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Socio-ethical Objections to Assisted Suicide

Abstract: Legal considerations regarding suicide are not just a legislative issue, but largely concern the deepest cultural underpinnings of the political community. Recent court rulings, in particular by the German Federal Constitutional Court, reveal far-reaching changes in the understanding of human nature. Under the lofty slogans of human rights and freedom, there is a systematic transformation of the role of law as guarantor of absolute human autonomy. Taking one's own life or assisted suicide is no longer understood as an unethical act, and is increasingly presented in terms of an entitlement or even a duty.

Keywords: suicide, law, ethic, Canada, Federal Constitutional Court

Killing oneself is considered a human right – in fact not in a world view and understanding of human being shaped by the Christian faith, but in a secular society in which autonomy is at the heart of the conception of human being. In its judgement of 26 February 2020, the Federal Constitutional Court derived such a "right to self-determined death" from the general right of personality in Article 2, paragraph 2, and the guarantee of human dignity in Article 1, paragraph 1 of the Basic Law (GG) [Judgement FCC 2020: para. 208]. This right to kill oneself, according to the Court, includes the right to seek assistance in committing suicide. The only decisive factor is that the suicide, and not the helper, performs the act of killing. The termination of life on request remains (for the time being) prohibited and is punishable pursuant to § 216 of the German Criminal Code (StGB). The prohibition of "assisted suicide services" passed by the Bundestag in 2015 was revoked by the Federal Constitutional Court and § 217 StGB was declared unconstitutional. The right to kill oneself thus also includes the freedom to seek assistance in committing suicide offered by euthanasia associations [ibid.: para. 212]. Although the legislator is not prevented from "regulating" assisted suicide [ibid.: para. 338], it must not make the right to suicide obsolete through such regulations [ibid.: para. 274]. That right must therefore not be made also dependent

on material criteria such as the existence of an incurable or fatal disease [ibid.: para. 340]. Although the legislator is fundamentally authorized to use criminal law to protect the legal interests of autonomy and life, its competence finds a limit "where free choice is no longer protected, but made impossible" [ibid.: para. 273]. According to the Federal Constitutional Court, the legislator should therefore only ensure by law "that the decision to end one's own life actually corresponds to the will of the person concerned" [ibid.: para. 305]. Nearly five years have passed since the judgement was announced. The Bundestag has discussed the regulation of assisted suicide several times, but has not been able to agree on any law so far.

Recently, two draft laws failed at the beginning of July 2023. A liberal draft law by MPs Katrin Helling-Plahr (FDP) and Renate Künast (Bündnis 90/Die Grünen), intending to entirely remove assisted suicide from criminal law and only require medical advice before prescribing the lethal means, did not receive a majority (287 to 375), nor did the more restrictive draft law by MPs Lars Castellucci (SPD) and Ansgar Heveling (CDU), which intended to continue to criminalize organized assisted suicide but allow it under certain conditions (304 to 363). These conditions included two psychiatric or psychotherapeutic assessments at three-month interval to determine free responsibility and an additional medical consultation. Both draft laws would have tied up considerable financial resources through the introduction of a counselling and assessment system, which suicide prevention experts would have preferred to invest in improving suicide prevention. Two months before the vote in the Bundestag, four of these experts had also called for both draft laws to be rejected: "Our simple but insistent message is: None of the current draft laws helps people who are considering suicide in their existentially difficult situation." [Anselm, Bausewein, Dabrock, Höfling 2023: 6][1] On the same day that the two draft laws were rejected, the Bundestag also decided by a large majority that the federal government should present a plan to strengthen the suicide prevention structures and services by 31 January 2024. A new attempt to introduce legal regulation of assisted suicide is to be expected even in this legislative period. Following supreme court judgements, similar legislative initiatives are also imminent in Italy and Austria.

