

Recommendation 1418 - The position of the Council of Europe

by Dick Marty

“The vocation of the Council of Europe is to protect the dignity of all human beings and the rights which stem therefrom.”

The first sentence of Recommendation 1418, “Protection of the human rights and dignity of the terminally ill and the dying”, which the Council of Europe Parliamentary Assembly adopted on 25 June 1999, is one on which consensus is possible despite decade of fierce disagreement about a challenging and sensitive issue. For human dignity is invoked both by opponents of any form of euthanasia and by those who believe that, in certain well-defined circumstances, we should grant terminally ill or dying patients’ insistent and carefully considered requests for their lives to be ended. In contrast, the recommendation’s conclusions are uncompromising: the Committee of Ministers is asked to

“encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects ... by upholding the prohibition against taking the life of terminally ill or dying persons, while ... recognising that a terminally ill or dying person’s wish to die never constitutes any legal claim to die at the hand of another person”.

This is an unambiguous position and there were legitimate grounds for thinking that it would call a halt, at least temporarily, to the lively and often impassioned debate of recent decades, both within the Parliamentary Assembly and in member states. This has not happened, as we shall see.

The Committee of Ministers replied to Recommendation 1418 in two stages. First, on 30 October 2000, it stressed the complexity of the issues and noted, regarding the absolute prohibition on intentionally taking the life of a terminally ill or dying person, that

“the legal position differs from one member state to another on advance refusal of certain treatments and on euthanasia”.

The Committee of Ministers dealt with the subject again in more detail on 26 March 2002, having previously sought the opinion of, among others, the Steering Committee for Human Rights (CDDH). The Ministers endorsed the Assembly's position about:

“upholding the prohibition against intentionally taking the life of terminally ill or dying persons”,

and the principle that

“a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death”.

They again made the point, however, that member states had varying approaches to the issues the recommendation dealt with. They posed, but left unanswered, the question of whether states party to the European Convention on Human Rights were allowed some discretion in the matter and, if so, how much, for it accepted that, from the standpoint of the Convention, the human rights of the terminally ill and the dying posed some very complex problems of interpretation, notably regarding interplay of the various rights and freedoms.