ASSISTED SUICIDE AND EUTHANASIA IN EUROPE: A FORAY THROUGH CURRENT DEVELOPMENTS FROM AN AUSTRIAN PERSPECTIVE

SUICIDIO ASISTIDO Y EUTANASIA EN EUROPA: UNA INCURSIÓN EN LOS AVANCES ACTUALES DESDE UNA PERSPECTIVA AUSTRIACA

Actualidad Jurídica Iberoamericana Nº 24 bis, 30 de junio de 2026, ISSN: 2386-4567, pp. 688-733

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ARTÍCULO RECIBIDO: 6 de marzo de 2026
ARTÍCULO APROBADO: 15 de junio de 2026

RESUMEN: El presente artículo examina distintas perspectivas europeas en materia de eutanasia. En primer lugar, se analiza el marco jurídico a nivel europeo, con especial atención a las disposiciones pertinentes y a la jurisprudencia del Tribunal Europeo de Derechos Humanos. A continuación, tomando como referencia el caso de Austria, que ha adoptado una nueva legislación sobre el derecho a morir a raíz de la jurisprudencia de su Tribunal Constitucional, se examina el régimen jurídico del suicidio asistido y su articulación con otras áreas del ordenamiento jurídico, en particular el derecho penal. Por último, el trabajo ofrece un análisis comparado de determinados ordenamientos jurídicos europeos, confrontando sus soluciones normativas con la jurisprudencia del TEDH y con el modelo austriaco.

PALABRAS CLAVE: Eutanasia; CEDH; Ley austriaca sobre el testamento vital; tratamiento médico; medicina paliativa; testamento vital; TEDH; autonomía; capacidad de decisión; Austria; Benelux, España; derecho a la vida; derecho a la intimidad; información médica.

ABSTRACT: *This article examines different European perspectives on the issue of euthanasia. It first analyses the legal framework at the European level, with particular attention to the relevant provisions and the case law of the European Court of Human Rights. It then turns to Austria as a case study, which has adopted new legislation on the right to die following the jurisprudence of the Austrian Constitutional Court, and examines the legal regime governing assisted suicide and its interaction with other areas of law, in particular criminal law. Finally, the article offers a comparative analysis of selected European legal systems, contrasting their normative approaches with the case law of the ECtHR and with the Austrian model.*

KEY WORDS: *Assisted suicide; ECHR; Austrian Dying Disposition Act; medical treatment; palliative care; living will; dying disposition; ECTHR; autonomy; decision-making capacity; Austria; Benelux; Spain; right to life; right to privacy; medical information.*

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I. INTRODUCTION.

The question of the permissibility of euthanasia and assisted suicide has always been the subject of an emotional and lively debate all across Europe. As is often the case with existential questions, opinions have always differed widely on these end-of-life decisions. In addition to one's own worldview, ideology and religious affiliation, the conception of the function of the state and the respective history of a Nation-State plays a significant role in the process of representing a stance.

Modernity, especially secular life style, the loss of religious convictions, but also capitalistic requirements and affluence, foster individualism: Not only regarding decisions about how to shape his or her own life, whether to marry and build a family, which lifestyle to adopt and generally how to design one's own biography but also when it comes to deciding a death of one's own.[1] These modern viewpoints and opinions on a self- determined death are therefore a development that has been emerging for quite some time and has now spilled over from other areas of life to these end-of-life decisions.

This goes hand in hand with the development of human rights in the 20th century, in Europe especially with the European Convention on Human Rights from 1948 which is the individualistic counterpart to the collectivism of the Nazi-Regime. Therefore, the European Convention on Human Rights states only

1 Walter, T.: *Death in the modern world: Individual and Group*, Sage Publications Ltd, Thousand Oaks, 2020, p. 126 (discussing the impacts of individualism on death in detail and from different perspectives).

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individual rights (like right to life, personal freedom, freedom of property, freedom of expression etc.). According to this legal and political system, Norberto Bobbio, an Italian philosopher, deduces consequently that "Individualism is the basis of democracy".

The state of the discussion was and still is differing heavily within the European countries. While the Netherlands as the first European country introduced the immunity from criminal prosecution when concluding a certain process of euthanasia in 2001, in Italy only the request of a patient with muscular dystrophy for switching off the ventilator in 2006 lead to a nationwide very controversial discussion: Piergiorgio Welby was in the final stages of the disease in 2006, he was almost completely paralyzed, bedridden and could no longer speak. In addition, he had required a ventilator for ten years. He could only communicate through his eye movements with the help of a special apparatus. On September 22, 2006, an open letter, accompanied by a video, was published to Italian President Giorgio Napolitano, in which Welby demanded the right to a self-determined death. Napolitano immediately responded, calling for a political debate on the issue. On December 16, 2006, the competent court in Rome rejected Welby's request for passive euthanasia. Welby nevertheless died on Dec. 20, 2006, with the help of his doctor, Mario Riccio, who administered an anaesthetic and then turned off the ventilator. The subsequent murder charge against Riccio was dismissed by a court in Rome. The Catholic Church then refused to give him an ecclesiastical burial.

Nowadays cases like those of Piergiorgio Welby are no longer discussed as a topic of euthanasia or assisted suicide but are recognized – within legal and medical standards – as refusing the informed consent which forces the doctor to stop the ongoing medical treatment. The patient then dies a natural death because of his illness and it is not qualified as assisted suicide.

Nevertheless, the opinions and the legal situations are very vastly between different European countries in 2023. We can see liberal and pro-Euthanasia and pro-assisted-suicide developments in protestant and Calvinistic countries and parts of Europe, meanwhile the catholic and anglican countries remain in their position against the legalisation of such opportunities.

The European Court of Human Rights [Eur. Ct. H.R.] has already ruled on the complex of issues surrounding assisted suicide and euthanasia several times[2], leaving the national states with their own discretionary powers. Hence, a look beyond national borders shows that very different regulations are indeed applicable across Europe since there is no consensus among the states of the Council of Europe regarding the legal regulation of assisted suicide and euthanasia.

2 See chapter II.B of the present remarks.

Another source of law that has a major importance for several countries in Europe is, of course, the supranational law of the European Union [EU]. The Charter of Fundamental Rights of the European Union[3] [CFR] codifies certain political, social and economic rights for citizens and residents of the EU. According to Article 51 CFR, which determines the scope of the CFR, the Charta does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties. The provisions of the Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. As regards the Member States, it follows unambiguously from the case-law of the Court of Justice that the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law.[4] Due to the lack of fulfilment for this requirement in regard to the regulation of assisted suicide the guarantees of the CFR are not pertinent in this case.

Apart from insights into certain selected European Jurisdictions such as the Benelux-countries, Spain, Portugal, Germany and Switzerland, this article is primarily dedicated to the new Austrian regulation on assisted suicide- also in comparison to the neighbouring legal systems of Switzerland and Germany. The Austrian Dying Disposition Act entered into force on 1st January 2022 and explicitly regulates requirements for certain possibilities of assisting in suicide. The newly introduced statute became necessary due to a Constitutional Court ruling of December 2020,[5] which overturned the ban of assisted suicide as unconstitutional.

II. THE EUROPEAN CONVENTION ON HUMAN RIGHTS.

The Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention on Human Rights,[6] was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953. The ECHR and its additional protocols represent international treaties between the member states of the Council of Europe.[7] In Austria, they were given the status of constitutional law in 1964. Therefore, the rights of the

3 Charter of Fundamental Rights of the European Union, Oct. 26, 2012, 2012 O.J. (C 326) 2 [hereinafter CFR], ELI: http://data.europa.eu/eli/treaty/char_2012/oj.

4 European Union Agency for fundamental rights [FRA], 2007 O.J. (C 303) 17.

5 Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] no. 20433/2020.

6 Eur. Ct. H.R., ECHR, https://www.echr.coe.int/Documents/Convention_ENG.pdf (last visited Jan. 6, 2023).

7 Until Russia's withdrawal in March 2022, all 47 member states of the Council of Europe, including the 27 member states of the European Union, were also parties to the European Convention on Human Rights.

ECHR constitute directly applicable constitutional law for the Austrian courts and administrative authorities.[8] The Eur. Ct. H.R. in Strasbourg (France) guards compliance with the ECHR, which contains a wide catalogue of fundamental and human rights. The primarily[9] relevant ECHR guarantees in the context of the permissibility of assisted suicide are Article 2 [Right to Life] and Article 8 [Right to Respect for private and family Life], which will be addressed in more detail below.

The substantive discussion arises from the fact that being allowed to do something (in concrete: committing suicide)[10] is not always equivalent to also having a right to do it. If there was such a right, one might impute a questionable stance to the legislature, if those who try to assist or encourage the person willing to die in exercising this right were threatened with punishment. [11] And what role does the right to life play in this structure?

1. Guarantees of the European Convention on Human Rights.

A) Article 2: Right to Life.

Article 2 of the ECHR states that everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.[12]

Article 2 ranks as one of the most fundamental provisions of the Convention.[13] The right to Life requires the protection of lives by imposing three duties upon the States: Firstly, there is a "negative duty" to refrain from taking life, except in prescribed exceptional circumstances. Next to mention is a "procedural duty" to investigate deaths (or near deaths) for which someone might bear some responsibility. This requirement is usually done through the judicial inquiry. The third duty is a "positive one" to also take steps under certain circumstances to protect our lives and to prevent avoidable losses of life.[14]

8 Berka, W.: *Verfassungsrecht*, Verlag Österreich, Vienna, 8th ed. 2021, p. 1172.

9 Fremuth, M. L.: „Le Temps Qui Reste – Eine rechtsvergleichende Betrachtung der verfassungsgerichtlichen Entscheidungen zur Suizidassistenz in Deutschland und Österreich", *Zeitschrift für öffentliches Recht,* 2021, no. 3, p. 850.