Back to the judgement of the Federal Constitutional Court: With this judgement, the court went far beyond all previously known legalisations of assisted suicide

[1] A plea for a liberal regulation of assisted suicide, which denounces suicide prevention measures as „suicide sabotage", was provided by [Schöne-Seifert 2022: N2].

in the Netherlands, Belgium, Canada, Switzerland or the US state of Oregon. In these states, assisted suicide is still tied to material criteria. The court also went beyond all draft laws discussed and put to a vote in the Bundestag in 2015 which sought to legalise assisted suicide in one form or another [Spieker 2016: 91]. The judgement has significant consequences: In Germany, the right to self-determined death now also applies to the student who failed the high school graduation or fell unhappily in love, to the husband who was abandoned by his wife, to the businessman who went bankrupt, or to the prisoner who was sentenced to "life imprisonment". The state has no right to subject "the motives underlying an individual suicide decision... to an assessment according to the standards of objective rationality" [Judgement FCC 2020: para. 340, 210]. It may only impose "requirements for proof of the seriousness and permanence of a will to commit suicide" [ibid.: para. 340].

1. Objection: The threat to solidarity

The judgement deprives persons wishing to commit suicide, as well as the elderly and the persons in need of care, of the unconditional solidarity of society, which cannot consist of paving the way for the intention to commit suicide with a lethal pill. Solidarity towards a suicidal person consists of helping him or her to overcome despair through human closeness, intelligent help and strengthening his or her own resilience. Solidarity with old people, in need of care and dying, requires that relatives respect the self-determination of the dying person who, in the face of death, refuses further medical measures, but also in stressful situations, in cases of almost insurmountable speechlessness and fear of death, are ready to stay, to endure patiently and, finally, to wait together for death. The former Federal President Johannes Rau summed up the problem of legalising any form of assisted suicide in his Berlin speech on bioethics on 18 May 2001: "Where continuing to live is just one of two legal options, anyone who places the burden of his or her survival on others becomes accountable" [Rau 2001: 27]. A psychological pressure arises to avoid the medical, nursing and financial costs and to join the trend of a socially or generationally acceptable early death. Who wants to continue living while feeling that the continued life is a great burden to the relatives? A deadly trap of self-determination: It leads to self-disposal. There have long been pleas for such self-disposal in philosophy and jurisprudence [Fenner 2007: 210; Lewinski 2008: 186]. They do not shy away from speaking of an "altruistic" suicide, which can even be ennobled, as is already practised in Canada [Ely 2019: 1309-1311], by organ donation. Solidarity in a society whose constitution is committed to human rights and the rule of law requires special protection for vulnerable groups who, as shows

the experience in countries that have legalised assisted suicide, are particularly at risk: the elderly, handicapped, lonely and sick.

2. Objection: The threat to the Hippocratic oath

The judgement contradicts the Hippocratic oath, which includes the promise of the prospective doctor: "I will not administer a deadly poison to anybody, even when asked to do so, nor will I suggest such a course". The professional regulations of the State Chambers of Physicians, which have on these grounds banned physician-assisted suicide, cannot defend themselves against the judgement if suicide and the use of appropriate assistance are to be a fundamental right guaranteed by the constitution. Constitutional law is superior to the code of professional conduct. At the end of its judgement, the Federal Constitutional Court even pointed out that the right to suicide would require "a consistent design of the professional law of doctors and pharmacists" as well as "adjustments to the narcotic drugs law" [Judgement FCC 2020: para. 341]. On 5 May 2021, the German Medical Association deleted the sentence corresponding to the Hippocratic Oath, "A doctor may not provide any assistance for suicide", from its professional code of conduct. The American Medical Association (AMA), whose guidelines state that assisted suicide aid is fundamentally incompatible with the physician's role as healer, discussed at its annual meeting on 10-14 November 2023, several proposals aiming at giving up resistance to assisted suicide and also at changing terminology. Instead of assisted suicide, we should talk about Medical Aid in Dying (MAID). The AMA has rejected all the proposals and maintained its no to assisted suicide [Schadenberg 2023a]. The legalisation of assisted suicide also weakens efforts to train doctors in palliative medicine.

As far as the narcotic drugs law is concerned, the Federal Office for Drugs and Medical Devices would have to comply with the judgement of the Federal Administrative Court of 2 March 2017 and authorise a suicidal person to access the lethal sodium pentobarbital [Judgement FAC 2017]. On 7 November 2023, this Court again ruled on this matter and dismissed the lawsuit of two people wishing to die for permission to acquire a certain narcotic drug for suicide. By generally prohibiting the purchase of narcotic drugs for the purpose of suicide, the narcotic drugs act pursues the legitimate aim of preventing the abuse and misuse of lethally acting narcotic drugs. The plaintiffs would have the possibility to obtain access to medicines which could be used to carry out suicide via a doctor's prescription [Judgement FAC 2023].[2]

[2] The court did not discuss the question of whether killing agents can still be marked as medicinal products.

