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PALLIATIVE CARE AND ETHICS

Deprivation of liberty and end of life: Does die with dignity mean to die free?

Privation de liberté et fin de vie : mourir digne implique-t-il de mourir libre ?

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Summary More than 10 years after the establishment of the law of 4 March 2002 on patients' rights and quality of health system, the application of one of its measures, suspension of sentence for medical reasons, remains poor. This arrangement should enable inmates with serious diseases to benefit from a release to be cared for and die free. The low effectiveness of the measure questioned its necessity and sufficiency to meet the goal of a dignified end of life. There are two opposing views regarding its necessity. For proponents of Kantian inherent dignity, detainee's release is not a prerequisite to a dignified end of life. Conversely, it becomes necessary when one adheres to a modern vision of autonomy and 'good death', defined by the expression of their own will. Anyway, caregivers are not responsible for the decision to grant the release, but participate daily to a third way. The terminally ill prisoner is particularly vulnerable. Serious illness affects drastically the identity and lifestyle, individualization factors already weathered by years of detention. Attention and kindness of the caregiver involved in restoring the deteriorated autonomy of the patient in the twilight of his/her life. Only acceptance of our responsibility towards this person, even transgressive, can promote more than the application of the law, the defence of the dignity of the terminally ill prisoner.
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MOTS CLÉS
Suspension de peine ;
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Résumé Plus de dix ans après l'avènement de la loi du 4 mars 2002 relative aux droits des malades et à la qualité du système de santé, l'application d'une de ses mesures, la suspension de peine pour raison médicale, reste médiocre. Cet aménagement devait permettre aux détenus atteints de pathologies graves de bénéficier d'une libération pour être soignés et mourir libre. La faible effectivité de la mesure interroge sa nécessité et sa suffisance à remplir l'objectif d'une fin de vie digne. Deux points de vue s'opposent quant à sa nécessité. Pour les tenants d'une dignité intrinsèque kantienne, la libération n'est pas une condition sine qua non à une fin de vie digne. À l'inverse, si l'on s'accorde à une vision moderne de l'autonomie et du bien mourir défini par l'expression d'une volonté propre, elle le devient. Quoi qu'il en soit, les soignants ne sont pas décisionnaires de l'octroi, mais participent au quotidien à une troisième voie. Le détenu mourant est particulièrement vulnérable. La maladie grave affecte de façon drastique l'identité et le mode de vie, facteurs d'individualisation déjà altérés par les années de détention. L'attention et la bienveillance des soignants participent à restaurer l'autonomie dégradée du patient au crépuscule de sa vie. Seule l'acceptation de notre responsabilité à l'égard de cet être certes transgressif peut promouvoir, plus que l'application de la loi, la défense de la dignité du détenu mourant. La version complète en français de cet article est disponible en ligne.
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Introduction

Like the French general population, the prison population is aging and that aging is amplified by longer sentences. The number of prisoners aged over 60 has increased by a factor of 10 between 1978 and 2008, while the total prison population doubled over the same period [1]. Consequently, there has been an increase in cases of complex socio-sanitary situations in prison, posing ethical problems, especially for end-of-life situations. To address this issue, the legislative arsenal now allows the possibility to release seriously ill inmates. This release aims to protect the dignity of inmates at the end of their life. Yet, according to the definition used in the philosophical notion of dignity, release of the inmate does not necessarily meet the desired objective. Caregivers in detention facilities, as well as in free environment, remain an essential link in the end-of-life support. We will see how the inclusion of the particular vulnerability of the patient/inmate draws a new path to achieve a fair equity of dignity at the final moment of existence.

Description of the suspension of sentence

If an offense results in a custodial sentence, criminal law provides several measures of individualization that allow offenders not to serve their entire sentence in custody. The most frequent sentence arrangement is parole. It is reserved for inmates without unconditional detention period and who have served at least half of their sentence.

Some prisoners suffering from serious diseases incompatible with detention and not eligible for parole could not regain freedom and were dying in prison given the absence of a rare presidential pardon. Pardon was rarely granted because it depends on the political power, which is particularly sensitive to public opinion.

Under the Kouchner's Law of 4 March 2002 appear the dispositions to create a suspension of sentence for medical reasons [2].

This law, by the Article 720-1 of the Code of Criminal Procedure, allows inmates with serious life-threatening diseases or making their health status incompatible with detention, given release, whatever the reason of their incarceration, length of sentence remaining to be served, and despite the existence of an unconditional detention period [3]. The suspension of sentence is framed by strict conditions about the health of the prisoner.

The pathology in question must either be life threatening or be permanently incompatible with detention and be authenticated by two medical expertise.

For the suspension to be accepted, both expertises must match for one of the two conditions, but it is at the discretion of the enforcement judge to order the suspension.

If the spirit of the law was of a purely humanitarian nature, the scope of the text was restricted gradually to meet security requirements. First, the law of 9 March 2004 adapting justice to developments in crime authorized the enforcement judge to impose the suspension of one or more obligations or prohibitions [4]. Then the law of 12 December 2005 concerning the treatment of recidivism and criminal offences diverted the law of 2002 [5]. It has affected the principle of suspension by a significant condition; the decision now depends on the intrinsic severity of the sentence. While the original measure could apply regardless of the sentence, if the judge suspected a risk of reoffending, the possibility of suspension of sentence now becomes

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