10 As far as can be seen, suicide is exempt from punishment in all Convention states with the exception of Cyprus, see Fremuth, M. L.: "Rechtsvergleichende Betrachtung", citation, p. 850.

11 Allen, N.: "The Right to Life in a Suicidal State", *International Journal of Law and Psychiatry*, 2013, no. 36, pp. 350 - 357.

12 Eur. Ct. H.R., ECHR, Article 2 para 1 https://www.echr.coe.int/Documents/Convention_ENG.pdf (last visited Jan. 6, 2023).

13 McCann v. UK, App.No. 18984/91, 37 (September 25, 1995), https://hudoc.echr.coe.int/eng?i=001-57943.

14 Allen, N.: "The Right", citation, p. 353 (who precisely describes the positive duty to protect lives in more detail).

B) Article 8: Right to Respect for private and family Life.

Article 8 of the ECHR states that everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.[15]

Article 8 guarantees the right to be "left alone".[16] It consists of various facets and protects part of the core of a free society by requiring the state to respect four domains of human life: Private life, family life, home and correspondence.[17] The most relevant one in the discussion regarding suicide is the respect to private life- domain, as this field includes both: the protection of our physical and moral integrity.[18] The Eur. Ct. H.R has clearly recognised that deciding the manner and moment of death is similarly protected under Article 8, as long as the person is 'capable of freely reaching a decision on this question and acting in consequence.[19]

2. Pertinent case law of the European Court of Human Rights.

The Eur. Ct. H.R has already dealt with the legal regulation and permissibility of assisted suicide several times, whereby some complaints were inadmissible in result.[20] In the following the Court's main judgements and its reasoning will be discussed in short to provide a helpful and clarifying overview of the underlying judicial decisions.

A) Pretty vs United Kingdom.

Diane Pretty, a 43-year-old woman, suffered from an advanced stage of motor neurone disease (MND). This is a progressive neuro-degenerative disease of motor cells within the central nervous system. The applicant was essentially paralysed from the neck down, had virtually no decipherable speech and was fed through a tube. Although it is not a crime to commit suicide under English law, Diane Pretty was prevented by her disease from taking such a step without

15 Eur. Ct. H.R., ECHR, Article 8 paras 1 and 2 https://www.echr.coe.int/Documents/Convention_ENG.pdf (last visited Jan. 6, 2023).

16 Malone v. UK, App. No. 8691/79, 44 (August 2, 1984) (1985), https://hudoc.echr.coe.int/eng?i=001-57533.

17 Allen, N.: "The Right", citation, p. 353.

18 X & Y v. Neth, App. No. 8978/80, 7 (March 26, 1985), https://hudoc.echr.coe.int/eng?i=001-57603.

19 Haas v. Switz, App. No. 31322/07, 51 (January 20, 2011), https://hudoc.echr.coe.int/eng?i=001-102940; Koch v. Ger, App. No. 497/09, 52 (December 17, 2012), https://hudoc.echr.coe.int/eng?i=001-112282; Gross v. Switz, App. No. 67810/10, 59 (September 30, 2014), https://hudoc.echr.coe.int/eng?i=001-146780.

20 Only after the high hurdle of admissibility of an appeal has been met the court will consider the merits of the appeal.

assistance. It is however a crime to assist another to commit suicide. Nevertheless, the applicant wanted her husband to provide her with assistance in suicide. Because giving this assistance would expose the husband to liability, the Director of Public Prosecutions was asked to agree not to prosecute him. The request was refused and Pretty finally appealed to the Eur. Ct. H.R. The Court considered Pretty's application admissible, but found no violation of the Convention.[21]

In this landmark judgment, the Eur. Ct. H.R pronounced, that Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.[22] Regarding the applicant's right to respect for private life under Article 8, the Eur. Ct. H.R considered that the interference in this case might be justified as "necessary in a democratic society" for the protection of the rights of others and therefore declared that there has been no violation of Article 8 of the Convention.[23]

B) Haas vs Switzerland.

Ernst G. Haas, a 58-year-old-man, has been suffering from a serious bipolar affective disorder for about twenty years. During this period, he has twice attempted suicide and has stayed in psychiatric hospitals on several occasions. Taking the view that his illness, for which treatment is difficult, made it impossible for him to live with dignity, the applicant asked Dignitas[24] to assist him in ending his life. He approached several psychiatrists to obtain the necessary lethal substance, namely sodium pentobarbital, which is available only on prescription, but was unsuccessful. The applicant launched an appeal with the Federal Court. Relying in particular on Article 8 of the ECHR, he alleged that this provision guaranteed the right to choose to die and that State interference with this right was acceptable only in the conditions set out in the second paragraph of Article 8. In the applicant's opinion, the obligation to submit a medical prescription in order to obtain the substance necessary for suicide, and the impossibility of procuring such a prescription – which, in his view, was attributable to the threat that hung over doctors of having their licence withdrawn by the authorities should they prescribe the substance in question to mentally ill persons – amounted to interference with his right to respect for his private life. He argued that while this interference was

21 Pretty v. UK, App. No. 2346/02, (April 29, 2022), https://hudoc.echr.coe.int/eng?i=001-60448.

22 See Pretty, App. No. 2346/02 at 28.

23 See Pretty, App. No. 2346/02 at 38.

24 Dignitas is an association which offers, among other services, assisted suicide.

admittedly in accordance with the law and pursued a legitimate aim, it was not, in his case, proportionate.[25]

The primary issue before the Eur. Ct. H.R was whether the State's refusal to allow the applicant to obtain a lethal substance without a prescription and to enable the applicant to procure it in order to commit suicide was a violation of the right to private life under Article 8 of the ECHR. The Court found that one aspect of the respect for private life guaranteed by Article 8 is the right of an individual to decide how and when to end his or her life, provided that he or she had the capacity to make a decision and to take the appropriate action. The Court also noted that member States tend to place more weight on the protection of an individual's life under Article 2 ECHR than on the right to end one's life. Thus, States have a considerable margin of appreciation in this area, and can take action to prevent individuals from ending their lives if such a decision is not taken freely and with full knowledge.[26]

According to the Eur. Ct. H.R the requirement of a medical prescription for sodium pentobarbital has a legal basis, is intended to protect public safety and health and to maintain order in the public interest and is also a proportionate and necessary measure in a democratic society. In weighing up the interests at stake, namely the protection of life – which requires (as a minimum) verification, on a case-by-case basis, of whether individuals' decisions to end their lives genuinely correspond to their free and considered will where they opt for assisted suicide using a product subject to legislation on drugs or medicinal products –, and the individual's right to self-determination, the State remains free – from the standpoint of constitutional law or of the Convention – to lay down certain conditions and, in this context, to maintain, inter alia, the obligation to obtain a prescription for sodium pentobarbital.[27]

The Court held that although a right to suicide exists, this does not confer upon states a positive duty to ensure a rapid and painless suicide for concerned parties. Indeed, under Article 2, the State must protect the right to life and therefore has an obligation to prevent abuse. As a result, the Court held that the applicant's right to private life under Article 8 of the Convention had not been violated.[28]

25 Haas v. Switz, App. No. 31322/07, (January 20, 2011), https://hudoc.echr.coe.int/eng?i=001-102940.

26 Haas v. Switz, Global Health & Human Rights Database https://www.globalhealthrights.org/haas-v-switzerland/; Fremuth, M. L.: "Rechtsvergleichende Betrachtung", citation, p. 863.

27 Haas v. Switz, App. No. 31322/07 at 7.

28 Haas v. Switz, Global Health & Human Rights Database https://www.globalhealthrights.org/haas-v-switzerland/.

C) Koch vs Germany.

Ulrich Koch, a 69-year-old-man, and his late wife had lived together since 1978. From 2002 onwards, the women had been suffering from total sensorimotor quadriplegia.[29] She was almost completely paralysed and needed artificial ventilation and constant care and assistance from nursing staff. She further suffered from spasms. According to the medical assessment, she had a life expectancy of at least fifteen more years. She wished to end what was, in her view, an undignified life by committing suicide with the applicant's help.

In 2004 the applicant's wife applied to the Federal Institute for Pharmaceutical and Medical Products for authorisation to obtain a lethal dose of a drug that would have enabled her to commit suicide at home in Germany. The Institute refused and an administrative appeal by the applicant and his wife was dismissed. In February 2005 the couple contacted the Swiss assisted-suicide organisation, Dignitas, for assistance and travelled to Switzerland, where the wife committed assisted suicide. In April 2005 the applicant alleged that the refusal to grant his late wife authorisation to acquire a lethal dose of drugs allowing her to end her life violated both her and his own right to respect for private and family life.

