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Bioethical review on the legality of assisted dying in Ecuador

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Abstract

The legality of assisted dying is a controversial matter worldwide due to bioethical aspects. In countries such as Luxembourg and Canada, euthanasia was approved, with positive impacts on the quality of life of patients; however, there are negative aspects, such as not taking palliative options into consideration. This descriptive literature review considered publications from the last five years with bioethical approaches in favor of assisted dying, based on the importance of definitively alleviating patient symptomatology, in addition to providing quality of life, but also noting that in the long term the legality of this procedure may lead to medical dehumanization. Ecuador's Comprehensive Organic Criminal Code presents ambiguous articles for and against assisted dying, with legal loopholes that preclude its application in the health care system. Despite solid arguments for and against euthanasia, the decision must be adapted to the context of the patient and health care system.

Keywords: Bioethics. Patient rights. Personhood. Euthanasia. Death. Life.

Resumo

Revisão bioética sobre a legalidade da morte assistida no Equador

A legalidade da morte assistida é controversa em todo o mundo devido a aspectos bioéticos. Em países como Luxemburgo e Canadá, a eutanásia foi aprovada, gerando impactos positivos na qualidade de vida de pacientes; entretanto, há aspectos negativos, como o abandono de opções paliativas. Esta revisão bibliográfica descritiva considerou publicações dos últimos cinco anos com enfoques bioéticos a favor da morte assistida, com base na importância de aliviar definitivamente a sintomatologia do paciente, além de proporcionar qualidade de vida, mas referiu também que a longo prazo a legalidade desse procedimento pode acarretar desumanização médica. O Código Orgânico Integral Penal Integral do Equador apresenta artigos ambíguos a favor e contra a morte assistida, com brechas legais que não permitem sua aplicação no sistema de saúde. Embora haja argumentos sólidos a favor e contra a eutanásia, a decisão deve ser adaptada ao contexto do paciente e do sistema de saúde.

Palavras-chave: Bioética. Direitos do paciente. Eutanásia. Morte. Pessoalidade. Vida.

Resumen

Revisión bioética acerca de la legalidad de la muerte asistida en el Ecuador

La legalidad de la muerte asistida es controvertida en todo el mundo debido a aspectos bioéticos. En países como Luxemburgo y Canadá, la eutanasia ha sido aprobada, generando impactos positivos en la calidad de vida de pacientes; sin embargo, hay aspectos negativos, como el abandono de opciones paliativas. Esta revisión bibliográfica descriptiva consideró publicaciones de los últimos cinco años con enfoques bioéticos a favor de la muerte asistida, con base en la importancia de aliviar definitivamente la sintomatología del paciente, además de proporcionar calidad de vida, pero refirió también que, a largo plazo, la legalidad de este procedimiento puede acarrear la deshumanización médica. El Código Orgánico Integral Penal del Ecuador presenta artículos ambiguos a favor y en contra de la muerte asistida, con brechas legales que no permiten su aplicación en el sistema de salud. Aunque existan argumentos sólidos a favor y en contra de la eutanasia, la decisión debe ser adaptada al contexto del paciente y del sistema de salud.

Palabras clave: Bioética. Derechos del paciente. Eutanasia. Personeidad. Muerte. Vida.

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Update

The World Health Organization (WHO) and the World Medical Association (WMA) define terminal illness as an illness whose progression cannot be stopped by any treatment, so that death is imminent and inevitable for those affected, causing suffering that exceeds that of the illness [1]. This type of situation can be referred to as a catastrophic illness, as the patient's comprehensive perspective is violated by the various discomforts and sufferings that come with the disease. In this context, dignified death represents the prospect of respect for patient autonomy and dignity [2].

From the perspective of human rights, dignity is understood to contain the meaning of accepting to live and asking to die [3]. Euthanasia, death with dignity or assisted dying have been the subject of debate, and their practice is widely analyzed, giving rise to several arguments against and in favor based on a bioethical and legal approach [4]. Several countries have legalized euthanasia, including Luxembourg, Canada, the Netherlands and Belgium [5], sometimes after a long time of debate—it took ten years for its implementation in the Netherlands and Belgium, in 2001 and 2002, respectively [6].

Physician acceptance increased from 0.29% in 2002 to 0.47% in 2009 [7]. Belgium was the first country to legalize child euthanasia [8], and, in Luxembourg, assisted dying had 34 hospital records in 2009 [9]. In Switzerland and the United States (in states such as Montana, Washington, Vermont, California and Oregon), medical assisted suicide is practiced, which differs from euthanasia [10], and, in Spain, euthanasia regulation was approved by parliament in 2021 [11].

