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Euthanasia and assisted suicide in Spain and Portugal: a legal comparison

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Abstract

This article summarizes, for the first time, the laws on aid in dying (euthanasia and medically assisted suicide) in Spain and Portugal. Four aspects of each law will be identified in particular: the type of assisted dying, the administrative requirements, the clinical requirements, and the different steps in the application process. Subsequently, the convergences and divergences between Spain and Portugal will be analyzed, with special emphasis on the ethically problematic elements that could be of interest to those countries that are close to legislating their respective laws. Finally, a brief section will be devoted to analyzing how the ruling of the Portuguese Constitutional Court, issued after the preceding sections of this article were written and relating to the Portuguese law on assisted dying, will influence the final configuration of that law.

Keywords: Euthanasia. Assisted suicide. Right to die. Terminal care. Death. Spain. Portugal.

Resumo

Eutanásia e suicídio assistido em Espanha e Portugal: comparação jurídica

Este artigo sintetiza pela primeira vez as leis de assistência para morrer (eutanásia e suicídio medicamente assistido) em Espanha e Portugal. Serão analisados, especificamente, quatro aspectos de cada lei: as modalidades de assistência para morrer, os requisitos administrativos, os requisitos clínicos e as diferentes etapas no processamento da solicitação. Posteriormente, serão analisadas as convergências e divergências entre Espanha e Portugal, com especial destaque para os elementos eticamente problemáticos que poderiam interessar aos países que estão prestes a criar suas respectivas legislações. Por último, uma breve seção será dedicada à análise de como a decisão do Tribunal Constitucional de Portugal, proferida após a redação das seções anteriores deste artigo e relacionada à lei portuguesa sobre assistência para morrer, influenciará a configuração final da referida norma.

Palavras-chave: Eutanásia. Suicídio assistido. Direito de morrer. Cuidado terminal. Morte. Espanha. Portugal.

Resumen

Eutanasia y suicidio asistido en España y Portugal: comparación legal

Este artículo resume por primera vez las leyes de ayuda para morir (eutanasia y suicidio médicamente asistido) en España y Portugal. Se identificarán especialmente cuatro aspectos de cada ley: las modalidades de ayuda para morir, los requisitos administrativos, los requisitos clínicos y los diferentes pasos en el tratamiento de la solicitud. Posteriormente, se analizarán las convergencias y divergencias entre España y Portugal, con especial énfasis en los elementos éticamente problemáticos que podrían ser de interés para aquellos países que estén próximos a legislar sus respectivas leyes. Finalmente, se dedicará un breve apartado a analizar cómo la sentencia del Tribunal Constitucional de Portugal, emitida después de la redacción de las secciones precedentes de este artículo y relativa a la ley portuguesa de ayuda para morir, influirá en la configuración final de dicha norma.

Palabras clave: Eutanasia. Suicidio asistido. Derecho a morir. Cuidado terminal. Muerte. España. Portugal.

Update

The author declares no conflict of interest.

The first three countries to legalize and regulate euthanasia and medically assisted suicide in Europe were the Netherlands in 2001 [1], Belgium in 2002 [2], and Luxembourg in 2009 [3] (in Switzerland, Germany, Austria, and Italy, assisted suicide is decriminalized, but euthanasia is not legal). Spain and Portugal subsequently joined the list in 2021 [4] and in 2023 [5], respectively. Thus, there are two regions of neighboring countries on the European continent with laws that regulate both euthanasia and medically assisted suicide: on the one hand, the block known as Benelux and, on the other, that of the Iberian Peninsula, although in the latter case the Portuguese law is still subject to specific adjustments.

Since the first block has many years of experience in the application of aid in dying, much of the academic literature has dealt with the situation in these countries. In contrast, because the Iberian countries have had this type of law for a very short time, articles dedicated to them are relatively scarce.

Regarding Portugal, the academic bibliography is practically non-existent. This may be because, even though its law has already been approved by Parliament, its entry into force is subject to the correction of three specific points pointed out by the Constitutional Court as unconstitutional, as well as to the preparation of a protocol that regulates certain practical aspects [6]. However, the law itself already provides enough information to identify the type of processing that applications for aid in dying will have in Portugal.