He further complained about the domestic courts' refusal to examine the merits of his complaint. As regards the procedural limb of Article 8 and in particular the question whether the applicant's own rights had been sufficiently safeguarded in the domestic proceedings, the administrative court and the administrative court of appeal had refused to examine the merits of his case on the ground that he could not rely on his own rights under domestic law or under Article 8. Whilst the administrative court had expressed the opinion that the Federal Institute's refusal had been legitimate and in compliance with Article 8, neither the administrative court of appeal nor the Federal Constitutional Court had examined the initial action on the merits. According to the Eur. Ct. H.R this refusal to examine the merits of the case had not pursued any legitimate aim. There had thus been a violation of the applicant's right to have the merits of his complaint examined by the domestic courts.[30]

Regarding the alleged violation of the applicant's wife's rights, the Eur. Ct. H.R reiterated that the rights under Article 8 were of a non-transferrable nature and that complaints under that Article could thus not be pursued by a close relative or other successor of the person concerned. The applicant did not therefore have

29 Quadriplegia is a symptom of paralysis that affects all a person's limbs and body from the neck down.

30 Hudoc, Information Note on the Court's case-law No. 154, (July 2012), European Court of Human Rights https://hudoc.echr.coe.int/eng.

standing to complain of a violation of his wife's rights and that complaint was therefore inadmissible.[31]

When it comes to the alleged violation of the applicant's own rights the Eur. Ct. H.R stated that the applicant and his wife had been married for 25 years and shared a very close relationship. He had accompanied her throughout her suffering, ultimately accepting and supporting her wish to end her life, and had travelled with her to Switzerland in order to fulfil that wish. Lastly, he had lodged an administrative appeal jointly with his wife and had pursued the domestic proceedings in his own name after her death. Those exceptional circumstances showed that the applicant had a strong and persisting interest in having the merits of the original case decided by the courts. Furthermore, the case concerned fundamental questions about the possibility for a patient to decide to end his or her life, such questions being of general interest and transcending the personal situations and interests of the applicant and his late wife. Having regard, in particular, to the exceptionally close relationship between the applicant and his wife, and to his immediate involvement in the fulfilment of her wish to end her days, he could claim to have been directly affected by the refusal to grant her authorisation to acquire a lethal dose of the medication. There had accordingly been an interference with his own right to respect for his private life, on account of the Federal Institute's decision to dismiss his wife's request and the refusal by the administrative courts to examine the substance of his action.[32]

D) Gross vs Switzerland.

Alda Gross was born in 1931 and had expressed the wish to end her life for many years. She explained that she was becoming increasingly frail as time passed and was unwilling to continue suffering the decline of her physical and mental faculties. She decided that she wished to end her life by taking a lethal dose of sodium pentobarbital. She contacted an assisted-suicide association – EXIT – for support. Then a psychiatrist submitted an expert opinion in which he observed that there was no doubt that the applicant was able to form her own judgment. From a psychiatric medical point of view the psychiatrist did not have any objection to the applicant being prescribed a lethal dose of sodium pentobarbital. However, four medical practitioners declined to issue the requested prescription. At least two of them declined her request on the grounds that they considered they were prevented from doing so by the medical practitioners' code of conduct or feared lengthy judicial proceedings and, possibly, negative professional consequences.[33]

31 *See id.*

32 *See id.*

33 Hudoc, Information Note on the Court's case-law No. 163, (May 2013), European Court of Human Rights https://hudoc.echr.coe.int/eng?i=002-7536.

The case primarily raised the question of whether Switzerland had failed to provide sufficient guidelines defining whether medical practitioners were authorised to issue a medical prescription to a person in the applicant's condition and, if so, under what circumstances. The applicant's wish to be provided with a dose of sodium pentobarbital allowing her to end her life fell within the scope of her right to respect for her private life under Article 8 of the Convention. In Switzerland, inciting and assisting suicide were punishable only where the perpetrator of such acts was driven to commit them by "selfish motives". Under the case-law of the Swiss Federal Supreme Court, a doctor was entitled to prescribe sodium pentobarbital in order to allow his patient to commit suicide, provided that specific conditions laid down in the Federal Supreme Court's case-law were fulfilled. The Federal Supreme Court, in its case-law on the subject, had referred to the medical ethics guidelines on the care of patients at the end of their life, which had been issued by a non-governmental organisation and did not have the formal quality of law. Furthermore, the guidelines only applied to patients whose doctor had arrived at the conclusion that a process had started which, as experience had indicated, would lead to death within a matter of days or a few weeks. As the applicant was not suffering from a terminal illness, her case clearly did not fall within the scope of application of those guidelines. The Government had not submitted any other material containing principles or standards which could serve as guidelines. This lack of clear legal guidelines was likely to have a chilling effect on doctors who would otherwise have been inclined to provide someone such as the applicant with the requested medical prescription. The uncertainty as to the outcome of her request in a situation concerning a particularly important aspect of her life must have caused the applicant a considerable degree of anguish. This state of anguish and uncertainty would not have occurred if there had been clear, State-approved guidelines defining the circumstances under which medical practitioners were authorised to issue the requested prescription in cases where an individual had come to a serious decision, in the exercise of his or her free will, to end his or her life, but where death was not imminent as a result of a specific medical condition. The Court (Chamber judgement)[34] acknowledged that there may be difficulties in finding the necessary political consensus on such controversial questions with a profound ethical and moral impact. However, these difficulties were inherent in any democratic process and could not absolve the authorities from fulfilling their task therein. The foregoing considerations were sufficient to conclude that Swiss law, while providing the possibility of obtaining a lethal dose of sodium pentobarbital on medical prescription, did not provide sufficient guidelines ensuring clarity as to the extent of this right.[35]

34 Gross v. Switz, App. No. 67810/10, (May 14, 2013), https://hudoc.echr.coe.int/eng?i=001-119703. This case was referred to the Grand Chamber which delivered the judgement in the case.

35 Hudoc, Information Note on the Court's case-law no. 163, (May 2013), European Court of Human Rights https://hudoc.echr.coe.int/eng?i=002-7536.

Having regard to the above considerations the Court considers that it is primarily up to the domestic authorities to issue comprehensive and clear guidelines on whether and under which circumstances an individual in the applicant's situation – that is, someone not suffering from a terminal illness – should be granted the ability to acquire a lethal dose of medication allowing them to end their life. Accordingly, the Court decides to limit itself to the conclusion that the absence of clear and comprehensive legal guidelines violated the applicant's right to respect for her private life under Article 8 of the Convention, without in any way taking up a stance on the substantive content of such guidelines.[36]

This case was referred to the Grand Chamber.[37] In its Grand Chamber judgment the Eur. Ct. H.R came to the conclusion that the applicant had intended to mislead the Court on a matter concerning the very core of her complaint. In particular, she had taken special precautions to prevent information about her death from being disclosed to her counsel, and thus to the Court, in order to prevent the latter from discontinuing the proceedings in her case. The Court therefore found that her conduct had constituted an abuse of the right of individual application. As a result, the findings of the Chamber judgment of 14 May 2013, which had not become final, are no longer legally valid. Thus, by the time the Chamber had adopted its judgment in this case, the applicant had been dead for approximately one and a half years.[38]

The Gross vs Switzerland ruling is the first one in which the Eur. Ct. H.R holds a member State's position on assisted suicide as incompatible with Article 8 ECHR. However, the relevance of this judgment is more apparent than real: Gross v Switzerland opens the door to the concrete use of Article 8 ECHR in cases relating to assisted suicide, without implying the acknowledgment of a "right to die" under the ECHR.[39]

E) Summarized key messages.

To sum up the main findings of the reported case law it was not a violation of the ECHR if a member state forbids a man to help his terminally ill wife to commit suicide. The same applies if a member state permits the access to medication for suicide in principle, but restricts it for the protection of the persons concerned.

36 See Gross v. Switz, App. No. 67810/10, (September 30, 2014), https://hudoc.echr.coe.int/eng?i=001-146780 at 18.

37 Gross v. Switz, App. No. 67810/10, (September 30, 2014), https://hudoc.echr.coe.int/eng?i=001-146780.

38 Eur. Ct. H.R, Difficulties in obtaining drug to commit assisted suicide: complaint declared inadmissible after Court was informed of claimant's death earlier in its proceedings, Press Release issued by the Registrar of the Court, (September 30, 2014), 141006_Grosse_Kammer_Gross_gegen_die_Schweiz.pdf (humanrights.ch).

39 Sartori, D.: "Gross v Switzerland: the Swiss regulation of assisted suicide infringes Article 8 ECHR", *Strasbourg Observers*, June 26, 2013, https://strasbourgobservers.com/2013/06/26/gross-v-switzerland-the-swiss-regulation-of-assisted-suicide-infringes-article-8-echr/.

However, it is a violation of the ECHR if a member state does not consider the substance of an applicant's request for access to a medication for his wife's suicide.

Whether the ECHR is violated if a member state permits access to a drug for suicide in principle, but does not regulate it clearly enough (lack of clear legal guidelines regulating the prescription of a drug to enable an individual who is not suffering from a terminal illness to commit suicide) ultimately has to remain an open question.

After all, a right to assisted suicide cannot be derived from the ECHR. However, the member states have a wide scope for assessment ("margin of appreciation").

III. AUSTRIAN DYING DISPOSITION ACT: "STERBEVERFÜGUNGSGESETZ".

Based on the notable ruling[40] of the Austrian Constitutional Court, the criminalisation of every kind of participation in suicide was abolished as of January 1st, 2022. Hence, a new law – the Dying Disposition Act[41] – was introduced on January 1st, 2020. Within the Dying Disposition Act [StVfG], the connected amendment of the Austrian Penal Code[42] [StGB] and the Addictive Substances Act[43] [SMG], certain acts aiming at assisting in someone else's suicide were allowed.

