

# Protecting life, facilitating death

## The bureaucratic experience of organized assisted suicide

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### Abstract

The process of organized assisted suicide (OAS), permitted in Switzerland under specific circumstances, requires applicants to produce and circulate an array of medico-legal documents. Obtaining these documents involves stressful interactions with family doctors, turning the bureaucratic experience into a very personal, and rather intimate, form of sociality. In this Think Piece, I suggest that by following how such documents are produced and circulated, we can better understand how OAS reveals an underlying tension between two figurations of life. Normatively, life is seen as a source of value that needs to be protected and preserved, but OAS statutes acknowledge that some individual lives require professional assistance to die. While legal protections are set up in order to protect life from OAS, these same protections are responded to via the establishment of a bureaucratic infrastructure that facilitates death. In this sense, medico-legal documents not only expose a tension between life and lives, but also enable the navigation of a bureaucracy that facilitates death within a legal framework designed to protect life.

### Keywords

bureaucracy, documents, life, sociality, organized assisted suicide

## Introduction

Margot died on a Thursday morning in the outskirts of Basel, Switzerland. I was by her bedside, holding her hands, when after having said her goodbyes to everyone around her, she decided to release the flow of sodium pentobarbital down the cannula and into her veins. About twenty minutes after Margot's organized assisted suicide (OAS),<sup>1</sup> Dr. Preisig – founder of the organization LifeCircle and Margot's suicide assistant – decided to notify the authorities.<sup>2</sup> It is always necessary to wait a few minutes before calling the police, Dr. Preisig told me, as a way of avoiding any attempt to reanimate the body. Even though what had just happened was not a criminal offense under Article 115 of the Swiss Criminal Code, she said that police officers claim a positive obligation to protect life and would therefore try to reanimate the body if there was any chance of survival. Margot's death needed to be irreversible. Twenty minutes after the OAS, her death seemed irreversible enough to me. Her skin was no longer vibrant, but pale. Her hands were cold. And while death was progressively making itself more visible, rapidly transforming Margot's body, nothing was to be moved before the authorities arrived. When they finally did, the kind of institutional response that Margot's death triggered – and the way in which her death came 'to matter' (Stevenson 2012, 595) – became clear.

While waiting for the right time to call the authorities, Dr. Preisig occupied herself with the documents she would have to present to the police officers and the state prosecutor. These were the documents Margot had to submit to LifeCircle a few months before her procedure took place, when she was still applying for the organization's green light; that is, their authorization to carry out a professionally assisted suicide. This is granted – or denied – by the organization itself and requires the production, gathering, and circulation of specific documents. Margot submitted: a curriculum vitae, in which she had to explain what her family situation was, stating who would be accompanying her to Switzerland and whether her relatives were informed about and agreed with her wish to terminate her life; a personal letter, in which she had to explicitly request that the organization prepare the OAS and explain why the procedure was necessary; and a medical report, no older than six months, on her current health situation, attempted therapies and treatments, and prognosis.

1 The term 'organized assisted suicide' is subject to debate, and LifeCircle refers to it as 'assisted voluntary death'.

2 Whereas Dr. Preisig had agreed to the use of her real name, 'Margot' and 'Ingrid' are pseudonyms. The decision regarding the use of pseudonyms or real names was made by the research participants themselves.

In order to carry out the procedure with Dr. Preisig's assistance, Margot had to produce and collate these documents and submit them to the organization. This process of document gathering, despite the bureaucratic ideal of impersonal interactions, reveals a bureaucratic experience embedded in deeply personal, if not intimate, forms of sociality. The experience not only involved translating complex emotions and feelings into a coherent written narrative justifying her desire to die, but also demanding interactions with physicians who were not always in agreement with her wishes. The role played by documents in this experience is of utmost importance. They are both the materialization of a bureaucratic rationale that organizes OAS and the visible manifestation of a patient's sociality with medical professionals, a form of sociality that exposes two conflicting figurations of life. I define 'sociality' following Nicholas Long and Henrietta Moore's (2013, 2) definition: a dynamic, malleable, and interactive relational matrix through which people make sense of the world they live in. In turn, 'figuration' is employed here following Norbert Elias's (1978, 14-15) conceptualization of it as 'webs of interdependence' characterized by various power balances.

