

“Death tourism” in Europe: a potential problem in Croatia

Abstract

“Death tourism” is one of the newest types of tourism worldwide, but especially in Europe. In this article an author deals with this issue regarding one country where it could raise many problems. This is Croatia, where legislator brought a very specific legislative solution which will be elaborated here.

Keywords: death tourism, assisted suicide, illness, Croatia

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Introduction

Living and dying in accordance with the person's own beliefs and desires are considered to be one of the greatest human freedoms, and one of the most common wishes of the patients who are in the terminal stage of the disease because it enables to end their lives with a certain amount of dignity.¹ This raised a question of one of the most important problems in the past and present times. It is an issue of decriminalization of euthanasia and physician-assisted suicide. This also actualized the question of decriminalization of assisted suicide, but we have to also emphasize its ethical issue.² Student of law and medicine worldwide have its own view about these issues.³ An unavoidable basic question should be raised at the beginning. Should anyone be allowed to decide to end the life of a patient in the terminal stage of the disease? This issue is the main dilemma of patients, their families, physicians, and society as a whole. The issue becomes even more important if we bear in mind the fact that modern technology allows a prolongation of life in terminally ill patients,⁴ which can mainly be seen as the positive aspect, but, in some cases, may result in extending the unbearable suffering of patients.⁵ The reasons that lead to the assisted suicide or suicide are very different: illness (from the cancer to the psychiatric illnesses, even diabetes), sadness, problems in the relationships. On the one hand, such as the issues of abortions,

the death penalty, and other issues dealing with the beginning and end of human life, euthanasia has always provoked strong reactions, both of its supporters and opponents. On the other hand, it should be emphasized that the debate should not be limited only to the question of euthanasia, but other processes that lead to the same outcome, such as medical assistance in committing suicide, need to be discussed as well. Suicide is certainly a very widespread phenomenon in Europe.⁶

Although euthanasia is largely taboo in Europe, in some countries it has been practiced for many years. This issue is, however, particularly actualized with the emergence of the so-called ‘death tourism’ in countries that have passed laws legalizing the mercy killing, because the application of this procedure has contributed that these countries become a tourist destination for suicide, which caused negative publicity for them.⁷ This primarily refers to Switzerland, which is faced with the influx of a large number of patients from the UK arriving in Zurich ‘suicide clinic’ and, therefore, the term “death tourism” has become very popular with the western media, while other countries that have not legalized mercy killing nor assisted suicide have no problem with inflow of foreign nationals with suicidal intentions.

The basic terms related to this issue

Before moving on to specific questions which will be addressed in this paper, it is necessary to define key terms used in these procedures. Primarily, we should start from the fact that “death tourism” is a specific type of medical tourism, where under the latter it is considered a medical treatment or surgery happening according to a plan. Not only should that it be carried out in a place that does not represent the patient's residence.⁸ “Medical tourism” has emerged, initially, as a result of vacations spent in spas and health resorts throughout the

⁶McNicolas F. "Suicide in Europe: an on-going public health concern." *Soc psihijat*. 2017;45(1):22–29.

⁷Safyan A. "A Call for International Regulation of the Thriving „Industry“ of Death Tourism." *Loyola of Los Angeles International and Comparative Law Review*. 2011;33.

⁸Terry N. "Under Regulated Health Care Phenomena in a Flat World: Medical Tourism and Outsourcing." *Western New England Law Review*. 2007;29. Garud, A. "Medical Tourism and its Impact on Our Healthcare." *National Medicine Journal India*, 2005.

¹Keegan L, CA. Drick. *End of Life – Nursing solutions for Death with Dignity*. New York: Springer, 2010.

²Banović B, V Turanjanin. "Euthanasia: Murder or Not: A Comparative Approach." *Iranian Journal of Public Health*, vol. 43, no. 10, 2014: 1316-1323; Banović, B., V. Turanjanin, and A. Miloradović. "An Ethical Review of Euthanasia and Physician-assisted Suicide." *Iranian Journal of Public Health*, 46(2), 2017: 173-179; Banović, B., Turanjanin, V., & Čorović, E. (2018). Physician-assisted Suicide in Serbia. *Iranian Journal of Public Health*, vol. 47, no. 4, 538-545; Turanjanin, V., Banović, B., & Čorović, E. (2018). Euthanasia and Physician-assisted Suicide in South-East Europe. *Beau Bassin: LAP*.