Despite these examples, euthanasia has not been legalized in countries such as the United Kingdom, Finland and France, although it has gained increasingly more space in national reform policies [12]. In Latin America, in countries such as Colombia and Ecuador, the issue was the subject of debate with several decisions against the assisted dying protocol. However, in 2015, the protocol for implementing the procedure of euthanasia was approved in Colombia as a requirement for euthanasia [13], which had a great impact on Latin America [14].

In Ecuador's legal framework, assisted dying was last contemplated in 2024, in the plenary session of the Constitutional Court of Ecuador, which, in the exercise of its constitutional and legal powers, due to Judgment 67-23-in/24, resolved the following: *a person, expressing their unequivocal, free and informed consent (or through a representative when they cannot express it), requests access to an active euthanasia procedure due to intense suffering resulting from injury necessarily of a bodily, serious and irreversible nature or a serious and incurable disease* [15].

Art. 45 of the Constitution of the Republic of Ecuador (CRE) specifies that *the State will recognize and guarantee life*; however, it *includes not only every human being's right to not being arbitrarily deprived of life, but also the right to not being prevented from accessing conditions that guarantee a dignified existence* [16].

Art. 45 of the CRE, on the right to a dignified life, in its § 55, notes that *the right to a dignified life is not limited only to existing and protecting this existence, understood as the maintenance of physical indicators (vital signs) that confirm the survival of individuals* [17], but requires the occurrence of factors that enable the achievement of the ideals of human excellence of each person; this *can* [be] *through the comprehensive development of their individual and collective capacities, in an environment of dignity, that enables them to fully exercise their rights* [18].

Medicine has undergone major advancements in technological aspects and in access to new treatments for diseases that were considered incurable only a few years ago [15], which has provided significant benefits to society, such as increased life expectancy [1]. However, in some cases, the prolongation of life causes suffering to patients with irreversible conditions and their families, forcing them to experience an undignified life. Therefore, some countries have established death with dignity, euthanasia or assisted dying, which has gained acceptance, despite the debate between bioethical and legal approaches [14].

In Ecuador, assisted dying is a controversial subject, with favorable and contrary interests, although it aims to provide a dignified death to patients with catastrophic illnesses [18].

This study seeks to compile and analyze the situation of assisted dying in Ecuador through different approaches, considering the principles

of bioethics with a focus on the dignity of life and its exercise.

Bioethical aspects

The bioethical aspects in favor of assisted dying consider that patient decision is paramount in relation to any medical argument, leaving aside the individual morality of each health care professional [19]. Thus, this procedure requires a qualified physician who respects patient integrity and, after carrying out the procedure, submits a professional responsibility report [20]. It is important to leave aside the social myopia according to which health care professionals are seen as spiritual guides who ensure full recovery from illness [21].

Health care professionals argue that assisted dying in the case of some diseases is the only solution to solve the unbearable discomfort and pain that affect the patient's quality of life [22]. In addition, ensuring assisted dying through controlled methods enables patients to have access to a dignified death, considering all personal issues. This differs from suicide, in which patients opt for an undignified death due to despair, to be free from their disease and not represent a burden to their family [23].

A study in Oregon, United States, found that less than 0.2% of assisted deaths have moral support, despite an article on dignified death in its state constitution [24]. Ensuring that the therapeutic options are understood by the patient and their family is ethical; thus, offering assisted dying as the "first option" is a lack of respect, an attack on the physician-patient relationship [25]. Another perspective is that of ethical equivalence, which translates into the patient's own decision without considering other ethical aspects, such as responsibility [26].

As for the moral aspect, assisted dying should be the last option available, as there are therapeutic alternatives that provide patients with control of symptoms of their disease, since moral value should prevail over the hastening of death [27]. These alternatives serve to give meaning to death, so during this time they can resolve outstanding issues and feel personal fulfillment. Freedom of access to assisted dying as a right enable patients to have autonomy and decide whether to prolong their lives [28].

In 2016, a law was passed in the United States that allows patients to self-administer a lethal substance to end their lives; however, if a physician uses such substance, they will be punished by law [29]. Canadian legislation allows the medical practice of assisted dying and the prescription of lethal drugs for self-administration by patients [30]. It is important to note that this legislation respects the integrity, autonomy and self-determination of patients.

