

## VIEWPOINT

## Reflections on our country's euthanasia law

*Anotaciones sobre la Ley de Eutanasia de España*María Jiménez-Herrera<sup>1</sup>, Xavier Escalada-Roig<sup>2</sup>

When reviewing the history of mankind, it becomes evident that death and all that surrounds it has always been a recurring theme and a highly complex one. From the most diverse areas of knowledge such as philosophy, law, ethics or medicine. In 1978, the French historian Philippe Ariès, pointed out the remarkable shift in the conception of death among Westerners from the 19th century onwards. Until then, it had been a natural phase of life and accepted as such. However, modern man has repressed death and has kept it away from himself for different reasons by hiding it and dissembling it. Death has no place in modern society. It is a disruptive factor that can be handled rationally, at best<sup>1</sup>. Death is an inevitable and universal event, tightly linked to existence and there is no way around it.

Nowadays it is unusual for people to die amongst their beloved ones, but rather far from the public eye, and, in many cases, highly medicalized. The medicalization of death is a response to the positivist paradigm of science. In recent years, new forms of relationships between health professionals and patients plus their families are being incorporated, responding to paradigms much closer to the field of humanistic sciences. This promotes individual rights in matters related to life and death, the two latter being the axis on which every relationship pivots.

For decades, people have been expressing their concern for this sensitive and important topic, which implies the right to decide upon the continuation of our own life in circumstances of intolerable physical or psychological suffering. People such as Ramón Sampederro, Inmaculada Echavarría or María José Carrasco have caused the greatest social impact generating greater visibility to this situation. Even when the road has been very tortuous for many of them and their families, they have endured the process of allowing progress to be made in legislation.

On June 25th, 2021, the Organic Law 3/2021 on the Regulation of Euthanasia<sup>2</sup> came into force, decriminalizing certain cases. After its publication in the Official State Gazette (BOE, for its acronym in Spanish), it has made Spain the seventh country in the world to regulate these situations, together with the Netherlands, Belgium, Luxembourg, Canada, Colombia and New

Zealand. Other countries, such as Switzerland, some states in the United States and two in Australia, allow assisted suicide.

The incidence of euthanasia requests in a country like the Netherlands, which passed the final law regulating it in 2002, has shown continuous increase since 2006. It has gone from 1933 cases in 2005 to 6361 in 2019. The authors of this publication could not find the reasons that justify this increase, although they consider various issues such as social, ethical or medical, among others, as the possible reason<sup>3</sup>. We are currently uncertain about what the response in Spain will be. Nevertheless, a brief summary from the point of view of healthcare professionals is available in hopes it will be useful in future implementation of this review as well as for those who happen to come across this type of event.

This new law represents a change in the perception of the way we face the end of life, both for individuals and professionals, especially in terms of questioning what gives value and meaning to life. Although there are conflicting opinions, different medical specialties have made a firm commitment, especially Family and Community Medicine, to the implementation and development of medical aid-in-dying (AID). Although they also recognize that there is a plurality of opinions among the professionals in this specialty<sup>4</sup>.

Emergency Medicine professionals may find themselves in situations related to the decision to stop living, and they can request how to make use of this right. In principle, the characteristics of emergency services and the care provided by emergency teams do not correspond to the spirit of the law. Conceptual confusions derived from normo praxis or usual practice should be avoided, such as the adequacy of treatments, avoiding futility, prescribing comfort care when curative therapies are ineffective or there are no realistic expectations, taking into account advance directives for the limitation of life support, refusal of treatment or palliative sedation, which do not respond to practices related to the concept that the law delimits as euthanasia.

The emergency department is not an appropriate place to perform the euthanasia procedure. In fact, any foreseeable death should be prevented from occurring

**Author Affiliation:** <sup>1</sup>Facultad de Enfermería de la Universidad Rovira i Virgili, Área de Bioética, Tarragona, Spain. <sup>2</sup>Sistema d'Emergències Mèdiques y Hospital General de Sant Boi, Barcelona, Spain.

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**Corresponding Author:** María Jiménez-Herrera. Facultad de Enfermería. Universidad Rovira i Virgili. Avinguda Catalunya, 35. 43002 Tarragona, Spain.

**Email:** maria.jimenez@urv.cat

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in the ED, as far as possible. Clearly, ED professionals should never abandon patients, and patient support is an ethical imperative, including counseling if necessary. Thus, it is an ethical imperative to inform both patients and families or legal representatives of therapeutic decisions, so that they are involved in the decision-making process, accompanied and guided in order to receive the best care.

In the event that the patient expressly requests medical assistance in dying, all the mechanisms for the protection of his or her right should be put in place so that he or she can obtain a response from the corresponding circuits. An adequate system of care must be guaranteed and the centers must have foreseen the circuits and protocols to be able to implement this process and respond to the request.

We must be aware that recommendations were presented by different expert bioethics prior to the enactment of the law and that scientific and professional entities that should be present in the regulation lack a response to special situations involving children or persons with mental disorders<sup>5-7</sup> in their assessments. It should not be forgotten that there are also professional associations and other entities that oppose this regulation<sup>8</sup>. The general characteristics of the regulation are therefore presented below.