According to the StVfG, a dying disposition is required in order to receive lethal medication from a public pharmacy.[44] Besides the possibility of setting up a dying disposition, several assisting actions in connection with a person's suicide are still criminalised according to the StGB. Below, the Austrian Constitutional Court's ruling and an insight into the subject's criminal law component will be discussed.[45]

40 Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] No 20433/2020.

41 Bundesgesetz über die Errichtung von Sterbeverfügungen [Sterbeverfügungsgesetz – StVfG] [Austrian Dying Disposition Act] Bundesgesetzblatt [BGBl I] No. 242/2021.

42 Strafgesetzbuch [StGB] [Penal Code].

43 Bundesgesetz über Suchtgifte, psychotrope Stoffe und Drogenausgangsstoffe [Suchtmittelgesetz – SMG] [Addictive Substances Act] Bundesgesetzblatt [BGBl I] No. 112/1997.

44 Only such pharmacies are authorised to hand out lethal medications [§ 11 StVfG]. The Addictive Substances Act authorizes pharmacies to dispense adequate drugs.

45 See generally Ganner, M. et al.: "Dying Disposition Act", in AA.VV.: *Quality in Healthcare, Can the law help to guarantee safe and reliable care for the patient? Book of Proceedings. Eight European Conference on Health Law* (Goffin, T. & Balthazar, T. eds.), Ghent University, 2022, p. 175 (discussing the new Austrian regulation in detail and providing relevant background information).

1. The Austrian Constitutional Court's ruling[46].

Prior to December 31, 2021, assisting a person in committing suicide was punishable under § 78 of the StGB, which states "Whoever induces another to kill themself, or assists them to do so, shall be punished with imprisonment from six months to five years." In its landmark ruling[47] on December 11, 2020, the Constitutional Court declared the wording "or assists them to do so" as unconstitutional and revoked it, effective on December 31, 2021.

The main justification in the Court's ruling on the application of several affected persons, including two seriously ill persons, is essentially based on Article 8 of the ECHR. The Court argues that the corresponding wording constitutes a "violation of the right to self-determination" which derives from "several fundamental rights guarantees", particularly the right to private life (Article 8 ECHR), the right to life and the principle of equality. This right to free self-determination includes the right to determine one's own life and the "right to die in dignity". If the decision to commit suicide is based on the person in concern's free self-determination, it must be respected by the legislature. Consequently, the right to free self-determination must also contain the right to seek third party help.

According to the court, it makes no difference from a fundamental rights perspective, whether the patient refuses life-prolonging or life-sustaining medical measures within the framework of his or her autonomy of medical treatment or a patient's directive in the exercise of his or her right of self-determination, or whether a suicidal person wants to end his or her life with the help of a third party in the exercise of his or her right of self-determination. What is rather decisive in each case is that the respective decision was made on the basis of free self-determination.

Another crucial aspect of this landmark ruling is that the Court does not make any remarks about the material conditions for a permissible assisted suicide situation, therefore leaving the legislature a wide scope for implementation (with unanswered questions).[48] Nevertheless, the Constitutional Court does not overlook the fact that free self-determination is also influenced by a variety of social and economic circumstances. Accordingly, to prevent abuse, the legislature

46 Verfassungsgerichtshof [VfGH] [Constitutional Court], *Es ist verfassungswidrig, jede Art der Hilfe zur Selbsttötung ausnahmslos zu verbieten*, Verfassungsgerichtshof Österreich (Dec. 11, 2020), https://www.legalbluebook.com/bluebook/v21/rules/18-the-internet-electronic-media-and-other-nonprint-resources/18-2-the-internet; Assfahani, S.: "Wenn uns der VfGH Im Dunkeln tappen lässt ... Eine Analyse Zu VfGH 11. 12. 2020, G 139/2019", *Fachzeitschrift für Familienrecht*, 2021, no. 1, p. 42; Fremuth, M. L.: "Rechtsvergleichende Betrachtung", citation, p. 841.

47 Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] No 20433/2020.

48 In contrast, compare the situation in Germany based on the ruling of the German Federal Constitutional Court, see chapter III.A.1 of the present remarks; Assfahani, S.: "VfGH Im Dunkeln", citation, p. 42.

must provide measures to ensure that the person concerned does not make his or her decision to commit suicide under the influence of third parties.

In the same decision, the Constitutional Court clearly declared that the criminalisation of incitement to suicide is not unconstitutional, as the decision to die must be based on a free and self-determined decision. Therefore, the inducement of suicide remains a punishable offence in Austria under § 78 of the StGB.

2. Background of the legislative process in Austria[49].

Due to Austria's pertinent history, every form of assisted suicide is a highly sensitive matter within the jurisdiction. During the Nazi-regime, from 1938 to the end of the Second World War in 1945, persons with disabilities were killed in "euthanasia programs" because their lives were considered unworthy. Notwithstanding the historical burden imposed on the Austrian Republic, most of society considers it inappropriate to hinder people who are able to form and articulate a self-determined will to end their lives from doing so via the means of criminal law. This change of perspective is clearly embedded in the steadily increasing life expectancy of the human population and the expanded medical possibilities for the preservation of human life and hence is to be discussed before this background. [50] As a result, scholars are talking about a new kind of dying trajectory: The main patterns of dying at older age have their roots in cancer, organ failure and frailty and dementia. Because these diseases are all prevalent later in life, elderly people are especially vulnerable.[51]

The Oregon Death with Dignity Act served as a model and guide for the Austrian considerations on regulating assisted suicide. Having existed since 1997, the act already provides numerous materials for analysing possible problems and unintended outcomes. Within the framework of law-making the parliamentary reviewing process of the Austrian draft resulted into 147 comments, quite a lot for Austrian reviewing processes. These comments include numerous different and even contradictory proposals for amendments. However, this did not have a significant impact on the finalisation of the law. Only some specific regulations (for instance, those on loss and theft[52] of the medication, and the obligation to report

49 *See* Ganner, M. et al., "Dying Disposition Act", cit., p. 175.

50 Walter, T.: *Death in the modern world*, cit., pp. 3, 11 (discussing life expectancy and longevity in detail and explaining several findings and relevant studies).

51 Longer lives allow time either for cells to grow abnormally (cancer) or for the body to degrade which can directly lead to heart attacks, lung disorders and dementia; *See id.* at p. 12.

52 In the event of loss or theft of the lethal drug, the person willing to die may request the documenting person to note on a valid dying disposition or on a dying disposition newly set up on this occasion that a new preparation can be obtained. The documenting person shall add this note if there is no doubt regarding the reliability of the person willing to die and report it to the register of dying dispositions (§ 8 para 4 StVfG).

to the district administrative authority in the case that a drug is part of a legacy) are grounded in the mentioned comments of the parliamentary reviewing process.

3. Definitions of terms.

Before delving deeper, and to ensure a uniform understanding of the new legal regulation, it is important to clarify and define some terms. The central terminology of the new Austrian regulation on assisted suicide is the so-called "dying disposition". This term describes a declaration of intent where a person who is willing to die records his or her permanent, free and self-determined decision to end his or her own life (§ 3 No 1 StVfG). The corresponding noun "assistance" specifies any physical support of the person willing to die in carrying out the life-ending measure (§ 3 No 4 StVfG). If the following explanations talk about a "medication", respectively a "lethal drug", they are referring to a dose of sodium pentobarbital which is lethal to the person who is willing to die or any other drug specified by order which ends life in an appropriate dose (§ 3 No 9 StVfG). In this context the terminal phase means the beginning of the moment when the disease has reached a stage where it is medically expected to lead to death within six months (§ 3 No 8 StVfG).

4. Related aspects of criminal law[53].

First of all, it has to be clearly stated that the "killing of others", in example direct-active euthanasia, is a punishable offence in Austria. This is initially sentenced as murder under § 75 StGB. Moreover, the privilege of murder stated in § 77 StGB is often applicable in relevant cases.[54] The named privilege concerns killing on demand, which occurs when the victim is killed on their earnest and insistent demand.[55] In this case, the degree of killing is considered diminished compared to murder and therefore is privileged with a lower threat of punishment.[56] Nevertheless, killing on demand is punishable in any case. Critically the Constitutional Court's judgement at issue explicitly concerns only assistance in suicide. In the case of killing on demand, the offender performs the act of killing whilst in the event of assisted suicide, the victim himself or herself performs the act that directly leads or is intended to lead to his or her death while the third somehow contributes to it.[57]

Aforementioned, § 78 para 1 StGB penalises the "inducement to commit suicide" in an unchanged manner. "Inducement" means awakening the decision

53 See Ganner, M. et al., "Dying Disposition Act". cit., p. 175.

54 See *generally* Kienapfel, D. & Schroll, V.: *Strafrecht Besonderer Teil I* [StR BT I], Manz Verlag, Vienna, 4th ed., 2016, § 77 para 1.

55 Birklbauer, A.: "§ 77 StGB", in AA.VV, *Strafgesetzbuch StGB: Wiener Kommentar* [Penal Code StGB: Vienna Commentary], (Höpfel, F. & Ratz, E. eds), Manz Verlag, Vienna, 2nd ed., 2022, paras 18 – 41.

56 See Kienapfel, D. & Schroll, V.: *Strafrecht Besonderer Teil*, op. cit., § 77 para 2.

57 See *id.*

to commit suicide, for example by suggesting a suitable means of killing or by exaggerating the fear of death.[58] In reaction to the Court's relevant judgment, the legislature has, to some extent, created a "new offense of assisted suicide", which specifies what still remains a punishable offence under § 78 para 2 StGB in this context. In other words, this provision regulates under which circumstances assisting in suicide is punishable.