From the bioethical perspective, in the two examples above, the moral duty in relation to assisted dying has evolved and reconceptualized the request to have a dignified death, enabling the prescription of lethal drugs even without a terminal diagnosis [31].

From a philosophical point of view, it is argued that there is no moral difference between physician-assisted dying and refusal of unnecessary treatment. This establishes assisted dying as a moral issue, which currently depends on several legislative and sovereignty factors to be applied [30].

At the individual level, the right to life and the right to die constitute a paradoxical issue, because, although human beings must live, the struggle for dying is based on the understanding that the exercise of living should not be a justification for an undignified life. In fact, this claim is based on the fact that nature, when lacking mechanisms to overcome adversity, undergoes an autolytic process [32]. Therefore, it is characteristic of the nature of human beings to die when their conditions do not allow them to develop normally.

Assisted dying should not be promoted by public policies, since the responsibility is individual to the patient, who decides to continue or end their life. End-of-life patients are aware of their condition and, when abandoned, some freely wish not to prolong their suffering [33]. A study with patients who had a total desire to die found that 70% of them were aged over 80 years and were affected by serious diseases, mostly diseases such as cancer (27%). Of this total, 77% indicated that they would need to depend on a caregiver for more than ten years [34].

From an economic point of view, it is important to note that, in the United States, private expenses for the care of end-of-life patients exceed US$ 4.4 trillion, 18% of gross domestic product (GDP). In the last six months of life, these expenses are 170 million dollars, which raises the question of whether the expense is justified from the medical perspective of doing everything possible. By legalizing euthanasia, inefficient spending would be reduced, thus allowing families to save and invest in the future of the next generations [35].

Arguments against assisted dying

The main arguments against assisted dying are based on the lack of compliance with the *Hippocratic Oath* and its medical code [36], arguing that suffering and pain can be resolved with the administration of central analgesics or terminal sedation [37]. Another point of interest is the abuse of unjustified euthanasia in places where it is approved, with the vulnerable population being the most affected [38].

In addition, there is the religious perspective, which bases its argument on the fifth biblical commandment ("Thou shalt not kill"), with the premise that God is the One who starts life and therefore decides when it ends [39].

The main arguments against assisted dying are discussed more in depth below.

Assisted dying in patients without therapeutic scope

Medical ethics has shown that saving, curing and healing constitute the traditional goal, but it can cause the prolongation of agony; therefore, medical bioethics disseminates the importance of the duties and rights of patients.[40].

A study in New Zealand—a country where assisted dying is legal—observed that 25% of the elderly suffer loneliness and 10% suffer physical and psychological violence [41]. In Belgium, only two cases were prosecuted for negligence in assisted dying [42]. Despite that, in Belgium, the age restriction for euthanasia was set on February 13, 2014, despite religious and medical opposition [43].

There really are lives that can be eliminated and that will help us

This argument is based on the fact that the economic impact of legalizing assisted dying is favorable, but the State will decide who should die to save in costs and encourage assisted dying rather than a follow-up process, because keeping a sick person alive costs more than killing them [44].

Palliative care will be considered secondary

It is argued that, if access to assisted dying is open and uncontrolled, investment in palliative care will not be a priority, but, if it is not legalized, the government will invest in end-of-life care to provide a dignified life to patients. The studies that support this approach include one conducted in Canada, which observed that, since the approval of assisted dying, only 6% of end-of-life patients have undergone psychological evaluation before death [45].

Respect for the true profession of physicians

This argument is based on the fact that physicians are trained to care for and palliate the illness of patients, so their art is to cure; however, with euthanasia, many physicians will dedicate their lives to killing. Thus, this would lead to a lack of empathy and affect the physician-patient relationship, so that some professionals would say that it is better to die than to fight for life [46].

Suicide will be normalized

The understanding is that assisted dying basically fulfills a desire to die, a suicidal ideation resulting from the depression that is secondary to illness. Thus, it is argued that it would be logical to think that: "If a family member requests assisted dying, my suicide should be respected because I have discovered that my life is meaningless, and the medical team and the State approve that."

A psychological study reported that patients who requested dying, when treated for depression, changed their minds, and the main reason was the fear of loneliness [47]. In a country where assisted dying is illegal, patients are encouraged to continue

fighting for their life and not opt for the easiest way out, death.

Assisted dying in Ecuador: legislation

In Ecuador, assisted dying is also controversial, with interests for and against it [48]. The Constitution [17]. Despite that, this law expresses the right and access to a dignified life with autonomy and self-determination [49].

