

Restrictions to cross-border access to end-of-life services in Germany

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Active Euthanasia

An (almost) complete ban

- **Active euthanasia is prohibited by (1.) professional law of medicinal associations and (2.) punishable according to sect. 216 Criminal Code (=Strafgesetzbuch StGB)**
- „Whoever is induced to kill at the express and earnest request of the person killed incurs a penalty of imprisonment for a term of between six months and five years.“
- **Federal Court of Justice makes two exceptions, not relevant to the problem of assistance in dying.**
 - No penalty is imposed on a physician who administers narcotics to an incurable ill person to relieve pain and the patient dies earlier as a side effect of the medications.
 - A physician who terminates a life-sustaining measure at the patient's request is not punished; under certain conditions, this is also possible on the basis of a written living will or on the basis of a presumed will which has to be determined by the physician in accordance with the relatives.
- **Scholars occasionally debate a liberalization, but political initiatives do not exist and would not be promising.**

Suicide Assistance

A legislative circle: From impunity to punishability and back again

- **Suicide is not a criminal offense in Germany. Therefore, participation in a suicide is, in principle, not a criminal offense.** Exception: Whoever assists the suicide of a person who is not in a position to make a responsible decision acts criminally.
- **In 2015, the Legislature created a offense that criminalized the organized suicide assistance** (sect. 2017 StGB: „Whoever, with the intention of assisting another person to commit suicide, provides, procures or arranges the opportunity for that person to do so and whose actions are intended as a recurring pursuit incurs a penalty of imprisonment for a term not exceeding three years or a fine.“
- **In Februar 2020, the German Constitutional Court declares sect. 217 StGB null and void**, as it disproportionately restricts the right to self-determined dying.
- **Main reason:** The prohibition of organized assisted suicide excludes any professional support; individuals have only painful/archaic options for realizing her/his right to self-determined

Legal barriers to assisted suicide (lex lata)

A mosaic of rules that nevertheless provide a clear picture

- Organized assisted suicide is not prohibited per se. Currently, such organizations and associations are only subject to general rules of common association law or trade law.
- **But:** In some states, the professional law of medical associations still prohibit assisting a suicide per se.
- **Most of all:** German Narcotics Law (*Betäubungsmittelgesetz, BtMG*) does not allow prescription of drugs for the purpose of suicide.
 - Back in 2017, the Federal Administrative Court declared this ban to be unconstitutional. Since then, however, politicians have delayed amending the law. Therefore, there is almost no legal way for physicians to facilitate a painless suicide with medication.
- **In consequence:** Even after the abolition of sect. 217 StGB, Germany is not a place where assisted suicide can be easily obtained and realized.
- **From a cross-border perspective:** German law does not attract people willing to die from other countries. On the contrary, there are legal reasons for Germans to seek assisted suicide abroad. Several cases, including decisions by the European Court of Human Rights, confirm this assessment (cf. inter alia ECHR, 19.07.2012, No. 497/09).

Plans for new regulation (lex ferenda)

- According to the Constitutional Court, legislators may create new – proportionate! – regulation.
- Various bills are currently being discussed in the German Bundestag; the **legislative process is still at an early stage**. It is currently unclear when a decision will be made and how the rules will look like.
- Only one aspect is certain: **There will be a legally secure way to prescribe drugs for the purpose of suicide**.
- In addition, there will be procedural requirements to ensure that the person willing to die has made an autonomous and responsible decision to die. However, the proposals differ widely: **some envisage a central role for physicians, while others want to involve additional state-supervised institutions**.
- It is unclear how violations will be sanctioned: **criminal offenses or administrative penalties?**
- Whatever the new law looks like: **It will facilitate physician-assisted and organized assisted suicide in Germany**.
- This should **reduce the incentive for Germans to seek assisted suicide abroad**.
- **Whether Germany will attract citizens of other countries depends above all on the concrete design of the rules:** Should the law require multiple tests at different institutions and provide for a "waiting period" of several weeks or even months (as proposed), then the law will be unattractive to foreigners.

Transnational dimension

- **Current law (lex lata)**
 - Since suicide assistance is possible without punishment in Germany, there is also no criminal offense applicable to acts committed abroad by Germans/foreigners.
 - Also: Narcotics Law is only applicable to acts committed domestically (cf. sect. 32 BtMG, sect. 5, 7 Ordnungswidrigkeitengesetz, OWiG): principle of territoriality
- **Possible new law (lex ferenda):** Supposed there is a new criminal law statute criminalizing suicide assistance, will it provide for a transnational applicability? NO!
 - German criminal statutes are in general applicable to acts committed domestically (cf. sect. 32 BtMG, sect. 3, 9 StGB): principle of territoriality
 - According to the principle of passive personality, German criminal law also applies to acts committed abroad against a German. However, this only applies if the act would also be punishable abroad (sect. 7 StGB). This is not the case in legal systems that permit assisted suicide.