In contrast to the old legal situation, moral assistance is no longer punishable. There is relatively little scope of application for moral assistance apart from consolation and counselling: On one hand, even the smallest physical assistance in another person's suicide could be interpreted as physical assistance.[59] On the other hand, moral assistance in suicide is limited by the criminal liability of incitement to suicide.[60] In this respect, the scope of application of a non-punishable moral assistance in another's suicide is relatively small. Nevertheless, as long as there is no incitement to suicide, it is no longer a punishable offense to counsel a person willing to die.

When it comes to physical assistance, § 78 StGB regulates the exact conditions and circumstances under which such an action is to be punished. The following are the variants of offenses that can each constitute the offense of assisted suicide: First of all, the "physical assistance to minors" to commit suicide is lump sum always a punishable offence. The term "minors" refers to all persons who have not yet reached the age of 18. The second offence in this context is the "physical assistance for reprehensible motives". Such motives are in particular selfish motives, such as vindictiveness or a desire to make a profit by accepting an inheritance.[61] Thirdly, the "physical assistance despite the absence of an illness within the meaning of the Dying Disposition Act" remains a punishable offence. It is namely prohibited to assist persons in committing suicide who are not suffering from an incurable disease leading to death, or suffer from a serious, permanent illness with persistent symptoms, the consequences of which permanently impair the affected person in their entire way of life.[62] Lastly, "physical assistance despite an existing lack of medical information within the meaning of the Dying Disposition Act" has to be mentioned as a punishable offence. It is also worth noting that it is a criminal

58 Explanatory Report 1177 BlgNR XXVII. GP. p. 17; Dokalik, D. et al.: "Die Errichtung einer Sterbeverfügung und der neue Tatbestand des § 78 StGB", *Österreichische Juristen- Zeitung*, 2022, no. 3, p. 161.

59 Ganner, M.: "Neues Sterbeverfügungsgesetz" ["New Dying Disposition Act"] *Österreichische Zeitschrift für Pflegerecht* [ÖZPR], 2021, no. 6, p. 180.

60 Explanatory Report 1177 BlgNR XXVII. GP. p. 17; Dokalik, D. et al.: "Die Errichtung einer Sterbeverfügung", citation, p. 166.

61 However, the mere fact of being an inheritor does not constitute an initial suspicion that would make investigations necessary.

62 In both cases, the disease must cause a state of suffering that cannot be averted in any other way. Both physical and mental illnesses can be considered.

infringement to assist a person who is willing to die and who has not received the medical consultation required by the Dying Disposition Act.

After this enumeration of punishable acts of physical assistance to suicide under § 78 StGB, it is important to note that the existence of a valid dying disposition is not in itself a prerequisite for exemption from punishment. As a result, one doesn't commit a crime when assisting in someone else's suicide if no dying disposition has been established but the person willing to die has consulted two physicians and is suffering from a serious illness. Yet the mandatory requirements (medical information and medical confirmation of a correspondingly serious illness) have to be checked by the person who is willing to provide assistance in suicide.[63] This conclusion applies consistently to all types of physical assistance: For example, the act of accompanying a person to Switzerland remains a punishable offence unless the person has been examined by two physicians and is suffering from a serious illness within the meaning of the Dying Disposition Act. The same applies to providing weapons, lethal drugs, or other objects and to the transportation to appropriate places (e.g., cliffs, bridges) to carry out suicide. These acts remain a punishable physical assistance in suicide unless the required medical information has been given and the medical confirmation of a correspondingly serious illness is provided.[64]

5. The Dying Disposition Act[65].

A) Personal preconditions and free and self- determined decision.

The Dying Disposition Act [StVfG] standardises all the requirements for the establishment of a dying disposition: First of all, the person willing to die must establish the dying disposition in person (§ 4 StVfG). This means that the representation by another person is excluded.[66] As all conditions stated in the StVfG are strict preconditions for the dying disposition, an anticipated dying disposition is also not possible.

The person willing to die must be full of age (18) and capable of making a free and self-determined decision, and must make the free and self-determined decision to end his or her life in this state. Both the decision-making capacity and the free decision must be confirmed independently of each other by the two

63 See Ganner, M. et al.: "Dying Disposition Act", cit., p. 175.

64 Ganner, M. et al.: "Dying Disposition Act", cit., p. 180.

65 The explanations under this section have already been published to a large extent in the following paper: Ganner, M. et al.: "Dying Disposition "Dying Disposition Act", cit., p. 175. It represents the written summary of a workshop held in the context of the 8th conference on Health Law by the European Association on Health Law in Ghent (Belgium).

66 The same applies, for instance, when entering into marriage, the conclusion of a patient directive or a health care proxy and the last will and testament.

physicians who are providing the information (§ 7 StVfG). The age of majority and the capacity to decide must be present when the two physicians provide the information and at the time the dying disposition is set up (§ 6 para 1 StVfG), whereby up to one year can lie between the clarification and the establishment of the dying disposition (§ 8 para 1 StVfG).

The basic prerequisite is that the person willing to die has the "appropriate decision-making capacity" and that there is no inaccuracy or vitiated consent (error, trickery, deception, physical or psychological coercion, and undue influence by third parties). Otherwise, physical assistance in another person's suicide is not a self-determined suicide, but a homicide.[67] A free decision does not exist if it has been reached as a result of error, deception, or physical or psychological pressure and the decision would otherwise have been different. If the necessary decision-making capacity is not present, assistance in suicide will generally lead to criminal liability for intentional or at least negligent homicide. Hence, the person aiding must ensure that the person willing to die has the necessary decision-making capacity so not to be suspected of committing an offense of homicide.[68]

The decision-making capacity must also be detectable for physicians and lawyers (notaries or patient representatives). This presupposes, in addition to appropriate mental abilities, a sufficient ability to communicate (ability to express oneself) of the person willing to die. A person is capable of making a decision if he or she understands the significance and consequences of giving up their own life, is able to form a will in accordance with that understanding, and is able to act accordingly.[69] In deviation of the general assumption that in doubt adults have decision-making capacity, the decision-making capacity must be "present beyond doubt and demonstrable at the time of the medical consultation". If there are serious doubts about the decision-making capacity of the person willing to die, particularly due to a mental illness, a clarification by a specialist in psychiatry and psychotherapeutic medicine or a clinical psychologist is required (§ 7 para 4 StVfG) before the clarifying physician may issue a corresponding confirmation.

67 Explanatory Report 1177 BlgNR XXVII. GP. p. 18.

68 The offence of killing on demand of the to-be killed in § 77 of the Austrian Criminal Code [StGB] cannot be applied in the absence of decision-making capacity: a serious and insistent demand also requires decision-making capacity, Explanatory Report 1177 BlgNR XXVII. GP. p. 17.

69 Allgemeines Bürgerliches Gesetzbuch [ABGB] [Civil Code] (§ 24 para 2), https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001622 (Austria).

B) Required medical information.

The person willing to die must be examined and consulted by two independent physicians,[70] at least one of whom must have a palliative medical qualification.[71] The information of the consultation must in all cases contain (§ 7 StVfG):

1. the treatment or alternative actions possible in the specific case, in particular hospice care and palliative medical measures, and a reference to the possibility of setting up a patient directive or to other anticipatory care instruments, in particular a health care proxy and precautionary dialogue;

2. the dose and intake of the lethal drug, and the effects of the preparation and dosage of the accompanying medication, which is necessary for the tolerance of the preparation;

3. the method of taking the lethal drug, the effects and possible complications of taking the lethal drug, and that a patient directive can be used to refuse life-saving treatment,

4. a reference to specific offers for a psychotherapeutic consultation and for suicide prevention counselling; and

5. a hint to any other counselling services that may be useful in the specific case.

The physicians must prepare a written document about the consultation, including the essential content of the information provided.[72] Both physicians must confirm the existence of the decision-making capacity and the free and self-determined decision with their signature on the document. The physician who provides information on the treatment alternatives must also confirm the "existence of the serious illness" within the meaning of § 6 para 3 StVfG and

70 It is not necessary for every physician to provide information on all of the in § 7 StVfG stated topics (§ 7 para 3 StVfG). Rather, the physicians can split up the information on the individual points, taking into account their field of medical specialization. They can also provide the information in a joint discussion. This seems preferable in order to enhance the comprehensiveness of the explanations for the person willing to die, *See* Explanatory Report 1177 BlgNR 27. GP. p. 11.

71 The fact that one of the doctors must have training in palliative care was recently the subject of a decision by the Constitutional Court, which found the provision to be in accordance with the constitution, *see* Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] no. 20710/2024.

72 The physicians may draw up two different documents or one joint document. The document shall contain the name and date of birth of the person willing to die, the name and address of the physician and the date of the clarification. It shall be delivered to the person willing to die. Physicians should keep a copy at least if there is no electronic storage in the register of dying dispositions. [StVfG] [Dying Directive Act] [BGBl], § 7 para 3.

the existence of the patient's credible declaration that he or she is in a "state of suffering that cannot be overcome with other means".[73]

C) Dying Disposition.

According to § 5 para 1 StVfG, a dying disposition shall record a person's decision to end his or her life. It must also contain the expressed declaration that this decision was made freely and self-determined using detailed information. Paragraph 2 of the aforementioned norm adds that one or more persons providing assistance may, but need not, be specified.[74]

The dying disposition can be drawn up at the earliest twelve weeks after the first medical consultation. A period of two weeks is sufficient only if a physician —which can also be someone other than one of the consulting physicians —has confirmed the existence of an incurable illness leading to death and the occurrence of the terminal phase.[75] However, the second medical consultation must also have taken place in this case before the dying disposition is set up.