From 2014 to 2017, I carried out ethnographic research on OAS, focusing mainly on the transnational circulation of documents, people, and technologies across different national jurisdictions – particularly Switzerland, Germany, and the United Kingdom. Over the course of the research, it became clear that the way medico-legal documents were produced, gathered, and acted upon implied a specific form of sociality between human and non-human elements. This sociality directly involved the organization, medical doctors, and applicants for OAS – a relation that is already characterized by different power balances – and it was additionally informed by different moralities, bureaucratic criteria, and legal protections to life. Documentary practices facilitate access to OAS in jurisdictions where the procedure is subjected to legal sanctions. In so doing, they expose a fundamental contradiction that is expressed in two distinct figurations of life: one in which life is something of value that requires normative protection from the state, and one in which a life might require organized assistance in suicide. The production and circulation of medico-legal documents is a key element to circumventing this contradiction.

## The legal landscape

Over the course of several months following our first in-person meeting, Margot and I kept in touch through frequent phone calls and occasional letters. When I asked her about her motivations to apply for an assisted suicide, Margot shared that, after having witnessed the deaths of her grandmother and parents and, later on, some of the people living in the same assisted living facility as she did, she decided to avoid what she perceived as a prolonged and painful process. So she sketched a plan: after her eightieth birthday she would contact the German organization Sterbehilfe Deutschland (StHD) – which was conveniently located in

Hamburg, where she lived – and apply for OAS. When the time came, however, Germany had just passed its first official law on assisted suicide. The new law – section 217 of the Criminal Code – moved to restrict so-called businesslike (*Geschäftsmäßig*) operations related to death; that is, the form of assistance provided by both organizations and professional assistants (Andrade Neves 2019). To assist in a suicide could no longer be part of a person's main occupation; consequently, StHD had to stop organizing and providing suicide assistance. As carrying out the procedure in Hamburg was no longer viable, Margot had to look elsewhere for assistance. That was when one of her friends told her about LifeCircle in Switzerland, and traveling there became Margot's most promising option.

In contrast to Germany's legislative change, Switzerland has had the same official law on suicide assistance since 1937. There, Article 115 of the Swiss Criminal Code states that 'every person who, for selfish reasons, incites or assists someone to commit suicide, shall be sentenced to imprisonment of up to five years or a fine'. In other words, Article 115 does not legalize assisted suicide in itself, but rather criminalizes it if the assistance is provided with selfish motives, such as profiting from someone's death due to inheritance. In the common legal interpretation in Switzerland, there are no grounds for prosecuting someone for assisting a suicide in the absence of selfish motives (Andorno 2013). In this sense, both Germany (Margot's home country) and Switzerland (her final destination) criminalize assisted suicide, but the elements that constitute the criminal offense differ: in the former, it relies on 'businesslike' operations; in the latter, on selfish motives.

In both countries, therefore, life remains something to be protected from suicide assistance – despite variations on what constitutes this criminal offense – and enshrined as a value subjected to normative protection. When discussing the relation between Inuits and the Canadian state in the context of a suicide epidemic, Lisa Stevenson (2012, 593) argues that 'it has become a matter of good manners for agents of the state to invoke the sanctity of life' when dealing with the risk of suicide, thus fostering a regime of life that tries to prevent death. 'When life becomes an indifferent value', she writes, 'it no longer matters who you are – simply that you cooperate in the project of staying alive' (Stevenson 2012, 601). That is, when life is detached from individual people, it emerges as a value in and of itself. It emerges as a value subjected to legal protections and acts of care. In the context of OAS, where the possibility of lawfully applying for and carrying out an assisted suicide coexists with life-oriented political formations, documents represent a paradox: in order to produce the documents necessary to end a life, a person needs to engage with agents who see life as a value to protect and assisted suicide as something to prevent. But it is only through the documentary practices of these representatives of a life-oriented state that such regimes of life can be circumvented.

