

Assisted suicide in the perspective of the Czech criminal law and a comparison with the common law

Abstract

The strict prohibition on assisted suicide does not reach full acceptance among the members of the Czech society, regardless of their professional or non-professional background, similarly as it did not reach full acceptance in some of the common law countries, which consequently departed or are soon to depart from this regulatory conception. The objective of the two so far proposed Czech bills was identical, however, owing to the lack of clarity and detail, which certainly did not amount to the seriousness of the issue they aimed to regulate, none of them was successful. Hence, the legislative works were recommenced last year and resulted in the third bill, which claimed to be much more elaborative on the key issues and accordingly precise in the usage of language. Although the bill has not been introduced yet, the assumptions based not only on the territorial proximity are, that its prime source of inspiration resided mostly in the permissive regulatory attitude towards assisted suicide (or voluntary, active and intentional, euthanasia) as implemented in the European countries. However, notwithstanding the utter differences in the conception of the common law legal system, especially for such purposes, much can be learned from the concepts and practice of diverse regulatory attitudes as implemented in England and Wales, Canada, New Zealand, Australia and the United States of America. Most definitely apart from seeking the inspiration for drafting a new piece of legislation these jurisdictions offer a wide range of reasoning on both sides – in favour or contra the blanket ban, a thorough analysis of its scope, purpose and proportionality of the infringement of particular human rights resulting from its blanket operation, which can be equally useful for the analysis of the Czech regulatory attitude towards the assisted suicide. Under the Czech criminal law, any form of assisted suicide is an offence under the joint provision of aiding and abetting (inciting) suicide, which excludes the application of an accessory provision and imposes the criminal liability directly on an aider or abettor. Nevertheless, there are types of conduct which *prima facie* seem similar and thus subject to this provision, but they are substantially different and must constitute another offence. On the contrary, there might soon be a statutory definition of a conduct that is substantially similar, but thoroughly immune from criminal liability, and thus its typification a matter of criminal law. The aforementioned common law countries do have different schemes and models, which lay down different conditions and criteria making a person eligible for an assistance in dying and their analysis constitutes one of the five integral parts of this thesis. The other ones engage in the terminological clarification, historical background of relevant legislation and, most fundamentally,

in the analysis of the Czech relevant criminal law provisions, which is concluded by a brief reflection on a possible design of a permissive model.

Keywords: physician-assisted suicide, aiding suicide, abetting suicide