The dying disposition must be made in written form before a "documenting person" (public notary or legally competent employee of the patients' representative bodies).[76] If the dying disposition is not set up within one year of the second medical consultation, a new medical confirmation of the existence of decision-making capacity and free will is required. Again, the confirmation does not have to be issued by one of the informing physicians. This confirmation is valid for one year and a new medical clarification is not required.

The public notary or the legally competent employee of the patient's representative must go through the document on medical information with the person willing to die to ensure that he or she has been informed to the required

73 Dying Directive Act, § 6 para 3. *See* also the latest decision of the Austrian Constitutional Court regarding the constitutionality of this requirement: Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] no. 20710/2024. The documentation can also be conducted via an online interface to the register of advance directives, which must be protected against unauthorised access by a code so that only those persons to whom the person willing to die provides the code can gain access. The data entered may be kept for a maximum of 30 years. Dying Directive Act, § 7 para 3. More detailed information on data protection aspects can be found in section 5 of the already above-mentioned paper, which is at the same time also the basis of the subject chapter of this paper: *See* Ganner, M. et al.: "Dying Disposition Act", cit., p. 175.

74 Dying Directive Act, § 5. They do not necessarily have to be known to the person willing to die at this time. At the request of the person willing to die, the documenting person (notary or legally competent employee of the patient's representative) may include further persons providing assistance in the dying disposition or remove such persons. The person providing assistance may not be one of the counselling physicians or the patient's representative or public notary documenting the dying disposition. *See* Dying Directive Act, § 3 para 6.

75 Dying Directive Act, § 8. This is the case if death is expected to occur within six months (§ 3 para 8 StVfG). Dying Directive Act, § 3 para 8.

76 Dying Directive Act, § 3 para 6. If possible, this document must be signed by the person willing to die. In the case of persons who are unable to sign, hand signs or a notarial deed are sufficient.

extent. In addition, the person willing to die must be informed about various legal aspects, in particular about the possibility of setting up a patient directive, a health care proxy, and a testamentary disposition (will), and about the limits of assistance under criminal law and other legal consequences, such as the effects on insurance contracts.[77]

The document must contain the first name and surname, date of birth, nationality, and address of the habitual residence of the person willing to die, the name and address of the public notary or legal representative of the patient (in this case, the address of the patient's representative is sufficient), and the date on which it was drawn up. The documenting person must also confirm in the document that the person willing to die has confirmed his or her free and self- determined decision to end his or her life.[78] The document additionally must include the dose and the necessary accompanying medication.

If there are doubts about the decision-making capacity, the documentation of the establishment shall be rejected. If the person willing to die does not have Austrian citizenship, it must be checked whether there is habitual residence in Austria. If neither is the case, a dying disposition cannot be issued because it would be ineffective.[79]

If a dying disposition is established successfully,[80] the original document is to be handed over to the person willing to die, and a copy is to be kept for up to ten years.[81] All necessary data (see id. § 9 para 3) must be transmitted to the register of dying dispositions (at the Ministry of Health).[82] A dying disposition can

77 Before a dying disposition is set up, the person documenting it (public notary, patient representative) must check whether the person willing to die has already set up a dying disposition by consulting the register of dying dispositions. If a previous dying disposition is still valid, it must be revoked before a new one is set up. Dying Directive Act, § 8 paras 1-2.

78 Furthermore, it must be stated in the document that the person willing to die has had his or her decision-making capacity confirmed by a physician and that there is no indication that he or she was unable to make a decision at the time of the death and that there is no indication that he or she would be affected at the time of the establishment, as well as that the required medical information has been provided with regard to both the content and the (usually twelve-week) waiting period. Dying Directive Act, § 8 paras 1-3.

79 Dying Directive Act, § 1 para 2 and § 8 para 3.

80 Neither the costs for the lethal drug nor the two necessary medical consultations are covered by the health insurance. The person willing to die must bear these costs herself or himself, as well as the costs for the public notary documenting the dying disposition. Patient advocacy groups will possibly provide documentation of the dying disposition free of charge, as is also the case with the patient's directive in Austria.

81 Dying Directive Act, §§ 9, 10. If no lethal drug was obtained with the dying disposition, the person documenting it must destroy it five years after expiry of the one-year period, see Dying Directive Act, § 10 para 3. This is the criminal statute of limitations for any assistance under § 57 para 3 StGB, for which the dying disposition could serve as evidence. Strafgesetzbuch [StGB] [Penal Code] § 57 para 3. After the expiry of ten years after its creation, the documenting person must in any case destroy the copy of the dying disposition. Dying Directive Act, § 10 para 3.

82 Dying Directive Act, § 9 para 3. The primary purpose of the register of dying dispositions is to prevent misuse in the dispensing of preparations and to create investigating possibilities for the law enforcement authorities.

be withdrawn at any time. The revocation only requires a "natural will", but no decision-making capacity.[83]

According to the current (February 2026) legal framework, the dying disposition loses its validity in three distinct cases: If the person who wishes to die revokes it with or without decision-making capacity or ex lege one year after its establishment.[84] The third requirement that imposes a restricted temporal validity of the dying disposition was subject of a recent (partially) successful party motion in front of the Austrian constitutional court.[85] In summary, the Court upheld that the fact that the dying disposition automatically loses its validity after one year and that consequently the process of establishment (in particular the medical consultation) must be repeated entirely violates the principle of equality in the Austrian constitution[86]. The reason for that is that in § 8 of the Dying Directive Act, a person that does not establish a dying disposition within a year after the second medical disclosure only needs to repeat the medical disclosure and the assessment of decision-making capacity. In the eyes of the Constitutional court, there is no objective reason for the unequal treatment, which is why the provision was declared unconstitutional.[87] As a result, the court's ruling has ordered the legislator to come up with a different solution by May 31st, 2026, but up to now (February 2026), no public proposal has yet been presented.

D) Performance of the suicide.

Persons who fulfil the required prerequisites and follow the legal regime implemented by the StVfG are given the opportunity of obtaining lethal drugs. However, the subsequent steps, meaning the performance of the suicide, are not further regulated.

What is regulated in more detail, however, is the careful handling of lethal drugs by pharmacies. Persons willing to die are required to secure the preparation against unauthorized use, and if they abandon their will to die, they must return the lethal drug to the pharmacy.[88] Natrium pentobarbital and similar preparations (barbiturates) cause respiratory and cardiac failure and can be taken either in

In addition to the establishment of the dying disposition and any withdrawal (notification by public notary or patient representative) also the dispensing and return of the lethal drug (notification by pharmacy) and a death caused by taking a lethal drug must be reported to the register.

83 The same principle applies to patient directives in Austria.

84 Dying Directive Act, § 10 para 2.

85 Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] no. 20710/2024.

86 Art 7 Bundes-Verfassungsgesetz [Federal Constitution], Bundesgesetzblatt [BGBl I] No. 194/1999.

87 *See also* Ganner, M.: "Sterbeverfügungsgesetz: Die VfGH-Entscheidung vom 12.12.2024", ÖZPR, 2025, no. 2, p. 53

88 Dying Directive Act, § 11 para 4.

tablet form or as a powder dissolved in liquid. To prevent sickness and throwing up, an appropriate premedication is regularly taken. If a valid dying disposition has been set up, the lethal drug does not require further prescription by a physician.

The place where the suicide should be carried out is not regulated by law. The legislative materials strongly suggest that the place being addressed will likely be the own accommodation of the person willing to die. In general, a dignified dying in the family circle is probably what affected persons wish for, though this will not always be possible. Therefore, the performance of suicide by taking the lethal drug can, in principle, also take place in any care and nursing facility and in hospitals. However, most of these facilities will probably not be delighted with this and do not have to provide assistance in suicide. Such a duty cannot be derived from the home or treatment contract.

Nonetheless, care homes and hospitals may offer support, particularly making their facilities available for this purpose. In this case, only staff that do so voluntarily and have been adequately informed in advance may be employed. A corresponding obligation to cooperate may not be agreed upon in the service contract.[89] Additionally, there is no legal obligation for pharmacies to stock appropriate lethal drugs or to dispense them to persons with a valid dying disposition or their assistants. The employees of a home, hospital, or other healthcare facility are not obliged to assist someone in suicide (§ 2 StVfG). Employees also cannot be obliged to do so by their own employer. Every employee can reject to assist in any acts intending to lead to a suicide due to the "conscience clause."[90] The refusal to assist in suicide does not constitute grounds for employment termination in any case.[91] Consistently, of course, (closest) relatives also cannot be forced and are never obliged by law to assist someone in committing suicide. Neither the familial nor the marital duty to assist extends that far.

It is debated whether assisted suicide can be prohibited from being carried out in the patient's own facility. According to the explanatory notes, there is "a right of the person willing to die to refrain from measures which, as a result,

89 The other way round homes and hospitals can prohibit their employees from assisting in suicide in the respective institution. At best, this can be explicitly regulated in the employment contract. However, they cannot be prohibited from doing so besides of their official duties. Participation in assisted suicide outside the institution may also not have any disadvantageous consequences (under employment law) for these persons. This applies both to employment and to the areas of deployment within the facility, as well as to opportunities for advancement.