## Producing the documents

When Margot decided to initiate her application process, she had to start gathering all of the documents required by LifeCircle. In her letter to the organization, she wrote: ‘As a member of your organization LifeCircle, I hereby request that an assisted suicide be organized for me’. She stressed that her quality of life was nonexistent because everything that had once given her joy – such as hiking, practicing sports, and going out with friends – was no longer possible for her. Attached to her letter, Margot added a handwritten list of operations she had undergone from 1974 to 2009 that eventually left her incontinent. She also mentioned the arthrosis that consumed her body ‘from feet to the tip of her fingers’ and concluded the application by writing: ‘My biggest fear is that at some point something could happen to my body, and then I would no longer be able to travel. That is why I request suicide assistance as soon as possible’.

Margot feared that her health would further deteriorate, but fear alone was not enough to justify her application. Instead, she had to anchor it in medical grounds: her fear of not being able to practice sports and meet friends was ascribed to her arthrosis, which restricted her mobility. Likewise, her inability to go outdoors for long periods of time was the result of her incontinence. So, while Margot justified her wish for OAS on the basis of her perception of her own quality of life, she had to ground this justification in medical diagnostics, and for this she had to consult her family doctor. During one of our conversations in Hamburg, we talked about her experience with this process:

Marcos: Have you shared your intention with your family doctor?

Margot: God no! God no! She would not have given me any papers. I needed to send LifeCircle the medical report, can you imagine how much I had to fight to get anything? I think they [doctors] make many mistakes in their paperwork... For example, I fell and got a huge bruise, and we first thought that I’d broken my rib – I had terrible pain. And that’s not in the doctor’s paperwork at all. He had only copies of my operations, but nothing else. So I also tried to get something from my orthopedist, and it’s always like: ‘Why do you need this? What do you want this for?’ ‘Well, I’m eighty now, and my children and I want to organize my paperwork’. ‘When you need something I can fax it to you’. So what is one supposed to say to the doctor?

Marcos: So how did you get the report?

Margot: I have a certificate of disability graded 90 percent, so I said I wanted to try to get a 100 percent one. And for this the doctor had to fill in paperwork for the authorities. That’s what I sent to LifeCircle... I believe this happens not because of bad will, but because this demands much

work and the doctors are so overwhelmed... It's so much paperwork, it gets bigger and bigger, and paperwork is not the profession of a doctor... I was told by the organization's secretary, 'You could say that you will travel and that's why you need the papers', but a doctor would not accept that.

Margot's experience was not an exception. Ingrid, an eighty-one-year-old German member of LifeCircle, experienced a similar situation. When we met for the first time, Ingrid received me in her two-bedroom apartment in Nuremberg, where she used to live with her son, who had died of cancer in his forties, not too long ago. The floor in every room was covered by a cream-colored carpet, including the kitchen and the bathroom. To improve her balance, she walked around the apartment barefoot. In her living room, a plastic binder rested on the coffee table. For quite some time, Ingrid had been gathering the documents required to apply for OAS, including some extras – like photographs – that would help her present a clearer picture of her life and family history. To comply with the rules that could possibly grant her the green light for her assisted suicide, Ingrid had to write a personal letter and a curriculum vitae, but she had to rely on her family doctor to produce a medical report and her medical records.

When she visited her doctor to request these documents, she encountered opposition. 'My family doctor is completely against this system', Ingrid shared with me. 'Because she's already told me, "I can report you to the police and then you will be taken to the nuthouse". See? That was said by my family doctor. I find this criminal'. Ingrid's family doctor ended up agreeing to write a medical report, but did so in a technical language that Ingrid would not be able to understand. During one of our conversations, Ingrid recounted:

- Ingrid: My family doctor was so against assisted suicide, that that's how she wrote the report.
- Marcos: She wrote she is against it?
- Ingrid: No, she didn't, but she abbreviated everything. I said: 'Why? I would also like to be able to read it, I don't know this specialized language, but I would like to at least know what my physician writes about me, I've been coming here for thirty years now'. And the doctor answered: 'The physician who reads this will understand it'.