3. Objection: The threat to the freedom of church diakonia

The judgement endangers the freedom of church diakonia. The final sentence of the Federal Constitutional Court's judgement is that "no one can ever be obliged to assist in another person's suicide" [Judgement FCC 2020: para. 342]. However, it is not clear whether this applies only to individual doctors or also to institutions such as hospital and nursing home operators. How should a nursing home react if a resident has decided to commit suicide with the help of a doctor or an association and requests assistance? Can the resident then refer to a basic right guaranteed by the constitution? Does the nursing home have to tolerate this decision? In some Swiss cantons, guidelines for assisted suicide in old people's and nursing homes regulate the conditions under which such assistance can be provided. The nursing homes are concerned that it is absolutely important to avoid the impression that the home itself is providing assisted suicide. In May 2022, the cantonal council in the Canton of Zurich (by 92 votes to 76) has legally obliged old people's and nursing homes to allow residents for suicide assistance and to grant access for external organizations such as "Exit" or "Dignitas". The cantons of Neuchâtel and Vaud also force nursing homes to allow assisted suicide under threat of withdrawal of public funds. Since March 2020, Belgium has forced all hospitals and nursing facilities to accept euthanasia. The Canadian province of Quebec has legally obliged all hospices to offer euthanasia. A facility that is not ready to do so must close [Schadenberg 2023b: 27]. In Germany, such obligations would be unconstitutional. They would violate the corporate religious freedom (Art. 4 par. 1 and 2 GG) in conjunction with the church's right to self-determination (Art. 140 GG in conjunction with Art. 137 par. 3 of the Weimar Constitution (WV)). Social law also explicitly recognizes the religious self-image of service providers (SGB XI (Book 11 of the Social Code), § 11 par. 2, p. 1 and 2).

In the Lutheran church, the 2021 judgement led to a controversial debate about whether it was the task of charitable institutions of the church to "offer individuals or at least allow or accompany the possibility of assisted suicide in their own homes". Theologians and officials, including the then President of the Diakonisches Werk Ulrich Lilie and the Bishop of the Evangelical Lutheran Church of Hanover Rolf Meister, believed that this was required by respect for self-determination. In order to spare those wishing to commit suicide the search for assisted suicide associations, the church, as a "safe place", should take suicide assistance into its own hands and train pastors who are able to accompany those wishing to commit suicide [Anselm, Lilie, Meister 2021]. Heinrich Bedford-Strohm, the then Chairman of the Council of the Evangelical Church in Germany (EKD), and the Catholic German

Bishops' Conference immediately objected to the demand. It is not the task of church-diaconal institutions to open the path to suicide to those who wish to commit suicide. Although the self-determination of those wishing to die should be respected, this would not make suicide a normal death option or an ethically acceptable course of action. Wolfgang Huber and Peter Dabrock also objected. They pointed to the connection between self-determination and sociality and to the insights of suicide research that the desire to commit suicide is often born out of desperation. Even after the Federal Constitutional Court's judgement, assisted suicide cannot be regarded either as a medically indicated act or as a church official act. Patients in church nursing homes should not be confronted with the question "why they are still there". However, they did not exclude medical, pastoral and nursing suicide assistance in individual cases.

Assisted suicide in diaconal institutions is, though, not a purely private matter that concerns only the person committing suicide and the helper. It also touches the room-mates emotionally and affects the overall atmosphere of the facility, which under these circumstances can no longer be the shelter for life in which assisted suicide is not an option for dealing with a crisis. Against this background, the house rules of church institutions take precedence over the rights of the residents, who can preserve their self-determination with regard to their desire to commit suicide by concluding a nursing home contract with another institution that does not categorically rule out assisted suicide [Hillgruber: 14].

