



National
Council of
Ethics for the
Life Sciences

116/CNECV/2022

**OPINION 116/CNECV/2022 ON DRAFT BILLS 5/XV/1
(BE), 74/XV/1 (PS) AND 83/XV/1 (PAN) REGULATING
THE CONDITIONS UNDER WHICH MEDICALLY
ASSISTED DYING IS NOT PUNISHABLE AND
AMENDING THE PENAL CODE**

June 2022



OPINION 116/CNECV/2022 ON DRAFT BILLS 5/XV/1 (BE), 74/XV/1 (PS) AND 83/XV/1 (PAN) REGULATING THE CONDITIONS UNDER WHICH MEDICALLY ASSISTED DYING IS NOT PUNISHABLE AND AMENDING THE PENAL CODE

Executive Summary

The National Council of Ethics for the Life Sciences (CNECV) approved in its Plenary Meeting on June 9, 2022, in response to the request of the Parliamentary Standing Committee on Constitutional Affairs, Rights, Freedoms and Guarantees, the Opinion No. 116/CNECV/2022. 116/CNECV/2022 on Bills no. 5/XV/1 (BE), no. 74/XV/1 (PS) and no. 83/XV/1 (PAN), regulating the conditions under which medically assisted death is not punishable and amending the Penal Code.

The notions of "serious and incurable illness" (Bills no. 5/XV/1 (BE and 74/XV/1 PS) or "serious or incurable illness" (Bill no. 83/XV/1 PAN) - which translates into the broadening of the universe of situations by changing the concept -, stand out. The concept of "suffering", on the other hand, has very strong ethical implications: whether it is "severe suffering" (Bill no. 74/XV/1 PS) or simply "suffering" (Bills no. 9/XV and 83/XV/1), the assessment of what is "intolerable suffering" is, undoubtedly, subjective.

The CNECV stresses the importance of a legislative process that truly allows for the respect of the rights to self-determination and the free development of personality. In this context, the powers and responsibilities of the doctors who accompany and guide the process must be clear. It is also fundamental that the role of the Commission for Verification and Evaluation of Clinical Procedures of Medically Assisted Death (also known as Medical Assistance in Dying - MAID), which is foreseen in the three draft bills, is not merely administrative or bureaucratic.

Finally, access to palliative care is intended to be guaranteed to those who request it throughout the MMA process, when the current limitations of the National Palliative Care Network do not allow for equal access to all citizens who need it.

The CNECV recognises the existing plurality of worldviews on end-of-life decisions. It also takes into account its previous opinions on the subject, as well as the evolution of the MMA legislative process in Portugal and the grounds invoked to legitimise a new legislative intervention.



On those grounds, the CNECV is of the opinion that Bills no. 5/XV/1^a (BE), no. 74/XV/1^a (PS) and no. 83/XV/1^a (PAN) that regulate the conditions under which medically assisted death is not punishable and amend the Penal Code:

- extend without any basis the scope of MAID through the mere requirement of serious and incurable illness, or even only serious or incurable illness, not respecting the principle of proportionality;

- disregard the ethical foundation on which the role of the physician as recipient of the MAID request is based, by not requiring that the guiding physician be a physician of the patient's trust;

- do not properly value the availability of psychological counselling in decision-making processes concerning situations of intense suffering;

- do not respect the principle of equality between patients who request medically assisted death and patients who do not request it. Access to palliative care should be guaranteed for all citizens who need it.

Lisbon, 9 June 2022.

National Council of Ethics for the Life Sciences.

The President, Maria do Céu Patrão Neves.

Rapporteurs: Inês Godinho and Miguel Oliveira da Silva.

The present opinion was approved on 9 June 2022, at the 266th plenary meeting of the CNECV.