90 This also applies to physicians themselves. Dying Directive Act, § 2.

91 *Id.* The Dying Directive Act also explicitly states in § 2 para 2 that no one may be discriminated in any way on the basis of refusal to provide assistance, to carry out a medical consultation or to cooperate in the setting up of a dying disposition. *id.* The same shall also apply to persons who provide appropriate assistance, give medical information or cooperate in the setting up of a dying disposition. *id.* It needs to be mentioned, that medical information and assistance in setting up a dying disposition are expressly no assistance in the sense of the law. Dying Directive Act, §3 para 4.

restrict his or her right to end his or her life."[92] However, this only recognizes the subjective right to termination of life without establishing concrete obligations for third parties. The right of defence is to be directed primarily against aggressive opponents of assisted suicide who attempt to prevent the de facto implementation of assisted suicide through disruptive actions. Nevertheless, persons from assisted suicide associations might be prohibited from entering the patient's facility (the same also applies to physicians, public notaries and patient representatives who wish to provide information or draw up a dying disposition in the facility, even if this is expressly not assistance as defined by the StVfG). However, the practical enforcement of this order is difficult if the persons mentioned do not identify themselves as such. The consequences of a violation of this order are, at best, a permanent ban on entering the facility and, in the case of physicians and public notaries, possibly also sanctions under professional law.

E) Conclusion.

The Austrian regulation opts for the use of a lethal drug as the preferred modality of assisted suicide and hence is quite similar to the Oregon Death with Dignity Act. From a constitutional point of view, the necessity of a correspondingly serious and incurable illness was not undisputed. However, the latest ruling of the Austrian Constitutional Court affirmed the constitutionality of the norm in question, stating essentially that the legislator does not have the obligation to enable assisted suicide under all circumstances.[93]

As far as the repeatedly discussed topic of possible death tourism is concerned, it is to be said that Austria is not likely to become an attractive place for people wishing to die, as citizenship or a habitual residence in Austria is required for the effectiveness of a dying disposition. As a result of the new Austrian regulation, it is not expected that many people from abroad, like Switzerland, will be entitled to make use of the possibility of assisted suicide in Austria.

One of the biggest hurdles is ensuring an autonomous decision, which is of crucial importance and is probably also guaranteed by both the obligatory consultation process provided by two physicians and the legal advice given when the dying disposition is established. Moreover, the protection against abuse appears to be adequate: relevant influences on the will of the person who initiated the process of setting up a dying disposition should be detected with the mentioned instruments and subsequently lead to the invalidity of a dying disposition.[94] Nevertheless, the question arises whether the taking of the drug should be supervised obligatorily

92 Explanatory Report 1177 BlgNR 27. GP. p. 8.

93 Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] no. 20710/2024.

94 *See id.*

in order to be able to provide assistance in the case that the effects do not occur in the desired form or if part of the medication dissolved in liquid is spilled or erupted. However, a high probability of complications is not assumed.

From a practical point of view, it must be mentioned critically that the de facto possibility to establish a dying disposition is not ensured in Austria even if all the requirements are met by the person willing to die. Not only the act of finding two physicians (one of them with compulsory palliative medicine qualifications) who offer corresponding services will be difficult in many regions of Austria but also pharmacies, which deliver appropriate lethal drugs, are likely to be in short supply. Furthermore, assisted suicide services are generally subject to an advertising ban.[95] However, information may be provided about physicians who offer appropriate consultations, about public notaries and patient advocacy groups that set up dying dispositions, and about pharmacies[96] that dispense the required lethal drug. The same de facto restrictions occur when it comes to the willingness of public notaries and patient representatives to support assisted suicide measures. Therefore, the possible activity of non-profit associations in the field of assisted suicide could make a big difference in the actual conditions. Non-profit associations could act as "persons providing assistance," which is probably the only way for persons willing to die to find someone who will provide the necessary support.

IV. INSIGHTS TO OTHER EUROPEAN JURISDICTIONS.

1. The liberal regulation of the Benelux countries.

The three so-called "BeNeLux" member states, Belgium, the Netherlands, and Luxemburg are the pioneers in the field of euthanasia and assisted suicide within Europe and worldwide. In some parts of the US and Australia, similar developments took place at the more or less the same time.

95 Dying Directive Act, § 12 para 1 (Austria). Nonetheless the involved parties (pharmacies, public notaries, patients' representatives and physicians) may be financially compensated for their efforts taken in the process of assisted suicide. Accordingly, a customary compensation (market value) is permitted, which in any case does not (yet) exist for the lethal drugs. Economic advantages going beyond this are inadmissible and, like a violation of the advertising ban, are to be sanctioned with an administrative fine of up to € 30.000. *id.* § 13. This was also affirmed by the Austrian Constitutional Court in its most recent decision on this topic, see Verfassungsgerichtshof [VfGH] [Constitutional Court], Dec. 11, 2020, Erkenntnisse und Beschlüsse des Verfassungsgerichtshofs [VfSlg] no. 20710/2024. *See also* Ganner, M.: "Sterbeverfügungsgesetz VfGH", citation, p. 53.

96 The Chamber of Pharmacists must maintain a list of pharmacies that dispense the lethal drugs. This list has to be forwarded to the Chamber of Notaries and the patients' representatives so that they can inform persons willing to establish a dying disposition (§ 11 para 7 StVfG). *id.* § 11 para 7.

A) Netherlands.

In 2002, the Netherlands enacted the "Termination of Life on Request and Assisted Suicide Act".[97] This work states that euthanasia and physician-assisted suicide are not punishable if the attending physician acts in accordance with criteria of due care.[98]

The requirements of due care (article 2 of the act under discussion) mean that the physician:

a) holds the conviction that the request by the patient was voluntary and well-considered;

b) holds the conviction that the patient's suffering was lasting and unbearable;

c) has informed the patient about the situation he was in and about his prospects; and

d) the patient holds the conviction that there was no other reasonable solution for the situation he was in;

e) has consulted at least one other, independent physician who has seen the patient and has given his written opinion on the requirements of due care, referred to in parts a – d; and

f) has terminated a life or assisted in a suicide with due care.

Cases of euthanasia and assisted suicide must be reported to regional committees. The committee assesses whether the physician who has terminated a life on request or assisted in a suicide has acted in accordance with the requirements of due care (article 8 of the act under discussion). If the committee is of the opinion that the physician has failed to act in accordance with the requirements of due care, it then informs the Board of Procurators General and the regional health care inspector. The regional euthanasia review committees publish an annual report.[99] The report from 2022 notes 8,720 cases of euthanasia, which is an increase of 13.7% compared to 2021. In 13 of the reports assessed in 2022 (0.15%), the commission reached a verdict that the physician did not act

97 De Vries, U.: "A Dutch Perspective: The Limits of Lawful Euthanasia", *Annals of Health Law*, no. 13, 2004, p. 365.

98 Wetboek van Strafrecht (Dutch Penal Code) artt. 293, 294 (2014), https://sherloc.unodc.org/cld/uploads/res/document/nld/1881/penal-code-of-the-netherlands_html/Netherlands_Penal_Code_1881_as_amd_2014.pdf. The Dutch Penal Code includes that provision in the articles 293 and 294.

99 *Annual Reports*, Regional Euthanasia Review Committees, https://english.euthanasiecommissie.nl/the-committees/annual-reports (last visited Mar. 22, 2023) (Netherlands).

in accordance with the statutory due diligence requirements when performing euthanasia.[100]

The last detailed report (in English) from 2019 shows 6,092 cases of euthanasia (termination of life on request), 245 assisted suicides, and 24 combinations of both.[101] (page 11). The "nature of conditions" was mainly cancer (4,100), a combination of disorders (846), neurological disorder (408), cardiovascular disease (251), pulmonary disorder (187), multiple geriatric syndrome (172), psychiatric disorder (68), and other condition (167).[102] Dementia is heavily discussed because of the lack of decision-making ability at the moment of exercising euthanasia or assisted suicide. In 2019, two cases with advanced-stage dementia and 160 with early-stage dementia were reported.[103]

B) Belgium.

In Belgium, euthanasia has been legal since 2002.[104] As opposed to many other European countries, Belgium has never classified assisted suicide as a criminal offense. Therefore, a legal regulation for assisted suicide does not exist.[105] The Netherlands and Luxembourg treat euthanasia and assisted suicide identically.

The main legal details for euthanasia in Belgium are as follows (Section 3):

a) Eligibility: Only adult patients or emancipated minors can make a voluntary, well-considered, and repeated request for euthanasia can be considered for the procedure. The request must not be the result of any external pressure. The patient must be suffering from an incurable and serious medical condition that causes unbearable physical or mental suffering (§ 1).

b) Request Process: The patient must make a written request for euthanasia to the physician. The physician must then verify the patient's medical condition and the voluntariness of the request. If the patient is not capable of doing this, the document is drawn up by a person designated by the patient. This person must have attained the age of majority and must not have any material interest in the death of the patient. The patient may revoke the request at any time (§ 4).

100 *Dutch Euthanasia Review Committees Published report on 2022*, The World Federation of Right to Die Societies, https://wfrtds.org/dutch-euthanasia-review-committees-published-report-on-2022/ (last visited Apr 18, 2023).

101 *Annual Report 2019*, Regional Euthanasia Review Committees, file:///C:/Users/43676/Downloads/Annual+report+2019.pdf, pp. 10-12 (last visited Jan. 27, 2024) (Netherlands).