The Catholic Church maintains a general ban on assisted suicide, in which the judgement of the Federal Constitutional Court does not change anything. In addition to a statement by the German Bishops' Conference, this is shown above all by three documents of the Church's Magisterium: the Catechism [Catechism 1993: 2281] of the Catholic Church (1993), the encyclical "Evangelium Vitae" by pope John Paul II (1995) [Evangelium Vitae 1995: 66] and the letter of the Vatican Congregation for the Doctrine of the Faith "on the care of persons in the critical and terminal phases of life" entitled "Samaritanus Bonus" (2020). This letter deals with various aspects of humane care for the seriously ill and dying against the background of the legalisation of assisted suicide and euthanasia. The Catholic Church counters attempts to control death, be it through therapeutic overzealousness or assisted suicide, with palliative care and pastoral support. Numerous proposals are made in this regard. The document stresses, however, that "in the face of the legalisation of euthanasia or assisted suicide... any immediate formal or material cooperation must be excluded": representatives of the Church

must accompany people in the terminal phase of life with empathy, compassion, love and consolation. Priests must offer them the Sacraments of Penance and Reconciliation, the Anointing of the Sick and the Eucharist. However, when people who wish to commit suicide request these sacraments, priests must ensure that they give up their suicidal intentions. Otherwise, this constitutes "an obvious indisposition to receive the sacraments". Under no circumstances may they remain present when the suicide is carried out, because this could only be interpreted as collaboration in the elimination of a human life [CDF 2020: 11].[3]

Developments in Canada show that the legalisation of assisted suicide not only creates the illusion that suicide is a normal way to die. The legalisation also leads to a competition for the "best" place to carry out suicide. Funeral homes advertise their rooms, religious sects advertise their places of worship, and even Canada Parcs, the administration of the Canadian national parks, believe that there are many places in its parks that suicide candidates may associate with fond memories and that would therefore be suitable for this final act [Schadenberg 2024a].

4. Objection: The illusion of the autonomous person

The judgement states that the Basic Law is based on a conception of human being "that is determined by the dignity of human being and the free development of personality in self-determination and self-responsibility" [Judgement FCC 2020: para. 274]. This is not wrong, but it is only half the truth. It needs to be supplemented in two ways. On the one hand, human dignity does not go into self-determination. The court ignores this. It absolutises autonomy and complains about "the anti-autonomy effect of § 217 StGB" [ibid.: para. 280]. If autonomy were the core of human dignity, people would have no dignity either at the beginning or at the end of life. The Federal Constitutional Court has already contradicted this in its judgement on the reform of the abortion criminal law in 1993: "Wherever human life exists, it is entitled to human dignity. This dignity of human being also applies to the unborn life in existence for its own sake"[4], an existence without autonomy and self-responsibility.

[3] For example, the guide of the [Caritas 2023] corresponds to this guideline. On the other hand, astonishing is the essay by Martin Seidnader and Leo J. Wittenbecher, [Seidnader, Wittenbecher 2024: 39] where the *Samaritanus Bonus* is not even mentioned. The authors are persons responsible for the hospital pastoral care in the archdiocese of Munich and in the diocese of Münster.

[4] BVerfGE (Federal Constitutional Court Decisions) 88, 203, 252.

On the other hand, the judgement, with its fixation on autonomy, ignores the social nature of man, which the Federal Constitutional Court itself underlined in 1954: According to the judgement at the time, the conception of human being contained in the Basic Law is "not that of an isolated, sovereign individual". It underlines the person's community-relatedness and community-boundedness without affecting the person's intrinsic value.[5] The 1954 judgement is cited in passing in the 2020 judgement [Judgement FCC 2020: para. 301], but without reflecting on the consequences for the relativisation of autonomy. Human freedom is not realized in an autarky of one's own self without reference to fellow human beings. It is not realized in the destruction of life. Suicide attempts in particular show this social embeddedness of the human being. They are usually appeals, not to say cries for help, to those close to the desperate person, which are hardly ever repeated in the event of failure. Every suicide, not just one that uses cruel, painful or so-called harsh methods, is therefore a violation of social relationships. It always causes suffering to relatives, acquaintances and friends. According to a 2019 study conducted for the American Society for Suicide Research, around 135 people are affected by each suicide [Cerel et al.].