In this context, this article aims to show the key aspects of the Spanish and Portuguese models, highlighting their main similarities and differences. To this end, the laws of both countries will be examined and the types of aid in dying will be contemplated, and the administrative and clinical requirements demanded of the patient and the treatment of the application process will be identified. Subsequently, a comparative analysis of both regulations will be conducted and their main coincidences and divergences will be pointed out, as well as some of their most relevant bioethical implications. Finally, we will dedicate a small section to analyze how the judgment of the Constitutional Court of Portugal, issued after the drafting of the previous sections of this article, will influence the possible final text of the law.

Spain

Types of aid in dying

Spanish law provides for two types of aid in dying: the direct administration of lethal substances to the patient by the physician (euthanasia) and the supply to the patient of the substances for self-administration (medically assisted suicide). If the patient cannot make decisions and has requested aid in dying in their previous instructions, but without specifying the type of modality, the first type will be chosen [7].

Administrative requirements

According to the Organic Law on the Regulation of Euthanasia (LORE), only people of legal age can apply for the Medical Assistance in Dying (MAID). Applicants must have Spanish nationality, legal residence, or prove by means of a census certificate that they have lived in the country uninterruptedly for more than 12 months at the time of application (which could be done even in an irregular migratory situation) [4].

Clinical requirements

Patients who request MAID must be in one of the following two situations: have a "serious and incurable disease" or "a serious, chronic, and disabling ailment." [4] In both cases, the law states that the applicant must experience constant and intolerable suffering. The main difference between these "euthanasia contexts" lies in the fact that the first refers to a situation of termination, while the second to one of chronicity.

The law does not indicate a specific life expectancy prognosis for the first euthanasia context, although internationally it has been considered that the terminal situation is one with a life expectancy of less than six months [8]. In contrast, in some regions of Australia where MAID is legal [9], an applicant with a neurodegenerative disease is terminally ill if their life expectancy is less than 12 months.

As for "serious, chronic, and disabling ailment", its definition has generated various controversies, particularly around whether it also covers mental disorders. This discussion is especially because the description of this euthanasia context alludes

to the "physical or psychological suffering" that the patient may experience. Initially, some guarantee and evaluation commissions (collegiate bodies that decide on requests for aid in dying) and judicial bodies considered that mental disorders could meet the characteristics established by the second euthanasia context [10,11]. In fact, several MAIDs were performed on psychiatric patients.

However, when considering an appeal of unconstitutionality against the LORE in 2023, which finally dismissed, the Constitutional Court pointed out that mental disorders cannot justify aid in dying by themselves [12]. The argument was based on an interpretation of the explanatory memorandum of the law that has not convinced all specialists [13,14]. In any case, it seems that the Court has not ruled out that a person with a mental disorder may have access to the MAID as long as they maintain the capacity to make decisions and the condition that justifies the request is of somatic origin.

Application processing

In Spain, the processing of requests for aid in dying can be conducted by ordinary means when the patient can make decisions at the time of the request and application of the MAID. Nevertheless, the extraordinary route is shown when the person cannot make decisions but has signed a document of prior instructions or similar that requests aid in dying when they had competence [4].

The ordinary route begins when a person submits their request to a physician, who may or may not be their treating physician. This professional is called the "responsible physician" and must conduct an informative and deliberative process with the patient about their diagnosis, their therapeutic, palliative options, and other relevant circumstances within the first two calendar days of the receipt of the request. Subsequently, after a minimum period of 15 calendar days has elapsed since the first request, the patient must ratify their will by a second request. Once this has occurred, and in less than two calendar days, the physician in charge will resume the deliberative process with the patient, seeking to resolve any doubts that may have arisen during the maximum period of five calendar days [4].

After 24 hours from the end of the second deliberative process, the physician in charge must confirm whether the patient wishes to continue with the process. If so, the physician in charge will have to contact a physician specialized in the patient's condition. The latter is called the "consulting physician" and examines the patient and their clinical history to issue a report within a maximum period of ten calendar days from the submission of the second application. If it has a favorable resolution, during the following three working days, the physician in charge will send the file to the respective guarantee and evaluation commission [4].

