an administrative agency—albeit the agency changed with supervision of the Swedish medical profession — cannot alone be taken to represent applicable law. In a more concrete and specific form, however, it could be acceptable as law. In my opinion express legislation is not necessary. The courts could without statutory enactments base their decisions on the principle which the Board has tried to formulate.

The consent of the relatives would not be required in these instances and the doctor might proceed in accordance with his own judgment.

The concept of death (heart death or brain death) is not significantly related to the questions of passive euthanasia.

From what I have said follows that a doctor has no legal obligation under Swedish law to *initiate* life-sustaining treatment when there is no hope that it can do more than delay death for a short while. It is further probable that the doctor is allowed to *discontinue* life-sustaining treatment under the same conditions. If there is still any doubt concerning his right in this respect it ought to be removed by legislation. In my view, however, legislation is a very blunt instrument when dealing with these delicate questions. It ought therefore to be avoided as much as possible. My ideal is that the legal framework in this field should be very wide and that within it the more detailed rules should be worked

out by the medical profession itself and that a wide scope should be accorded to the judgment and conscience of the doctor in charge of the patient. One principle should, however, be strictly adhered to: If possible the wishes of the patient should be followed. If the patient wants to die without pain and agony and without treatment and apparatus which makes his death slow and lingering, he should be allowed to do so.

If we have to resort to legislation it would take years of discussion. A further penetration into the problems is necessary. Under all circumstances the general public has to be made aware of facts and opinions concerning these highly controversial questions, which are of importance to everyone and not only to doctors and lawyers.

References

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