Both Margot and Ingrid faced difficulties in their interactions with family doctors while producing and gathering the required documents for their OAS. During their clinical encounters, it became clear to them that their physicians could deny them the documents they required. But obtaining these documents was a crucial step toward getting a green light. This paradoxical situation, in which the cooperation of physicians was necessary to enable a

procedure they themselves opposed, led to an affectively charged form of sociality where documents that facilitate death needed to be produced by agents who wanted to protect life. The obligation to present a medical report, as required by LifeCircle and other organizations, winds up giving doctors the role of a ‘gatekeeper’ to OAS (Conrad 1979, 5). In trying to pass through these medical gates and produce the necessary documents, Margot developed strategies to justify her request – upgrading her disability certificate and using that paperwork to send to LifeCircle – that allowed her to veil her true intentions. Ingrid, however, directly disclosed her wish to apply for OAS to her family doctor, who responded with threats of police action. Her wish to terminate her own life with organized, professional assistance clashed with her physician’s outlook on life as something that should be preserved and protected regardless of individual circumstances.

## Following the documents

When Margot took her own life with professional assistance in an organized setting, her death triggered a visit from state authorities and a coroner. It became the subject of a medical and state investigation in which documents played a central role. But these documents were as essential to the investigation that took place after the procedure as they were to Margot’s OAS becoming a lawful possibility in the first place. Because documents are essential for members of LifeCircle to have their request considered, they offer an analytical entry point into the profoundly personal dimensions of this bureaucratic experience.

Don Brenneis (2006, 42) suggests that documents have long remained ‘analytically invisible’ because of their ordinariness, and that most of us are ‘bureaucratic actors’ who, despite regularly filling out forms, think of such papers only as ‘mundane documents’ that provoke ‘routine responses’. A similar point is made by David Graeber (2015, 5), who, in his *Utopia of Rules*, alludes to this ordinariness by framing bureaucracy as ‘the water in which we swim’. As a result, he writes, ‘we no longer like to think about bureaucracy, yet it informs every aspect of our existence’ (ibid.). But it is precisely this ordinariness, their ubiquity in everyday life, that makes documents analytically interesting: we should look at them not only as mediators capable of transforming meanings (Latour 2005, 39) and generating entities (Mol 2002), but also as the outcome of an affectively charged bureaucratic experience that is embedded in complex forms of sociality. Margot and Ingrid both realized as they were interacting with their doctors that it would be challenging to produce the required documents. This was not because the documents themselves were difficult to produce, but because of the affectivities the process of document production evoked in this particular context.

Documents, Yael Navaro-Yashin (2007) argues, generate politically charged affectivities as they are produced and circulated. They have, as the author phrases it, an ‘abjected underside’

(ibid., 95) that is messy and full of potentialities, one that produces and effects affect. Upon becoming members of LifeCircle, Ingrid and Margot were presented with a bureaucratic path they would have to follow to successfully apply for OAS, but this path of documentary practices was not an ordinary one of mundane documents and routine responses. The necessary documents were produced in affectively charged environments – both clinical and legal – where interpersonal elements clashed with bureaucratic anonymity and disregard for personal circumstances, exposing two main figurations of life.

Margot and Ingrid's clinical encounters highlight a fundamental contradiction. On the one hand, there is an anonymous life that requires normative protection and enforcement. On the other hand, there are multiple lives, constituted from personal trajectories, moralities, and values, as well as other biographical and social elements. If the first perspective sees life through the lens of preservation, the latter perceives it as something unique and particular that can be terminated upon request. The bureaucratic experience made these two figurations noticeable, as the production of documents brought them into contact and made them clash.

While the contact between these two figurations may initially intensify the affectivities involved in this form of sociality – perhaps even leading to threats, as was the case with Ingrid – it is a vital step in transfiguring these heterogeneous elements by opening up a space. In this space, OAS can be provided within life-oriented legal frameworks. In other words, individual lives can be lawfully terminated, even if life, as a value, remains subject to legal protection. This transfiguration, provoked by the production of medical documents and the nexus this establishes between two figurations of life, produces a radical change in the very core of this legal framework. It produces a change that makes the goal of protecting life coexist with a process of lawfully facilitating death.

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