³Dimovski D, V Turanjanin, M. Kolaković-Bojović and D. Čvorović. "Attitudes toward Euthanasia of Students of Law and Medicine in Serbia." *Iranian Journal of Public Health*. 2020;49(1).

⁴Gamliel E. "To end life or not to prolong life: The effect of message framing on attitudes toward euthanasia." *Journal of Health Psychology*. 2013;18(5):693–703.

⁵Leenen HJJ. "The Development of Euthanasia in the Netherlands." *European Journal of Health Law*. 2001;8(2):125–134.

European continent. With the advancement of communication and transport, this term has expanded and began to be used to describe the journey of the patients from the less developed countries to industrially advanced countries of Europe and the United States, where they could receive better medical care than in their countries of origin.⁹ If it explains simply: bypassing most of the available facilities in own country, it forces residents of a country to seek medical treatment in another country. The next crucial issue is to raise that why do people tend to do so is to be considered. Out of many reasons the key factor that to be addressed in this paper is subjecting to medical procedures and services that are not legal in the country of residence of the patient. Among others, these are euthanasia and assisted suicide, which caused the emergence of "death tourism".¹⁰ In other words, this term (Eng. death tourism, Ger. Sterbetourismus) means journey of a person from the country where euthanasia and/or assistance in suicide is prohibited to the country in which one or both of the procedures are, under certain conditions, permitted by the law, which allows administration of these medical treatments to him.

To live with dignity - to die with dignity is the slogan of the famous Swiss organization Dignitas, whose goal is to help patients to commit suicide. The brochure of this organization highlights that a help can be obtained by any person who suffers from an incurable illness or permanent disability for life and wants to voluntarily end their life. An additional condition for providing the service is that person must be a member of this organization. Since its founding Dignitas has participated in about 900 cases of assisted suicide.¹¹ Given that a large number of Britons requested services from Dignitas, its work has attracted great attention in the UK (where the assisted suicide is prohibited). The data show that by the end of 2008, more than 100 Britons traveled to Switzerland in order to be provided with service of assistance in committing suicide,¹² but now the number is far higher. However, it should be noted that, generally speaking, patients do not use services of the organization very often. According to some data, about 70% of people who came for consultation never decided to use its services, and of those who did only 13.3% received a prescription for medication to get their desired effect.¹³

The potencial problem in Croatia

According to available data, the average suicide rate in Croatia is 34.6 for men and 11.7 for women per 100,000 inhabitants, which puts it roughly in the middle of the list.¹⁴ Suicide is the third leading cause of death among young people aged 15 to 24, a sixth in children 5 to 14 years, with the most common methods of execution as hanging and firearms, and the causes are mental illnesses, the economic crisis,

job loss and lack of support from the close ones etc. It is necessary to emphasize that suicides among war veterans are as twice as often as the others.¹⁵ Assisted suicide in Croatia is performed by drug administration to a patient by a physician, for the purpose of suicide, whereby such process does not pertain to the child and at the same time is considered to be unacceptable, because the physician must not expedite suicide by using drugs.¹⁶

In the future, this could be a problem. To explain this, we have to in brief explain a Swiss solution. Swiss legislator has only legalized assisted suicide (which has been challenged for years by the Swiss Academy of Medical Sciences, but which suddenly in 2004 took the view that it is a matter of individual conscience of physicians),¹⁷ but not the mercy killing. Swiss Criminal Code represents the most liberal law on assisted suicide in the world, with the practice of over 60 years, and because of certain characteristics it makes Switzerland one of the most popular destinations for "death tourism" today.¹⁸ First of all, on the one hand, euthanasia is stipulated as a privileged murder, and anyone who for reasons of humanity, especially compassion, kills another person on his serious and explicit request will be punished by imprisonment from three days to three years (Article 114 of Criminal Code of Switzerland).¹⁹ On the other hand, assisted suicide in Swiss criminal law is defined as a criminal offense, whose act commits any person who for selfish reasons encourages another person or helps him commit suicide, which is committed or attempted. This offense is punishable by imprisonment up to five years or a fine (Article 115 of Criminal Code of Switzerland). However, if assistance in suicide is provided for altruistic reasons, such action will not be considered a crime.