Suicide, according to Reinhold Schneider, a German catholic author whose father committed suicide and who himself attempted suicide, "seemingly the most personal crime, directed only against the self, is in truth not limited to the individual." Anyone who does not respect his own life "hurts life in general and rebels against the one who gave all life" [Schneider 2013: 185]. Therefore, the legal regulation of assisted suicide cannot only be about cultivating suicide and helping self-determination to achieve a false victory in which the subject of self-determination is eliminated. The more the powers are fading away and the closer death comes, the more clearly we see that what constitutes the essence of human nature is not so much self-determination but rather self-sacrifice. Not the interrupted life, but the life lived to the end – dying at the hand, not by the hand of relatives – is an expression of true self-determination. In dying, self-determination is transformed into self-sacrifice – not only for the dying person, but also for his relatives [Pieper 1997: 370; Spieker 2015: 215].

It is an illusion to assume that man is autonomous at every stage of his life. Just as he is not autonomous at the beginning of his life, so he is not autonomous at the end of his life either. Even if he is in full possession of his powers and decides

[5] BVerfGE 4, 7, 15 et seq.

to commit suicide, it is an illusion to assume that control over the end of his own life is guaranteed at all times in the act of suicide. Experience in the Netherlands shows that in around 20% cases of assisted suicide problems can arise that cause doctors to move from assisted suicide to active euthanasia [Grundmann 2004: 201; Heide et al 2003: 345; Loenen 2014]. Guidelines issued by the Canton of St. Gallen on dealing with euthanasia associations in its nursing homes of 17 May 2013 point out that "there is no information about the exact circumstances of the death" [Specialist Commission 2013: 12].

Rudolf Henke (MP, CDU), a doctor and former chairman of the Marburger Bund, had already pointed out in a Bundestag debate on suicide assistance on 13 November 2014 that patients who use physician-assisted suicide do not want the doctor to leave once he has placed the lethal cocktail at the bedside. Instead, he should rather stay and monitor the process. He should intervene if something goes wrong or the person attempting suicide is suffering. Therefore, the line between assisted suicide and killing on request is "very, very blurred". It will disappear over time [Bundestag 2014: 6150 et seq.]. The active euthanasia is therefore in line with the logic of assisted suicide. This requires trained doctors who offer a quality guarantee for their lethal service and for whom there are separate fee codes in the medical fee schedule. The efforts will no longer focus on preventing suicide, but on cultivating it. The result is a "market" for assisted suicide and euthanasia – not only with regard to the locations suitable for carrying out assisted suicide, but also with regard to the helpers who offer their expertise.

5. Objection: The logic of assisted suicide

The practice of assisted suicide and active euthanasia in countries which have legalised both shows that the idea that active euthanasia is only carried out when the patient has a persistent, voluntary and well-considered wish and that it affects only a few people is an illusion. This is the result of scientific research commissioned by the Dutch government, the first of which was carried out by van der Waal and van der Maas in 2001 and 2002 and published in June 2003 [Grundmann 2014: 203; cf.: Schepens 2000: 129; Schumpelick 2003; Wils 1999: 141; Jochemsen 2004: 235]. Dutch, Belgian and Canadian experience show that active euthanasia, once legalised, develops a dynamic of its own which eludes effective control and gives doctors the status of immunity. Their decision as to when a life is no longer considered to be humane or tolerable is considered inviolable. The legalisation of assisted suicide changes social relations, primarily between doctor and patient. The seriously ill patient is transformed from a suffering subject who receives the

compassion and solidarity of society into an object that is a burden on society. It is not the patient who can expect compassion from society, but society who expects compassion from the patient. The dying person in need of care, the elderly or the sick, is namely to be responsible for all the efforts, costs and deprivations that his relatives, carers, doctors and tax-paying fellow citizens have to make for him and from which they could quickly relieve them if he expresses a request for active euthanasia. The euthanasia on request becomes euthanasia without request. It is practised not only on elderly patients and patients in need of care or those in the terminal stage of the disease, but also on newborns and children in their first year of life. According to a study by the Dutch Medical Association in 1995, 8% of 1041 children died as a result of active euthanasia. According to a Belgian study of the deaths of children under one year old in Flanders between August 1999 and July 2000, 17 of 194, i.e. around 9% children, for whom doctors made a decision to terminate their lives, died as a result of active euthanasia [Provoost 2005: 1316; Onwuteaka-Philipsen 2012: 2]. In 2014, Belgium permitted euthanasia for children with parental consent without an age limit. When the euthanasia law was introduced into parliament, the Catholic bishops in the Netherlands warned of the mistrust in Dutch doctors that euthanasia could lead to [cf. Simonis 2002: 152]. In a paper on evangelical perspectives on the problem of physician-assisted suicide in 2008, the EKD warned against legal approval of assisted suicide. It would result in a "profound change in the general understanding of the medical profession".

