

AUT-2024-3-003

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Keywords of the Systematic Thesaurus

5.2 · Fundamental Rights - Equality

5.3.2 · Fundamental Rights - Civil and political rights - Right to life

5.3.21 · Fundamental Rights - Civil and political rights - Freedom of expression

5.3.32 · Fundamental Rights - Civil and political rights - Right to private life

Keywords of the alphabetical index

Death, Self-determined, Right / Personal autonomy / Suicide, Assistance, Criminal
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Headnotes

If the decision to commit suicide is based on free self-determination, the legislator must respect this. However, it is within the discretion of the legislator to allow assisted suicide only if the person wishing to die suffers from an incurable, fatal or serious, permanent illness.

Summary

1. The free and uninfluenced decision of the individual to kill themselves is protected by fundamental rights, regardless of the individual's motives. If the decision to commit suicide is based on free self-determination, the legislator must respect this. In 2020, the Constitutional Court therefore repealed the absolute ban on assisted suicide in § 78 of the Penal Code (*Strafgesetzbuch*, hereinafter, "StGB") as unconstitutional. This prohibition violated the right to self-determination derived from the Federal Constitution because it prevented persons willing to die from ending their lives with the help of a third party under any circumstances. As a result, the Death Decree Act (*Sterbeverfügungsgesetz*) was enacted in 2021. According to this law, a person of legal age who is capable of making decisions and wishes to end their own life can, under certain conditions, issue a death decree. To do so, the person wishing to die must be suffering from an incurable illness leading to death or a serious, permanent illness with persistent, severe symptoms. A dying will must be drawn up in writing, e.g. before a notary public; prior to this, information must be provided by two doctors who independently confirm that the person wishing to die is capable of making a decision and has made a free and self-determined decision. An effective death decree enables the person who wishes to die to obtain a lethal preparation from a public pharmacy for the purpose of suicide. § 78 StGB ("Assisting suicide") was revised with the enactment of the Death Decree Act. Anyone who helps another person of legal age to kill themselves shall be punished with imprisonment of up to five years. However, this assistance is exempt from punishment if the person of legal age who wishes to die is suffering from an incurable terminal or serious permanent illness, has been medically informed in accordance with the Death Decree Act and the assistance is not provided for a

reprehensible reason. It is therefore not necessary for all of the requirements of the Death Decree Act to be met for the assistance to be exempt from punishment; in particular, physical assistance in suicide can be provided without the person who wishes to die having made a death decree.

2. The applicants, five individuals, two of them seriously ill, filed a constitutional complaint against § 78 StGB and the Death Decree Act, alleging, in particular, the violation of their constitutionally protected rights to respect for human dignity, life and respect for private and family life. The applicants claimed that the right to a self-determined death should not be restricted to “externally defined situations” such as a serious or incurable illness or certain states of life and illness. In particular, the requirements for drawing up a death decree were too narrow and would still make it impossible for a person who wishes to die to end their life in a self-determined manner with the help of a third party.

3.1. The Constitutional Court held that § 78 StGB in its amended version not only recognises the constitutionally guaranteed right of the person willing to die to free self-determination to end their life, but also enables the person willing to die to call on the help of a third party, given that the person willing to die may be dependent on this to carry out their self-determined decision. This provision (also) fulfils the requirements for ensuring that a person's free will is the basis for exercising this right to self-determination; in particular, it ensures that such people are protected from (hasty) decisions about their own lives without the aforementioned requirements being met and from abuse. Finally, this provision creates legal certainty for third parties providing assistance. The legislator has also permissibly made the involvement of a third party in suicide or access to a lethal preparation dependent on the person wishing to commit suicide suffering from an incurable, fatal or serious, permanent illness. The constitutionally guaranteed right to free self-determination is particularly important in the case of seriously ill persons. State-regulated access to assisted suicide for other persons who wish to die would, on the other hand, send the undesirable signal that the state not only respects but also supports the decision to end one's life for reasons that are self-determined without further restriction.

3.2. There are also no constitutional objections to the fact that the person who wishes to die must be informed by two doctors, one of whom must be qualified in palliative medicine. This provision is intended to ensure that the person wishing to die can make their decision in full knowledge of all relevant circumstances. This also includes the person willing to die being informed about palliative care services. For the time being, sufficient doctors - including those trained in palliative care - are available to provide information in order to fulfil the legal requirements.

3.3. The legislator has also permissibly provided that the dying will (except in the terminal stage of an illness) can be drawn up at the earliest 12 weeks after the first medical consultation. The purpose of this provision is to ensure that the decision of the person wishing to die is based on a permanent decision.

3.4. However, it is not objectively justified for a dying will to become invalid after only one year and for the person wishing to die to subsequently have to go through the entire complex procedure provided for in the law again under all circumstances, i.e. even immediately after the end of its validity. With such a short period of validity, it would rather be sufficient to make the further validity of the death decree merely dependent on the permanence of the person's decision to die being confirmed by a doctor. The time limit therefore violates the principle of equality.

3.5. Under the Death Decree Act, it is prohibited to advertise assisted suicide. A violation of this prohibition constitutes an administrative offence punishable by a fine of up to € 30,000. This prohibition expressly covers not only advertising, but also offering and announcing assistance for suicide; this means that factual information is also punishable. However, such an extensive ban is not necessary in order to achieve the objectives pursued in the public interest (in particular suicide prevention). People who are willing to die are often

dependent on factual information in order to be able to call on the help of third parties. A ban that also includes such information is therefore disproportionate and violates the right to freedom of communication under [Article 10 ECHR](#).

Cross-references

Constitutional Court:

- G 139/2019, 11.12.2020, [[AUT-2020-3-004](#)].

European Court of Human Rights:

- *Pretty v. United Kingdom*, no. 2346/02, 29.04.2002;

- *Hiller v. Austria*, no. 1967/14, 22.11.2016;

- *Dániel Karsai v. Hungary*, no. 32312/23, 13.06.2024.