To provide someone with assistance in suicide with impunity, whereby the aider does not have to be a physician, it is necessary to fulfill several conditions. Primarily, it is necessary that the person is diagnosed with an incurable disease that will certainly lead to his death for some time, then, that all the alternative measures had been applied and that the person is capable of making such a decision, freely and without any external pressure. Whether these requirements are met should be determined by the third person, who by profession does not have to be a doctor.²⁰ Then, the legislator does not require that the patient is terminally ill nor to suffer from severe disability, which why this legal solution is most exposed to criticism.²¹ Finally, but most importantly for our considerations, is that there is nowhere prescribed condition relating to the nationality of the person seeking help. The absence of request for citizenship presented this country as a destination for "death tourism". The same problem could appear in Croatia, due to the similar legal solution, which will be discussed below.

⁹Terry N. "Under Regulated Health Care Phenomena in a Flat World: Medical Tourism and Outsourcing." *Western New England Law Review*. 2007;29.

¹⁰For instance, one of the medical procedures that are available in most European countries is the termination of pregnancy. However, this procedure is banned in Ireland, and therefore annually about 7,000 Irish women travel to England to terminate an unwanted pregnancy (Cortez, N. "Patients Without Borders: The Emerging Global Market for Patients and the Evolution of Modern Health Care." *Indiana Law Journal*. 2008;83(1):71–132.

¹¹This number is even higher according to some media. See: Srinivas, R. "Exploring the Potential for American Death Tourism." *MSU Journal of Medicine and Law*. 2009;13(1):91–122.

¹²As an appendage to the article, there is a video of a patient taking a medication by himself, which also the proves that the staff were only accomplice in the commission of suicide. Jamieson, A. "Assisted suicide: Swiss charity Dignitas has helped at least 100 Britons to die." *The Telegraph*. 10 December 2008.

¹³Hoffman S. "Euthanasia and Physician Assisted Suicide: A Comparison of EU and U.S. Law." *Arizona Legal Studies, Discussion Paper No.* 12–11.

¹⁴Lavor D, Poredoš S, Jerković, N Radišić. "Suicides in the Contemporary Society." *Police Security*. 2011;20(2):230–235.

¹⁵Lavor D, Poredoš S, Jerković, N Radišić. "Suicides in the Contemporary Society." *Police Security*. 2011;20(2):230–235.

¹⁶Duraković D. "Euthanasia in Childhood." *JAHHR*. 2014;5(10):387–405.

¹⁷Shariff M. A Perfection of Means, and Confusion of Aims: Finding the Essence of Autonomy in Assisted Death Laws." *Health Law in Canada*. 2011;31(4):81–148.

¹⁸Safyan A. "A Call for International Regulation of the Thriving „Industry“ of Death Tourism." *Loyola of Los Angeles International and Comparative Law Review*. 2011;33:309.

¹⁹Swiss Penal Code, SR 311.0, 21. December 1942

²⁰Bosshard G. "Assisted suicide and euthanasia (EAS) in Europe, with special regard to Switzerland." Briefing paper to the End of Life Assistance Bill Committee, 2010:5.

²¹Safyan A. "A Call for International Regulation of the Thriving „Industry“ of Death Tourism." *Loyola of Los Angeles International and Comparative Law Review*. 2011;33:310.

In the first place, Croatia banned euthanasia and physician assisted suicide, which are prescribed as criminal offences in the Criminal Code. However, Croatian Criminal Code has undergone several changes in recent years. One of the fields where this legal text has been changed is the area of crimes against life and body. This chapter consists the following offences: murder, aggravated murder, manslaughter, negligent homicide, participation in suicide, unlawful termination of pregnancy, female genital mutilation, bodily injury, serious bodily injury, particularly serious bodily injury, serious bodily injury resulting in death, serious bodily injury caused by negligence, participation in affray, failure to render assistance and abandonment of a helpless person. Croatian legislator, in the context of the criminal act of manslaughter, between the others, regulates euthanasia (Art. 112 of Croatian Criminal Code).

Assisted suicide is prohibited under the participation in suicide. As stated in the commentary of the law, starting point was the fact that every incitement and assistance in suicide is unacceptable, even in the case if it is led by altruistic motives, so any incitement to suicide, which is committed or attempted, the punishment of since timely intervention of physician does not extenuate the abettor or aider.²² That is, a criminal act consists of two articles:

Participating in Suicide (Article 114)

(1) Whoever induces or for base motives assists another in committing suicide which is accomplished or attempted, shall be punished by imprisonment to three years.

(2) Whoever commits the act referred to in Paragraph 1 of this Article against a child older than 14 years or a person whose capacity to realize significance of his actions was substantially diminished, shall be punished by imprisonment from one to eight years.