The guarantee and evaluation commissions are administrative bodies attached to each region (autonomous community). Each commission has a minimum of seven members, among which there must be physicians, nurses, and jurists. When the commission receives an application file from the responsible physician, its president must appoint a medical professional and a jurist within two days, who will verify whether the requirements and conditions for the granting of the MAID are met. Once this has been done, and within a maximum period of seven calendar days, the members of the commission will write a report that will resolve the request for aid in dying and that will be transferred to the physician in charge during the following two calendar days.

If the resolution is negative, the patient may appeal the decision before the contentious-administrative jurisdiction. If the resolution is positive, the physician in charge will agree with the care team and the patient on the date and modality of MAID [4]. Once the aid in dying has been performed, the physician in charge must send the file to the respective guarantee and evaluation commission.

Regarding the extraordinary route, it begins with the receipt, from the physician, of the advance directive document in which the patient requested the MAID. Subsequently, although the law does not explicitly specify it, it is understood that the physician in charge communicates with both the consulting physician and the guarantee and evaluation commission, even though the patient cannot actively participate in the process [15].

Portugal

Types of aid in dying

Portuguese law also provides for two modalities for MAID: euthanasia and medically assisted suicide. Nevertheless, *medically assisted death can only occur by euthanasia when medically assisted suicide is impossible due to the patient's physical incapacity* [5].

Administrative requirements

According to Portuguese law, only people of legal age can apply for aid in dying. Applicants must have Portuguese nationality or legal residence. Therefore, those in an irregular migratory situation are ruled out [5].

Clinical requirements

As in Spain, Portuguese law indicates two types of cases that justify the granting of aid in dying: suffering of a great intensity due to a 1) serious and incurable disease (*lesão grave e incurável*) or to a 2) definitive injury of extreme seriousness (*lesão definitiva de gravidade extrema*) [5]. Likewise, the main difference between these two situations is terminality and chronicity, respectively. Nor does Portuguese law establish a specific period of life expectancy.

However, regarding Portugal, the second type of context does not cause the same ambiguity as in Spain, since there is no allusion to psychological suffering (although physical, psychological, and spiritual suffering were contemplated in the first versions of the law) [16]. Moreover, in general, the law has a more paternalistic aspect in this area, since it establishes that the patient must go to a mandatory clinical psychology consultation and emphasizes the cases in which a specialist in psychiatry must be consulted.

However, if a patient remains competent despite suffering from a mental disorder, there would be nothing in the law prohibiting their access to the MAID as long as the disease justifying the request is of somatic origin. Moreover, this would be in line with some studies that confirm that certain psychiatric patients can maintain the capacity to make medical decisions [17].

Application processing

In Portugal, requests for aid in dying can only be processed when the patient can make decisions throughout the process of requesting and applying the benefit. The law even establishes that "immediately before" the administration of lethal substances, the guidance physician must confirm the applicant's will in front of one or more witnesses [5].

The process begins when a person submits their MAID application to a physician of their choice. This professional, called the "guidance physician", must guarantee that, within the first ten working days of receiving the request, the patient has a clinical psychology consultation. This consultation, which is mandatory unless expressly opposed, aims to ensure that the applicant fully understands its decisions and to rule out possible undue pressure [5].

Likewise, within 20 working days, the guidance physician must conduct an informative process with the patient about their diagnosis, their therapeutic and palliative options, and other relevant circumstances. If this physician considers that the patient meets all the requirements, they must contact a "specialist physician", who must examine the case to issue a report within a maximum period of 15 working days. If it has a favorable resolution, the guidance physician will send the file to the "verification and evaluation commission" (*comissão de verificação e avaliação*) [5].

This commission is unique in the entire Portuguese territory and is made up of five members: two jurists, a physician, a nurse, and a specialist in bioethics. When the committee receives an application file from the guidance physician, it must verify that the requirements and conditions for the granting of the MAID are met within five working days.

If the decision is negative, the patient may subsequently restart the procedure, but the law does not explicitly provide for the possibility of appealing the decision to any jurisdiction. If the resolution is favorable, the applicant will agree with the guidance physician on the date and may choose the place for the MAID, if it meets the necessary clinical and comfort conditions [5]. Once the aid in dying has been conducted,

the guidance physician must send a final report to the verification and evaluation commission, which must review it within five working days. After this evaluation, if the commission identifies that the physician has not followed the conditions and procedures of the law, it will send the report to the prosecutor's office.