Art. 66 ensures a dignified life that provides health and essential services. At the individual level, it seeks to maintain integrity through non-discrimination, the free exercise of voluntary and responsible decisions, and the right to safe conditions to make decisions [17].

As noted by Bermeo-Boero, Ronquillo-Riera and Arandia-Zambrano [50], the Comprehensive Organic Criminal Code (COIP) of the Ecuadorian State presents the following excerpts in favor of assisted dying:

1. The right to life with dignity must ensure that it ends with the same dignity with which it was lived;
2. Art. 1: Ecuador is a constitutional State under the rule of law and justice;
3. Art. 11, No. 1: the rights may be exercised, promoted and demanded individually or collectively before the competent authorities, who will guarantee their enforcement;
4. Art. 66, No. 3: the right to personal integrity includes: physical, psychological, moral and sexual integrity;
5. Art. 66, No. 5: the right to free development of personality, with no other limitations but the rights of others;
6. Art. 66, No. 9: the right to make free, informed, voluntary and responsible decisions about one's own life;
7. Art. 145: assisted homicide or euthanasia: a physician who applies euthanasia as an act of mercy to a person suffering from a disease previously diagnosed as terminal or final will not be subject to sanction.

The COIP includes the following article against assisted dying [50]:

- Art. 145, which defines involuntary manslaughter: a person who, culpably, kills another will be sanctioned with a prison sentence of three to five years. The same penalty will be imposed on any public official who, ignoring the objective duty of care, has granted permits, licenses or authorizations for the construction of civil works that have perished and, as a consequence, has caused the death of one or more persons.

The decriminalization of euthanasia in Ecuador was approved on February 7, 2024 due to the case of patient Paola Roldán, who had amyotrophic lateral sclerosis (ALS) and, after a long legal battle, managed to raise awareness in the country about the right to a dignified death [51].

Discussion

The bioethical aspects in favor of assisted dying ensure that the right to life with dignity must prevail over any moral and ethical aspect [42]. In addition, physicians must comply with patient needs, regardless of their individual judgment.

Expenses to keep terminal patients alive have an important socioeconomic impact; therefore, legalizing euthanasia would help improve the economic capacity of families [18]. From a psychological point of view, it was demonstrated that family care and preparation for dying favor the perception of personal fulfillment, unlike what occurs with suicide, a situation in which the patient seeks to end their life to stop being a burden to the family [47].

In different international jurisdictions, the minimum requirements for requesting dying are age over 18 years and having undergone appropriate psychological evaluation, in addition to evaluation and report issued by the physician who will arrange for death or perform assisted suicide [52].

In addition, it is stated that in countries where assisted dying is legal, the allocation of resources to palliative care is lower than in countries where assisted dying is not legalized, and the use of resources for the development of lethal drugs is higher [44]. From a medical point of view, it is argued that humanity is lost in the physician-patient

relationship and the health care professional ceases to be a giver of life to become a precursor of death.

Ecuadorian legislation protects and guarantees the right to life with dignity, although there are laws that allow the practice of assisted dying. Art. 45 of the CRE, on the right to a dignified life, in its § 55, notes that the *right to a dignified life is not limited only to existing and protecting this existence*, understood as *the maintenance of physical indicators (vital signs) that confirm the survival of individuals* [17], but requires the occurrence of factors that enable the achievement of the ideals of human excellence of each person; this *can* [be] *through the comprehensive development of their individual and collective capacities, in an environment of dignity, that enables them to fully exercise their rights* [18]. Although art. 45 explains that assisted dying performed by a physician is not punishable, it does not specify the procedure and requirements for terminal patients to have access to assisted dying [49].

Final considerations

Recently, the Constitutional Court resolved a public action of unconstitutionality contrary to art. 144 of the COIP, declaring the conditional constitutionality of said article provided that the physician performing the procedure is not sanctioned. The COIP covers conduct in which a person, expressing their unequivocal, free and informed consent, or by their representative, when they cannot express it, requests access to an active euthanasia procedure. The COIP presents ambiguities for and against assisted dying, with legal loopholes that preclude its application in the health care system. Despite solid arguments supporting approaches for and against euthanasia, the decision must be adapted to the context of the patient and health care system, and it is necessary to create a protocol with minimum requirements for access to death with dignity. Health care professionals who practice assisted dying or assisted suicide should have appropriate interdisciplinary training.

Update

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