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Landmark euthanasia case: Japanese doctor guilty

In Japan's first test of a doctor's criminal liability in a euthanasia case, the defendant has been found guilty of unlawfully killing his patient but was given only a suspended prison sentence. In presenting his verdict, the judge also produced a new list of criteria for the legal use of euthanasia, the first time these conditions have been modified in over 30 years.

The defendant was Masahito Tokunaga, a 38-year-old former assistant professor and physician at Tokai University Hospital, just west of Tokyo. In April 1991, he was treating a 58-year-old man with multiple myeloma (cancer of the bone marrow) who had a life expectancy of only a few days. Acting on what he claimed were repeated requests from the family, Tokunaga injected the patient with 20 ml of potassium chloride solution, which causes the heart to stop and death to occur in a matter of minutes. Tokunaga was dismissed by his university immediately after the incident and was indicted by Yokohama District Prosecutor's Office in July 1992.

At the trial, the family admitted asking Tokunaga to "ease father's pain" but denied that they had directly requested euthanasia. In announcing his decision at Yokohama District Court on 28 March, Judge Shigeru Matsuura reprimanded Tokunaga for failing to clarify the family's wishes. He also criticized the hospital for failing to establish a proper system for the care of terminally ill patients and their families.

The judge based his decision on four criteria for legal 'active' euthanasia, namely that the patient should express the clear wish to die, is in unbearable physical pain and be approaching inevitable death, and that there should be no alternative treatment available. In this particular case, as the patient was unconscious the first two conditions were not met and so Tokunaga was found guilty. However, Matsuura did acknowledge that Tokunaga was young, inexperienced and under great pressure at the time, and this was reflected in his sentencing. Although murder in Japan typically carries a minimum prison sentence of three years, Tokunaga was given a two-year suspended sentence.

Matsuura also issued guidelines for cases of 'passive' euthanasia. Unlike the Tokunaga case, which involved actively taking the patient's life, passive euthanasia involves removing life-prolonging treatment and/or feeding to allow the patient to die 'naturally'. Although the judge said that in such cases similar rules should apply, he stated that the patient's family may act as a proxy provided that their wish is presumed also to be the wish of the patient.

The conditions set out by Matsuura are based on a ruling by the Nagoya District Court in 1962 but reworded to reflect what the judge described as "changing public recognition of euthanasia". The Nagoya case involved a man suffering great pain who, at his own request, was poisoned by his wife and son. The new conditions are similar to those spelt out by the court in Nagoya, but the distinction between active and passive is new. The revised guidelines also exclude explicit statements that the method of euthanasia be ethical and that it be specifically for the purpose of relieving suffering, although both points appear to be implicit in the wording.

Nevertheless, some points are still left unclear. How, for example, should a patient's will be determined and how short should their life expectancy be for these guidelines to apply? These points will presumably be left up to hospital ethical committees and, if necessary, the courts to decide. The ruling also has nothing specific to say about difficult situations such as patients in vegetative states and terminally ill young children.

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The principle of passive euthanasia is gaining increasing recognition and support in Japan. The pro-euthanasia Japan Society for Death with Dignity (*Nihon Songenshi Kyokai*), formed in 1976, claims about 70,000 members nationwide, a sevenfold increase since 1990. Surveys of their members' experiences suggest that passive euthanasia is already widespread in Japanese hospitals. At the request of some of its members, the April issue of the society's newsletter contains a list of 116 doctors at 36 institutions who are willing to carry out passive euthanasia, the first time such a list has been published in Japan.

Moreover, in a poll conducted in 1993 by the Japanese Ministry of Health and Welfare, almost 75 per cent of people said they would not want treatment that would merely extend their lives if they were already close to death and in pain.

Public acceptance of active euthanasia in Japan, however, is much lower. The same poll found that, under the same circumstances, only 15 per cent of respondents would want their life shortened. The prestigious Science Council of Japan (*Nihon Gakujutsu Kaigi*) and the Japan Medical Association (*Nihon Ishikai*) have both come out in support of passive euthanasia but are against active euthanasia.

The care of terminally ill patients, particularly ones suffering from cancer (the cause of about a quarter of the deaths in Japan) is currently being re-examined from several angles. In January, the health ministry urged doctors to make more use of the painkiller morphine. The per capita use of morphine in Japan is less than one-tenth of that typically found in Europe and North America, mainly because Japanese doctors are overly anxious about patients becoming addicted.

The recent court decision on euthanasia has created great interest in Japan at a time when the ethical problems associated with medical treatments such as organ transplantation and gene therapy are being increasingly discussed in public forums. Euthanasia too is likely to become ever more prominent, not only because medical technology is keeping critically ill people alive longer, but also because Japan's population is ageing rapidly.

The common factor linking these subjects is the principle of informed consent, which is only just starting to take root in Japanese hospitals. As pointed out in an editorial by the *Asahi Shimbun*, a daily newspaper that tends to be politically 'left of centre', the ethical problems do not end when the patient's or family's approval has been obtained. In a country where it is still routine not to tell cancer patients about their condition, doctors have to learn to be more open with the facts, and hospitals need to provide proper counselling of patients and their families. But at the very least, these questions are now getting a proper airing.

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