Main similarities and differences between Spain and Portugal

Main similarities

In the Iberian Peninsula, the model of aid in dying includes the possibility of accessing euthanasia and medically assisted suicide. Unlike two of the three countries that make up the Benelux block (Belgium and the Netherlands), only adults can access this benefit. Likewise, on the peninsula, aid in dying can be requested for both terminal illnesses and chronic conditions and can be conducted in public and private hospitals and other places (such as patients' houses). Moreover, the Iberian model establishes prior control of the MAID conducted by a collegiate body; Nonetheless, in Benelux, the control is conducted after the aid in dying has been conducted.

Finally, both laws make explicit the right to conscientious objection of health professionals. In Spain, the LORE establishes the creation of a register in which objecting professionals must register the declaration of conscientious objection.

Main differences

Although in both Iberian countries euthanasia and medically assisted suicide are practices contemplated by the respective laws, in Portugal access to euthanasia is conditional on the patient being physically incapable of performing assisted suicide. This non-existent condition in Spain could be interpreted as a type of discrimination or unequal treatment [18].

Indeed, many people may choose to leave their care completely in the hands of healthcare personnel for reasons such as safety or comfort; However, this decision would be annulled by the mere fact of having the physical capacity to conduct medically assisted suicide. This is especially relevant when considering that 265 euthanasias were conducted in Spain compared to only five medically assisted suicides in 2022 [19], and 316 euthanasias compared to 18 medically assisted suicides in 2023 [20]. These data suggest that, in certain contexts, a preference for euthanasia as a form of aid in dying prevails.

Nevertheless, Spanish law allows people with irregular residence to access the MAID if they certify their registration in the territory for more than 12 months. Also, unlike Spain and the Benelux countries, in Portugal it is not allowed to access this benefit via a prior directive document. Therefore, in Portugal, the possibility of euthanasia is excluded in people with advanced dementia or in a state of irreversible unconsciousness, even if they previously expressed their will in this regard while retaining their ability to make decisions.

Moreover, in Portugal the patient only needs to submit a single request for aid in dying, while in Spain there are two, and the latter country does not establish the obligation to refer them to a clinical psychology consultation (unless expressly opposed by the latter). In some cases, this requirement may be considered excessive given the delicate health situation of the patient. Indeed, mandatory psychological consultation could delay the aid in dying process, prolonging the suffering of terminally ill or debilitating patients who have already made a conscious and informed decision.

In this sense, the requirement for psychological evaluations could be stigmatizing, as it systematically calls into question the willingness of applicants for aid in dying. Also, in regions with limited resources, it may be difficult to find the right professionals or ensure their availability, which would further complicate the process.

Nevertheless, some people have pointed out that the intervention of mental health professionals should have an accompaniment approach in the dying process, rather than being an inquisitive control [21,22]. In this regard, note that Portuguese law only provides for this accompaniment approach for health professionals, whereas, for applicants, intervention may be perceived as supervision more focused on scrutiny than on support.

As for the duration of the processing of the application for aid in dying in Spain, the legal deadlines establish around 39 days

from the submission of the application to its final acceptance. In 2022, the average time between filing the application and implementing the MAID was 75.1 days [19], while in 2023 it was reduced to 67 days [20].

In this sense, in Spain, the LORE contemplates the possibility that the physician in charge may reduce the minimum mandatory period between the first and second request if they notice an imminent loss of decision-making capacity in the patient. However, shortening the term due to imminent death is not permitted. This, added to the fact that the option of aid in dying is sometimes communicated late to patients, can lead to a significant percentage of deaths during the processing of the application, a situation identified since the first months of application of the LORE [23,24].

On the contrary, in Portugal the law establishes that the treatment of the request for aid in dying cannot be less than two months, even though the sum of its deadlines yields a duration of approximately 40 days from the submission of the application to its final acceptance.

Finally, Portuguese law does not indicate how the death caused by the MAID will be legally considered, nor does it explicitly indicate the review mechanisms that the applicant can activate in the event of a negative resolution (beyond restarting the process).