Dramatic are those euthanasia cases in which a demented patient, who, over the course of his life, has expressed the wish to be euthanised under certain conditions, makes it clear at the beginning of the medical euthanasia that he does not want to be killed. The doctor sedates him, assuming that he is no longer mentally capable of assessing his situation. With a sedative in coffee, his resistance is broken before the fatal injection is made. In such a case, which became known in 2020 as the "coffee euthanasia" case, the state control commission came to the conclusion that the doctor had not observed the legal regulations on euthanasia, but at the same time it supplemented the euthanasia regulations and allowed the doctor to administer so-called "pre-medication", i.e. the administration of sedatives if there are signs of "agitation or restlessness" at the beginning of the euthanasia [Walle, Kuby 2022: 39; FAZ 2020; cf. Odencu, Eisenmenger 2003].

The experience with assisted suicide in countries that have legalised assisted suicide also disproves the claim that legalisation would not increase the number

of suicides.[6] All countries show a rapid increase in assisted suicide cases. In the US state of Oregon, where assisted suicide was legalised in 1997, the number of assisted suicides rose from 16 in 1998 to 278 in 2022.[7] In Switzerland, the number of assisted suicides has doubled every five years since legalisation in 1999. While there were 582 cases in the five years from 1999 to 2003, there were already 4,820 in the years 2014 to 2018. In Belgium, the number of euthanasia cases rose from just under 500 per year in the first eight years after legalisation in 2002 to 2,275 per year in the period from 2015 to 2019 [Walle, Kuby 2022: 32]. In Canada, assisted suicide, known as Medical Aid In Dying (MAID), was legalised in 2016. The number of deaths due to assisted suicide rose from 1,018 (2016) to 13,241 (2022), thus with an annual increase of 31.1% [Annual Report 2022]. Approximately 16,000 are expected for 2023 [Schadenberg 2024b]. From March 2024, assisted suicide should also be made available to patients with mental illnesses.[8] It is discussed as to whether it can also be used by drug addicts and the homeless. Denying it to these groups is considered a violation of the prohibition of discrimination. In Switzerland, prisoners were also given access to assisted suicide in 2018 [Allaince Vita 2023]. A look at the Netherlands is informative. There is no annual increase in assisted suicides. The reason: You can have the doctor perform the fatal procedure yourself. Instead, there is an increase in "termination of life on request", which has been legal since 2002 and makes assisted suicide superfluous. While 1,886 cases of euthanasia and assisted suicide were registered in 2004, there were 2,636 in 2009 and 6,092 cases in 2019 [Walle, Kuby 2022: 37].

6. The threat to the rule of law

The experience with the legalisation of active euthanasia confirms the supposition that assisted suicide and active euthanasia are not help for the seriously ill but a tool for the bloodless disposal of the suffering, not love and care for the dying but a refusal of medical and nursing assistance. It shows that a state governed by the rule of law becomes entangled in irreconcilable contradictions when its legislator believes it can regulate by law the lifting of the ban on killing. A state governed by the rule of law thus destroys the very condition of its own existence. Active euthanasia at the patient's request, as the Dutch experience shows, leads to euthanasia without request. Anyone who wants to prevent euthanasia without request must

[6] This stated Thomas Ludwig [Ludwig 2023].

[7] The proportion of suicides who were subjected to psychiatric assessment prior to assisted suicide, fell from 31.3% to 1.1% over the same period [Schadenberg 2023c].

[8] At the beginning of February 2024, the Canadian government decided to postpone this until 2027.

therefore not legalise killing on request. Anyone who wants to prevent death on request must not legalise assisted suicide. The state governed by the rule of law, due to its duty to protect human life, is therefore obliged to classify assisted suicide as unlawful and to prohibit it [Hillgruber 2013: 76].

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