German Club of Life demands: Euthanasia, never again!

The Club of Life in Germany has issued an urgent appeal in an open letter to the federal government, members of Parliament, representatives of the judiciary, medical associations, churches, self-help organizations, and patients' groups warning against the far-reaching implications of the Federal Supreme Court decision on Sept. 13, 1994 on death-assistance. The following abbreviated version was prepared by Club of Life spokesman Jutta Dinkermann.

Now that the written argument of the judgment of the First Penal Senate of the Federal Supreme Court (BGH) (File Reg. Nr. 1 StR 357) from Sept. 13, 1994 is available, the Club of Life wants to express its deep concern over this judgment. Up to now in the Federal Republic of Germany, at least as a general rule, the immediate processes leading to death had to have begun, before "life-sustaining measures" for a sick person could be ceased. Now, according to the most recent judgment of the BGH, this prerequisite need not be met.

Mrs. Sch., the patient who is the subject of this judgment, suffered brain damage in 1990, following a cardiac arrest, and lay in a so-called "waking coma." After some three years, the attending physician, who himself concedes that he has no experience with coma patients, wanted to cease artificial feeding for the 72-year-old woman, in agreement with the patient's son, who was designated as her guardian. The nursing personnel did not follow the instructions of the physician, and instead appealed to the Guardian's Court. Artificial feeding for the woman was then continued. The woman died nine months later of pulmonary edema. In the criminal suit before the State Court of Kempten, physician and son were sentenced to fines for attempted manslaughter; this judgment was reversed in its entirety in the appeal before the BGH, and the State Court was instructed to re-try the case.

The judgment of the BGH

The BGH did in fact uphold the judgment of the State Court, in that the case was one of attempted manslaughter under the law. The case clearly did not involve an issue of assistance-to-death in the sense of the medical guidelines of the Federal Medical Chamber, which presuppose that "the fundamental illness of a patient is irreversible in the opinion of the attending physician, has taken a fatal turn, and death will ensue in a brief period of time."

The critique of the BGH, however, is directed at the State Court for not having taken sufficient account of the view of the two defendants, who believe they acted in a legally permissible way—an objection which, were it found applicable, would have exonerating character.

Secondly, according to the BGH, the State Court had wrongly viewed the "presumed agreement" of the patient as "irrelevant." The BGH rejected the interpretation of the law, which the State Court had applied, according to which "permissibly allowing the patient to die were inapplicable in this case from the outset, and insofar [as] the presumed agreement of the patient were irrelevant."

However, the BGH argues, "the interruption of a particular life-sustaining measure" in principle (in this case, the planned cessation of artificial feeding) is termed "death-assistance in the broad sense" in the relevant literature, and therefore should be acknowledged as such "given the will of the patient as an expression of his general freedom to decide and of the right to not suffer bodily damage."

The BGH, however, was unable to establish, on the basis of the available evidence (which evidence would have to be acknowledged by the court as admissible), that Mrs. Sch. had the wish to die by starvation. In its written argument, the BGH insists, nevertheless, that "it is possible to establish other [factors] which make a different judgment upon the presumed agreement of the patient, as well as the mistaken prohibition [of feeding] of the two defendants appear admissible. The contested judgment was therefore to be reversed in its entirety, and the matter reverted [to the original court] for a new hearing and judgment. The new judge in the case will have to examine, in particular, whether there are additional indications for a presumed agreement of Mrs. Sch., beyond those previously known and insufficient circumstances. In this respect, the criminal court will have to take account in particular, *but not only* of the criteria stipulated in the guidelines of the Federal Medical Chamber" (emphasis added).

This decision can only be termed monstrous, and one which threatens to become a precedent in similar cases.

When the BGH instructs the State Court to persistently search for convincing proof of a presumed agreement of the patient, although such evidence could not be found by two courts already, the intent is clearly to exonerate the defendants at any price.