In contrast, Spanish law equates the death caused by the MAID to natural death and, if the application is rejected, it contemplates review by both the guarantee and evaluation commission and the contentious-administrative jurisdiction. The fact of specifying the legal consideration of the death or not, as well as the competent jurisdiction to deal with MAID requests, is of great relevance, since it has been a determining factor in some controversial cases in Spain, such as the euthanasia of a detainee in criminal proceedings [25].

Impact of the ruling of the Constitutional Court of Portugal

On April 22nd, 2025, Portugal's Constitutional Court (TC) ruled on a request for a declaration of unconstitutionality filed by 56 deputies of the Assembly of the Republic against Portugal's medically assisted death law. Among the arguments showed, the Constitutional Court only accepted those that pointed to specific regulatory deficiencies, in particular regarding the choice of the method of aid in dying, the way in which the evaluation must be conducted by the specialist physician, the material requirements that determine the non-punishability of the act and the obligation to justify conscientious objection on the part of health personnel [26].

The Constitutional Court considered that the law had inconsistencies regarding the possibility for the person requesting aid in dying to choose between euthanasia and medically assisted suicide. Some provisions (such as Article 19, inherited from previous versions of the draft bill) suggest that this decision rests with the applicant himself [26].

However, Article 3, number 5, introduces a principle of subsidiarity that gives priority to medically assisted suicide, reserving euthanasia for cases in which the person cannot self-administer lethal drugs, which was incorporated into the final version of the legal text. This lack of internal coherence led the Court to declare unconstitutional provisions that recognized an alleged right to choose the method of dying, on because they contradict the principle of legal certainty [26].

Nevertheless, the Constitutional Court declared the legal configuration of the functions of the specialist physician unconstitutional, insofar as the rule does not require this professional to conduct a face-to-face evaluation of the applicant for aid in dying. The Court considered that this omission violates the right to the protection of life and self-determination in conditions of safety, by failing to ensure that the assessment of serious suffering, decision-making capacity, and compliance with legal requirements are based on an effective clinical relationship, in accordance with the principle of protection of fundamental rights. Consequently, the Constitutional Court concluded that the constitutional validity of Article 3, number 1, which establishes the material requirements of medically assisted death, is also affected [26].

Moreover, the Constitutional Court declared unconstitutional the provision that imposed on conscientious objecting health personnel the

obligation to specify the reasons for their refusal to perform or collaborate in an act of medically assisted death. To this end, it invoked the constitutional precepts that guarantee freedom of conscience, understood as a fundamental right whose exercise cannot be subject to the exposition or validation of the personal reasons that sustain it [26].

Finally, the Constitutional Court decided not to declare the unconstitutionality of the remaining articles that are the subject of the appeal. In fact, regarding the compatibility between medical aid in dying and the Portuguese Constitution, it held that the latter *neither categorically impose nor prohibit the legalization of assisted death* [26]. Thus, in the face of the global challenge to the law by the appellants, who questioned its conformity with the right to life, the Court recalled that said right *cannot become a duty to live in any circumstance* [26] and stressed that the decriminalization of assisted death *is – it bears repeating once again – a controversial and legitimate legislative option, as is the case in democratic politics* [26].

For these reasons, we can affirm that the Court did not question the legitimacy of regulating this matter, but rather identified technical aspects that must be corrected to ensure its full constitutional conformity. Therefore, the law on medically assisted death in Portugal has not been discarded, but remains a real possibility, provided that the legislator introduces the necessary adjustments pointed out by the Court.

Final considerations

Considering the divergences in the treatment of applications between Spain and Portugal, we can consider that Portuguese law is more restrictive than its Spanish counterpart. In fact, in each of the aspects we found that the requirements imposed in Portugal are more demanding than in Spain. This may be due to the political difficulties that have arisen in the Portuguese country and that have forced legislators to seek points of consensus.

Among the strictest conditions in Portugal is the requirement for the applicant that cannot physically conduct a medically assisted suicide to have access to euthanasia, establishing the latter as an exception and the former as the default modality. Other of the most burdensome requirements for the future Portuguese applicant are the obligatory nature (except for opposition) of the clinical psychology consultation, the minimum period of two months that the processing of the application must last, and the absence of explicit mechanisms for external review of rejected applications.

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Data availability: All data used or generated in this study are described and presented in full in the body of the article.

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