Croatian authors argue, reasonably and correctly, that there are four ways to regulate assisted suicide.²³ Firstly, attempt of suicide can be qualified as a crime, while the other way is reflected in prescribing the criminal offense of assisting in suicide. As we can notice, the second way is a characteristic of the countries of Southeast Europe. Thirdly, the legislator may decide to incriminate neither suicide nor assisted suicide, but it would be necessary to pass special legislation in order to specify certain issues related to patients at the end of their lives. Finally, the legislator can combine the second and third way, and punish certain forms of assisted suicide, but others do not.²⁴ Croatian legislator in relation to regions made a turnaround like the Swiss, which is somewhat unexpected. However, it is not a unique approach, since it is clear that a multitude of European legislative texts do not contain the alleged offense, taking the view that the prescription of criminal offense is contrary to the principle of the ancillary nature, because "if the legal system recognizes the right of an adult person to take his own life, those who encourage him or assist him in that should not be punished".²⁵ Unlike the Swiss legislator, who said self-serving initiatives (*selbtsüchtige Beweggründe*), Croatian turned to base motives, because it includes many other motives that are not necessarily focused on personal gain, but also include the benefit of

²²Turković K, et al. Commentary of the Criminal Code. Zagreb: Narodne Novine, 2013.

²³Turković K, et al. Commentary of the Criminal Code. Zagreb: Narodne Novine, 2013.

²⁴Turković K, et al. Commentary of the Criminal Code. Zagreb: Narodne Novine, 2013.

²⁵Turković, K, et al. Commentary of the Criminal Code. Zagreb: Narodne Novine, 2013.

another person.²⁶ Also, it is noted that this term is more developed in the case law in connection with characteristics of aggravated murder, and will thus be easier to implement it with this offense.²⁷ Primarily, incitement and assisting in suicide are criminalized, but for base motives. Practically, this means that punishing of assisted suicide is limited to cases where the offender assisted suicide for base motives, and suicide is committed or attempted. According to the literature base motives are coming into an inheritance, the release of obligation to support, etc.²⁸ So, in this way it is decriminalized the assisted suicide from compassion. Punishment is relatively low - up to three years.

In the second paragraph is incriminated assisting in suicide of a minor, i.e. a person who has attained the age of 14, or a person whose capacity to realize significance of his actions was substantially diminished. Second form is punishable by imprisonment from one to eight years. Practically, this crime almost does not appear in the jurisprudence, but in theory is reasonably stated that few cases in police and judicial practice does not mean that such cases do not exist and that the criminalization of such conduct is unnecessary or unjustified. Also, the authors leave open the question of the dark figure of these crimes, and what is the extent of incitement and aiding in suicide.²⁹

From the above we can conclude that Croatian legal solution is similar to Swiss. In the future, it can cause problems and morally difficult situations. Assisting in death is everything but not easy for any person, especially for the persons close to the patient (in the Swiss practice, victims are mainly patients, suffering from the various diseases). The court will have very hard task in determining whose motives are base, which could led to the conviction or to the freedom.

Conclusion

The legal solution similar to Switzerland, though not identical, can provide an opportunity and a risk for development of death tourism, which is already known in comparative law. The deficiencies in law may create a negative phenomenon of death tourism unless there is strict laws in Croatia. National culture will in some way prevent the development of death tourism, but at the same time, in this country do not exist, at least for now, the specialized agencies that would engage in assisting in the execution of suicide. Though this practice is already well developed in Western Europe, it will not be easily accepted in Central Europe and Southeast Europe. This is significantly contributed by the fact that the general public is still not aware of the existence of such a solution.

Acknowledgments

None.

Conflicts of interest

The author declares there are no conflicts of interest.

²⁶Turković K, S. Roksandić Vidlička, and A. Maršalevski. "Euthanasia and Assisted Suicide." *Hrvatski ljetopis za kazneno pravo i praksu*. 2010;17(1):223–246.

²⁷Turković K, S. Roksandić Vidlička, and A. Maršalevski. "Euthanasia and Assisted Suicide." *Hrvatski ljetopis za kazneno pravo i praksu*. 2010;17(1):223–246.

²⁸Turković K, et al. Commentary of the Criminal Code. Zagreb: Narodne Novine, 2013.

²⁹Horvatić Ž. "Legal Prevention of Suicide." *Zbornik radova Pravnog fakulteta u Zagrebu*. 1989;39(1):27–43.