For purposes of comparison, the "Guidelines of the Federal Medical Chamber for Physicians Attending a Death," passed in 1993, states: "Measures to extend life may be interrupted if delaying the onset of death represents an unreasonable prolongation of suffering *for the patient,* and the underlying illness with its irreversible course can no longer be influenced. An intentional shortening of life by means which bring about or accelerate death *is impermissible and punishable, also when it takes place upon request of the patient*. The collaboration of the physician in suicide is not commensurable with the medical profession" (emphasis added).

The BGH, in its judgment, argues to the contrary: "The Senate is of the opinion, that, in view of the special circumstances of the borderline case presented here, in exceptional cases, it cannot be ruled out from the outset that allowing a patient to die by interruption of medical treatment is permissible. The patient's right to self-determination must be respected in such a case also, against whose will medical treatment, in principle, may neither be initiated nor continued."

This "borderline" case is immediately promoted to the rank of precedent in the further argumentation: "In the case of a terminally ill patient, who is no longer capable of deciding on his own, interruption of medical treatment or measures may exceptionally be permissible also when the criteria of the guidelines passed by the Federal Medical Chamber are not met, since the process of death has not yet set in. The presumed will of the patient is decisive."

The BGH goes yet another crucial step, when it issues instructions to German courts about what they are supposed to do when the presumed will of the patient *cannot* be established. Instead of imposing an absolute prohibition against killing and the threat of punishment in situations which invite such grievous abuse, the written argument reads: "If concrete circumstances for establishment of the individual, presumed will of the patient cannot be found, and after careful examination, then criteria can and may be applied which correspond to *general notions of values*" (emphasis added).

This "general notion of values"—under Hitler, the term was "the healthy sense of the people"—is demonstrably unreliable. In view of this fact, the admonishment in the BGH judgment that, in such cases of doubt, protection of human life takes priority over personal considerations of the physician, or relatives or other persons, is patently nothing but lip sevice.

The underlying hypocrisy is underscored by the statement that, in particular cases, the decision will depend on the degree of expectation that the patient "will recuperate a life which is, in the general notion of value, worth living and how imminent death is."

"General notions of value" and the currently prevailing public opinion of a "life worth living" thus threaten to *replace* the law. If this is meant seriously, as it seems we must fear, then entire groups of patients in the Federal Republic of Germany will be threatened with death.

By the standard of "general notions of value," many lives, depending on one's taste, are already deemed "unworthy" and "inhuman life," from people in wheelchairs to the newborn who comes into this world with a harelip. Prenatal, allegedly "unworthy to live" life can be terminated legally already today. Children with Down's syndrome and those with spina bifida are acknowledged to have conditions that are grounds for legal abortions. In the latter cases, there are efforts to let such children die even after birth, without medical care, if the defects were overlooked prenatally.

Hardly anyone knows, however, what impressive medical successes have been achieved with such children—just as the layman knows little about the prospects for treatment of coma patients. Nevertheless, the typical German *Zeitgeist* fanatic—supported and incited by large sections of the media—thinks he has the right, in the context of "general notions of value," to deny people the right to life.

Self-determination and presumed will

It is not the basic right to self-determination which has brought us to the brink of barbarism, it is the morally wrong "interpretation" which results from a denial of natural law, and a wrongly defined notion of "freedom."

To make this problem clear, we recall a dilemma for which we have the perverse interpretation of the right to self-determination to blame. "Suicide assistance" is no longer treated as a criminal act under German law. The argument is that, since suicide is not punishable, assistance to suicide cannot be punishable either—a formal-logical conclusion, which is by no means lawful on that account!

The full implications of this decision become clear if one puts oneself into the shoes of a completely desperate person who wants to take his own life. Does not this person need active help and encouragement, "assistance to life," more than anyone else? Whoever denies such a helpless person such help and, instead of summoning other persons more capable of providing such help, assists this person in killing himself, is this person not guilty of a despicable crime?

The German judiciary must urgently remind itself that wrong does not become right just because it is legalized!

The catastrophic consequences of revoking the liability of punishment for "complicity to suicide" became clear all too quickly. According to the testimony of even the German Society for Humane Death (DGHS), the equivalent of a "medium-sized small town" has died in such a manner in recent years. Euthanasia promoters such as Henning Atrott from the

DGHS, Julius Hackethal, and others, claim that they "only" provided the deadly poison to their victims, i.e., placed it within their reach. Since the death-candidates then allegedly took the poison "on their own," all such cases were ranked as unpunishable "complicity to suicide"—although the procurers of the poison knew, of course, what a horrible death cyanide poisoning causes.

