Perspectives on Death: Korea's first court decision supporting death with dignity, its meaning and future prospect

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On November 28, 2008, Korean courts, for the first time, accepted a patient's demands to discontinue life support that was medically futile. The family of patient Kim, who fell into a vegetative state after suffering brain damage during a lung cancer examination at the Severance Hospital in February, had filed a law suit against the hospital to discontinue life support including respirators. The courts finally delivered a judgment ordering the defendant (the hospital) to remove the respirator. As Korea's first judgment acknowledging the right to die with dignity, the decision is expected to trigger serious debates in its society.

Due to its cultural influences, Korea has been reluctant to engage itself in a public discussion on death. Even the issue of recognizing the state of brain death as technical death was decided without sufficient social discourse. Likewise, discussions on euthanasia have also been limited to a small, mainly academic circle. In 1997, when a brain surgery patient died after being released from the Boramae hospital at the request of his legal guardian, the courts found his physicians guilty of abetting homicide. Since this precedence, Korean physicians have become extremely cautious to patient families' requests to discontinue life support.

Nevertheless, an increasing number of Koreans appear to favor death with dignity. According to a survey conducted by the National Cancer Center with 1,006 adults in September 2008, 87.5% of respondents supported death with dignity. Caught between a forbidding social system and changing public attitudes, physicians on the medical front lines had been placed under serious confusion. Hopefully, Korea's first judgment in favor of death with dignity will trigger a wider public discourse on the right to die with dignity and help form a social consensus around death.

The judgment read that "If life support becomes futile to a patient standing on the border between life and death and the patient's dignity and value is better served by naturally accepting death and if the benefit of accepting death outweighs the benefit of maintaining life, the physician cannot refuse the patient's self-deterministic right to demand the removal of respirators." In other words, if the patient has no possibility of recovery, the courts are recognizing a patient's demands to withdraw treatment because forcing life support against the demands of such a patient would infringe upon the patient's personal rights and the right to pursue happiness as guaranteed by the Constitution.

The court clearly specified conditions that allow the acceptance of a patient's demands to discontinue treatment. First, there must be objective grounds that show there is no possibility of recovery even with continued treatment. Second, the patient must clearly express his/her intention to discontinue treatment. Particularly noteworthy in the recent court decision is that the patient's expressed intention to discontinue treatment doesn't necessarily have to be explicit, for example, in writing. If the patient had previously expressed his/her intentions to family or friends verbally, the patient's intentions could

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be sufficiently "assumed" based on the patient's response to others being treated, the patient's religion, attitude towards life, expected remaining life span and age.

Since the judgment, conflicting responses have been expressed by different sectors of society. Some who believe that matters of life and death are beyond the realms of human-beings oppose the judgment, while those who believe that the right to die with dignity is a basic human right welcome the judgment.

Although there are conflicting responses even within Korean medical field, it overall appears to welcome the recent ruling. Considering changing public attitudes, similar disputes are likely to be repeated and establishing a social system regarding such situations will decrease unnecessary social confusion.

The most critical element to a system regarding death with dignity would be an objective and standardized procedure on establishing the patient's intentions in advance. The so-called "advanced directive" documents a decision by a patient imminent to death on whether to extend life relying on artificial devices or whether to accept death somewhat earlier but naturally. A widely adopted practice of preparing one's advanced directive is necessary to prevent any side-effects of a death with dignity system. The creation of a standard advanced directive form would significantly help broaden its adoption. In addition, physicians would need to be prepared to help the patient and family start a dialogue on such topics since many Korean families feel it extremely difficult to talk about death with the patient. Clear definitions on the procedure to objectively confirm futileness and on alternative ways of establishing a patient's intentions when the patient is unconscious are also necessary. At the same time, more attention towards hospice-palliative care should be paid.

However, what is most important is to sufficiently form a social consensus on death with dignity before any legal systems are established. After the Boramae incident in 1997, Korea's medical community had announced its position supporting the possibility of discontinuing futile life sustaining treatment to patients beyond recovery. This was met with fierce criticism by the public who misunderstood this as the medical community's acknowledgement of passive euthanasia. The lesson learnt from this previous experience is that the public must first become familiar with the various perspectives and concepts on death and be ready to join the discourse with an open mind and heart. Based upon such a social consensus, Korea would need to build a system that respects the wishes of a patient with "absolutely no possibility of medical resuscitation" to accept death in a manner of his/her choice as much as possible.