

Statement of the *German Association for Palliative Medicine (DGP)*

with regard to the debate of the Council of Europe on a possible legalisation of euthanasia

The Council of Europe is an organisation of currently 45 European countries. It was founded in 1949 and has its headquarters in Strasbourg. It is independent of the European Union and regards its key tasks to be the promotion of economic, social, cultural and scientific cooperation among European countries as well as the enforcement of human rights. One of the main bodies of the Council of Europe is the Committee of Ministers (consisting of the Foreign Ministers of the member countries), the decision-making making body of the organisation. The other is the Parliamentary Assembly, grouping 313 members from the 45 national parliaments, which meets for talks on all issues that are the responsibility of the Council of Europe and passes on its resolutions to the Committee of Ministers. Thus, the Council of Europe is a forum for debates on general matters of European interest. It may not pass directly applicable acts of law, but its bodies, including various committees and commissions, make statements in the form of resolutions and recommendations.

In 1999 the Parliamentary Assembly of the Council of Europe passed a much noted "Recommendation on the protection of human rights and dignity of the terminally ill and the dying" / Rec. 1418. In this recommendation, the member states were advised most strongly to provide access to appropriate palliative care services for all terminally ill and dying persons, as well as to promote their right of autonomy „by upholding the prohibition against intentionally taking the life of terminally ill or dying persons“. Three years later, in 2002, this recommendation of the Council of Europe was formally welcomed by the Committee of Ministers as part of a special statement (doc. 9404) on this matter, with particular emphasis on the prohibition of euthanasia:

“The Committee of Ministers therefore welcomes in this respect paragraph 9 (c) of the Assembly Recommendation, 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 intentionally taking the life of terminally ill or dying persons, while:

- i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that ‘no one shall be deprived of his life intentionally’;
- ii. 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;
- iii. recognising 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.”

Despite this clear position of the Committee of Ministers, the Europe-wide debate on the legal practice of euthanasia has been a matter of ongoing debate within the bodies of the Council of Europe, not least because of the new legal regulations on euthanasia in the member states Belgium and The Netherlands, which came into force in the year 2002. On behalf of the Committee of Ministers, the *Steering Committee on Bioethics* of the Council of Europe conducted a survey in all member states, addressing their legal practice with regard to active and passive euthanasia. The results of this survey were published at the beginning of 2003.

In September 2003, Dick Marty, the rapporteur of the *Social, Health and Family Affairs Committee* presented the Parliamentary Assembly with a report for adoption (Doc. 9898). In this report, the member states are asked to review their legal regulations on euthanasia in order „to consider whether enabling legislation should be envisaged“ in the way it has been in the Netherlands and Belgium. That very month, Kevin McNamara, the rapporteur of the *Legal Affairs and Human Rights Committee*, made a counterstatement. He denied that the current development in the Netherlands truly gives reason to believe that the practice of euthanasia and physician-assisted suicide can be restricted by such regulations but that, on the contrary, it leads to more irresponsible practice.

Since then, this matter and the debate on both reports has been repeatedly put on the agenda of the Parliamentary Assembly of the Council of Europe (in September 2003, in November 2003 and in January 2004). For various reasons the discussion on these topics was postponed again and again, among other reasons probably due to the particular complex and difficult perceived nature of the subject. The long and eagerly awaited discussion of the Parliamentary Assembly finally took place in April 2004. The result was that the Marty Report was referred back to the Committee by 68 to 33 votes, including the instruction to submit a reviewed report within the period of one year.

The German Association for Palliative Medicine (DGP) very much welcomes the current verdict of the Parliamentary Assembly of the Council of Europe and further fully supports the recommendations of the Parliamentary Assembly of 1999 (Doc. 1418). It also supports the statement of the Committee of Ministers of the year 2002 (Doc. 9404). Furthermore, the German Association for Palliative Medicine would like to refer to another recent Recommendation of the Committee of Ministers, dated November 2003, where the Committee formally emphasises the necessity and implementation of palliative care services in order to improve the care of the critically ill and the dying (Recommendation of the Committee of Ministers to member states on the organisation of palliative care/Rec. 2003, 24). A memorandum was added to this recommendation, in which the respective topics of the recommendation are fully discussed, including a plethora of practice-oriented information for the member states.

Concurrently with the debates within the bodies of the Council of Europe, the European Association for Palliative Care (EAPC) has also been discussing the matter of euthanasia in depth. As an associate member of the EAPC, the German Association for Palliative Medicine fully supports the official position of the EAPC as stated in the publication of the *EAPC Ethics Task Force: Euthanasia and physician-assisted suicide: a view from an EAPC Ethics Task Force* (Palliative Medicine 2003; 17: 97-101). Instead of encouraging the questionable legalisation of euthanasia of any kind, it forcefully stresses the urgent matter of implementation and continued establishment of structures for the delivery of palliative care to the critically and dying (all documents mentioned in this statement are available as downloads at the DGP website: www.dgpalliativmedizin.de) (30/04/2004)