### Contents of Organic Law 3/2021 on the Regulation of Euthanasia

Its structure is made up of five chapters in which the different aspects are established. Chapter I delimits the object and scope of application. Chapter II describes the requirements necessary to be able to request the provision of aid in dying and the conditions for its practice. Chapter III describes the regulation of the aid-in-dying procedure and the guarantees that must be preserved in this service. Chapter IV states that this practice is included in the portfolio of publicly funded services. Finally, Chapter V regulates the guarantee and evaluation commissions. Subsequently, the additional provisions are included, one of which stands out: the equating of euthanasia to natural death under the protection of the law. The remaining provisions refer to infringements of the provisions of the law, to the system of penalties; to the assurance of resources and means of support for persons with disabilities; to the processing of appeals through the procedure for the protection of the fundamental rights of the individual; to the preparation of a manual of good practices to guide the correct implementation of the law, and to the establishment of mechanisms to ensure maximum dissemination of the law among healthcare professionals and the public, as well as the provision of specific continuing education on aid in dying<sup>9</sup>.

To summarize in broad strokes the characteristics of the law, it should be noted that in order to be able to request the exercise of this right, one must have Spanish nationality or legal residence in Spain, be of le-

gal age and be capable and conscious at the time of the request. In addition, one must suffer from a serious and incurable illness or suffer from a serious, chronic and disabling illness, certified by the physician in charge, which prevents him/her from fending for him/herself or which entails constant and intolerable physical or psychological suffering.

The authorization process could take between 30 and 45 days before the practice is performed. The request must be made in writing to the physician responsible for the patient, who at the moment is not clear who would act as this figure, as they could be primary care or specialized care physicians. The person must receive in writing all the existing information on his or her medical process, the different alternatives and possibilities of action, including the possibility of being attended by palliative care units. After 15 days, the person must ratify his or her proposal and a consulting physician, external to the applicant and the health care team, must be established<sup>10</sup>.

The final decision of acceptance or rejection of the request falls on the commission of guarantees and autonomous evaluation (CGEA, Spanish acronym), composed of two experts who will prepare a report to notify the resolution to the Presidency of the CGEA and this will notify the responsible physician the authorization or denial to be carried out. From that moment, when the applicant decides, he/she will be able to receive the medical aid in dying. The professional performing the procedure must send a report on the procedure to the CGEA within 5 days. The CGEA must be set up in all the Autonomous Communities and in the autonomous cities of Ceuta and Melilla, so that the responsible physicians, before performing euthanasia, will have to bring the case to the attention of the president of the CGEA, so that he can appoint two members of the Commission, a medical professional and a jurist, to verify compliance with the requirements established by law and prepare a report<sup>11</sup>.

Finally, it is added that in the event that the patient, due to his/her personal situation or health condition, is unable to date and sign the request, he/she may make use of other means that allow him/her to record his/her will, such as the advance directives document or equivalent, which must be modified to include this situation. The applicant may revoke the request or request a postponement at any time during the process.

It will be the applicant, if conscious, who must communicate the modality in which he/she wishes to be euthanized, since there will be two modalities: the direct administration of a substance by the competent health professional, or the prescription or supply, by the competent health professional, of a substance in such a way that he/she can self-administer it, either in the health center itself or at home, to cause his/her own death. The latter is known as assisted suicide. In any case, health professionals will accompany and assist the patient until the moment of death wherever it is carried out.

Healthcare professionals can exercise the right to conscientious objection, so as not to participate in the

practice of euthanasia or assisted suicide, although they must state this in advance and in writing. This raises some ethical conflict, since it is considered the possibility of creating a registry to monitor it and that the centers will have to guarantee the right of citizens to the practice of euthanasia<sup>12</sup>.

This whole process will require the deployment and implementation of different strategies to protect the rights of individuals by the different autonomous communities, offering all the necessary tools to avoid conflicts. Euthanasia and suicide assistance are considered complex issues that provoke and raise numerous questions from both legal and ethical points of view. Emergency services and emergency teams are neither the places nor the professionals who will have to respond to this situation, but in any case, a patient should not be abandoned once it is determined that cure is impossible. Autonomy will be respected, information and emotional support will be provided, as well as comfort care appropriate to the situation. The autonomy of individuals and the exercise of self-determination, in health matters, is at the center of this debate and the most appropriate protocols should be established so that individuals can exercise their rights.

## Conclusion

The growing aging of the world's population, the increase in chronic diseases or highly disabling degenerative diseases and the assiduous use of emergency departments, should sharpen our attention to end-of-life issues by addressing the moral and ethical complexities that derive from them. It is not easy to synthesize such a complex subject and to express the most relevant aspects of the law. This contribution is only intended to provide information so that the reader can draw his or her own conclusions and objectively understand that this is not an exclusively medical issue, but also a social and ethical debate, which affects such an important decision as how we want to die.

As authors, we would like to add the following as a reflection:

"If you have the courage to be with the dying and respect their silence, then the dying will be teaching you what life is and what death is. Moreover, he will be preparing you for your own death, and that will be his parting gift to you."

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