Not least on account of such "verdicts," public opinion presumes that the right of a citizen to self-determination includes, in denial of natural law, the "right" to kill oneself. Thus, it is no surprise that the demand of the euthanasia lobby to legalize "death upon demand" already finds considerable public acceptance.

The next step of the euthanasia lobby is now to apply the demand of "free death for free citizens" also to people who can no longer speak for themselves. Since people have a firm notion of what an "existence worth living" means, those people who can no longer express themselves should not suffer. Relatives and acquaintances, physicians, or society in general, should represent their "interests" in place of the people themselves. Many handicapped people already see this situation as life-threatening. This is by no means a new phenomenon: At the beginning of the euthanasia program of the Nazis, the talk was of "relief" and "self-determination." In 1920, Judge Binding and neuropsychiatrist Hoche demanded legally permissible killing of the severely ill who wanted "relief," and that included "incurably retarded" and unconscious people.

Another consequence of the debate on self-determination is the so-called "patient's testament" [living will]. Previously, it was chiefly the DGHS which went around with these papers, which stipulate that the signer will forgo medical intervention in certain situations. Now even the Hamburg Medical Chamber, the Evangelical-Lutheran Church in Bavaria, and the German Hospice Aid felt called upon to advertise for patients' testaments or to proliferate them. Initially the issue of these patients' testaments was to "protect" a dying person from the measures of a physician to prolong life; the texts have been changed in the meantime so that the people forgo any form of help under circumstances felt to be unbearable.

In the United States, the "right to die" for many indigent elderly and sick people has become a "duty to die" because of scarce medical resources (and some politicians say so, straightforwardly). In the 1980s, a working paper circulated in the U.S. Department of Health and Human Services pointed out how many billions could be saved with such patients' testaments, and some American health insurance companies offer their customers reduced fees if they agree to sign such a patient's testament.

The Federal Medical Chamber does not yet consider patients' testaments binding. They are merely taken as a point of reference. How long this will last is questionable in view of the Supreme Court judgment.

Perry visits Asian subcontinent to help ease tensions

by Ramtanu Maitra and Susan Maitra

The recent trip of U.S. Defense Secretary William Perry to the Asian subcontinent has been hailed as a great success in India, but has failed to generate similar enthusiasm in Pakistan. The underlying theme of his trip was to discuss the security concerns in the region and, more urgently, to exhort both nations not to escalate bilateral tensions any further.

The Pakistan half of Perry's trip on Jan. 10-11 focused around two issues which seem to concern the Bhutto administration most in defining its relationship with Washington at present. These are the sale of 38 F-16 fighter-bombers for which Pakistan has made partial payment already, but which the United States, based on the Pressler Amendment which curbed the sale of all arms-related hardware to Pakistan beginning in 1991, refuses to deliver; and, resolution of the Kashmir conflict.

Discontent in Pakistan

On the first issue, the U.S. defense secretary told Islamabad that it would be a subject of discussion of the U.S.-Pakistan Consultative Group, an institution which has been moribund for more than five years and was resurrected during Perry's visit. At the same time, Defense Secretary Perry indicated that the final solution to the problem lies in the sale of those paid-for F-16s to a third country. The money so raised could then be used to pay Pakistan back.

On the Kashmir issue, it soon became clear that Perry was reluctant to come up with any new formulation. However, his virtual silence has been construed by some in the Pakistani media, as well as in government circles, as a quiet American endorsement of the British view expressed earlier in the week by visiting British Foreign Secretary Douglas Hurd.

Hurd's comments on the Kashmir issue had poisoned the situation within Pakistan. The British foreign secretary went on record saying that among the necessary steps to be taken was ending the external support to Kashmiri militants, which has been interpreted in Pakistan as Britain joining voices with India in claiming that the "Kashmiri uprising" was not spontaneous, but rather fueled from the