102 *See id.*

103 *See id.*

104 Raus, K. et al.: "Euthanasia in Belgium: Shortcomings of the Law and its Application and of the Monitoring of Practice", *J. Med. & Philosophy*, no. 46, 2021, pp. 80 – 107.

105 Nys, H.: "The ambiguous legal status of physician assisted suicide in Belgium", *Journal für Medizin- und Gesundheitsrecht*, no. 3, 2022, p. 191.

c) Consultation: The physician must inform the patient about his or her health condition and life expectancy, discuss the patient's request for euthanasia and the possible therapeutic and palliative courses of action and their consequences. The physician must come to the belief that there is no reasonable alternative to the patient's situation and that the patient's request is completely voluntary. A second physician must be consulted to confirm the patient's medical condition and the voluntariness of the request. The second physician must be independent of the first physician and have expertise in the relevant medical field (§ 2).

d) Waiting Period: There is only a mandatory waiting period of one month between the patient's request and the administration of euthanasia in cases of non-imminently dying patients. Those are usually patients with psychiatric diseases. Then, the physician must consult a second physician, who is a psychiatrist or a specialist in the disorder in question (§ 3).

e) Administration: Euthanasia is performed by a physician who administers a lethal injection to the patient. The procedure must be carried out in a medical setting and under the supervision of a physician.

f) Reporting: The physician who performs euthanasia must report the procedure to the Federal Control and Evaluation Commission, which monitors compliance with the law.

g) Legal Protection: Physicians who carry out euthanasia in compliance with the legal requirements are protected from criminal prosecution and civil liability.

It is important to note that while euthanasia is legal in Belgium, it is a complex and sensitive issue, and the legal requirements for euthanasia are strictly enforced to ensure that patients' rights are respected and their safety is protected. Euthanasia is widely accepted in Belgium and is seen as a humane way to allow patients to end their suffering when all other options have been exhausted.

Because euthanasia and assisted suicide is prohibited in France, many French people are going to Belgium for the procedure. Recently, the Citizens' council in France spoke out in favor of assisted suicide.[106]

C) Luxembourg.

In 2009, Luxembourg passed a law (Luxembourg Act on Euthanasia) legalizing assisted suicide and euthanasia under certain conditions.[107] These conditions are

106 Conseil Économique Social et Environnemental (CESE), *Rapport de la Convention Citoyenne sur la fin de vie*, https://www.lecese.fr/convention-citoyenne-sur-la-fin-de-vie (last visited Apr. 3,2023).

107 Atwill, N.: "Luxemborg: Right to Die with Dignity", *Lib. Cong*, March 2, 2008.

very similar to the requirements set forth by Belgian law. The law allows terminally ill patients with unbearable suffering to request assisted dying from a doctor.[108]

The patient must be capable of making an informed decision, and the request must be made in writing and signed by the patient. If the patient is unable to draft the document, it can be drawn up by a person designated by the patient. The physician must inform the patient about the health conditions and life expectancy. The request must be reviewed by a second doctor, who must confirm the patient's condition and the voluntariness of the request. The procedure must take place in a hospital or a nursing home.

If the physician performs euthanasia or assisted suicide, he must thereafter submit a registration document within eight days to the National Control and Evaluation Commission. Then, the Commission verifies whether the conditions and procedures stipulated by the law have been followed.

In 2022, 445 cases of euthanasia and assisted suicide were reported.[109]

In addition to the conditions for assisted dying, the Luxembourg Act on Euthanasia also provides for advance directives and palliative care. Advance directives allow patients to express their wishes about medical treatment in case they become incapacitated.[110]

2. Spain.

In Spain, euthanasia and assisted suicide have been legalized since the 25th of June 2021.[111] Within a year, 172 cases of euthanasia were registered.

The law intends to give a legal, systematic, balanced, and guaranteed response to a politically respected demand for assisted suicide and euthanasia. The law guarantees a right to a self-determined death if the required conditions are met. Those conditions are as follows:

a) The person (applicant) has to be of legal age (18 years) and must be capable and aware at the time of application.

108 See *id.*

109 Commission Nationale de Contrôle et d'Évaluation de l'application de la loi du 16 mars 2009 sur l'euthanasie et l'assistance au suicide, *Septième rapport à l'attention de la Chambre des Députés (Années 2021 et 2022*), Sante.lu, https://sante.public.lu/fr/publications/r/rapport-euthanasie-2021-2022.html (last visited Apr. 18, 2023).

110 UCI Health, Benefits of Advance Directives, UNIV. CAL. IRVINE. HEALTH, https://www.ucihealth.org/patients-visitors/advance-care-planning/benefits-of-advance-directives, (2023).

111 no (L) 3/2021, de 24 de marzo, de regulación de la eutanasia, BOE 2021, 34049.

b) The person needs the Spanish nationality or a legal residence in Spain or a certificate proving a period of stay in Spanish territory of more than 12 months.[112]

c) The person must suffer from:

- a serious and incurable disease, or;

- a serious, chronic, and disabling condition, which is certified by the responsible doctor.[113]

A "serious and incurable disease" is a disease that, by its nature, gives constant and unbearable physical or mental suffering without the possibility of relief that the person considers tolerable, with a limited life expectancy, in a context of progressive fragility.[114] The criteria of a "serious, chronic, or disabling condition" is fulfilled if physical autonomy is affected directly and if activities of daily living are affected in a way that it does not allow one to fend for oneself, e.g. concerning the ability to express and relate. The chronic or disabling condition must be associated with constant physical or mental suffering and it must be intolerable for those who suffer from them. It must be certain or highly probable that such limitations will persist over time without the possibility of a cure or appreciable improvement. If a person is absolutely dependent on technological support, the condition can also be met.

- The person is required to make two requests for euthanasia or assisted suicide voluntarily and in writing, or by other means that allow to record the requests. The two requests may not be the result of any external pressure, and must be made at least 15 calendar days apart.[115]

- The person must give prior informed consent to receive assistance in dying.[116]

To safeguard the autonomy of the person, it is necessary for the patient to have a solid information about all details to make an adequate, complete, and free decision. Therefore, the person must be informed about the following:

- the existing medical situation:

- the proposed medical process;

112 Lnote 107, at (L) 3/2021, de 24 de marzo, de regulación de la eutanasia, BOE 2021, 34041.

113 *Información básica para conocer la ley de regulación de la eutanasia*, Ministerio de Sanidad, https://www.sanidad.gob.es/eutanasia/ciudadania/informacionBasica.htm#1 (last visited Apr 18,2023).

114 L.O.R.E. art. 3c.

115 *Id.* at art. 5c.

116 *Id.* at art. 5e.

- the different alternatives and possibilities of action;

- the access to comprehensive palliative care included in the common portfolio of services;

- the access to the benefits to which people are entitled in accordance with the regulations for dependency care; and

- the process of applying and getting aid to die.[117]

The information must be in writing and must be understood by the concerned person.

The patient has the right to choose between the two modalities of provision:

- The direct administration of a substance to the patient by a competent health professional (euthanasia).

- Or the prescription or supply by a health professional of a substance so that he can self-administer it to cause his own death (assisted suicide).

There are two doctors involved in the process: upon receipt of the first request for euthanasia or assisted suicide, the responsible physician will initiate a deliberative process with the patient regarding his diagnosis, therapeutical possibilities, and expected results on possible palliative care. The doctor must ensure that the person understands the information provided. The person retains the right to receive all information in writing or in any other accessible format. After receiving the second request, the responsible doctor must resume the deliberative process with the patient in order to address any questions or need for more information that may arise. Once the deliberative process is finished, the responsible doctor must obtain the patient's decision to continue or withdraw. If the patient wishes to continue with the procedure, the responsible physician must obtain the decision through the informed consent document, signed by the patient. The responsible physician must inform the care team, especially nursing professionals, and, if the patient so indicates, relatives and close associates about the circumstances.[118]

Then, the responsible doctor must consult another doctor, the consulting doctor, who must study the medical history, examine the applicant, and corroborate compliance with the legally established conditions. If the consulting doctor's report I unfavorable to the request for the right to aid in dying, the applicant may file a

117 *Id.* at art. 5b.

118 *Id.* at art. 8.

claim with the Guarantee and Evaluation Commission[119] of his or her autonomous community.[120]

If the responsible doctor and the consulting doctor issue a favorable report, the request is sent to the Guarantee and Evaluation Commission of the concerned autonomous community.

Of course, the patient can revoke the request at any time. Likewise, the patient may request the postponement of the administration of aid to die.

The aid-in-dying service can be carried out in public and private health centers and at home.[121] Access and quality of care may not be impaired by the place where it is carried out or by the fact that healthcare professionals make use of the opportunity to object to the participation in the assisted suicide process. The patient has the right to be accompanied by his family and friends. This right must be compatible with the sanitary acts linked to the realization of the benefit to die.

The provision of aid-to-die must be carried out in a way that guarantees the utmost discretion and respect for the personal and family privacy. At all times, the patient and his family must receive the necessary support and assistance of the healthcare team.

If the method of administration chosen by the requesting patient consists of a substance being directly administered by a competent health professional, the responsible doctor and team of health professionals will assist the patient until the moment of his death.

If the method of administration chosen by the requesting patient is the option that consists of a prescription or supply by a healthcare professional of a substance that can be self-administered by the patient to cause death, the doctor in charge as well as the other health professionals – after prescribing the substance that the patient will self-supply – will maintain the due task of observing and supporting the patient until the moment of his death.

Support for autonomous dying is also possible if the requesting patient is not in full use of his or her faculties and cannot give his or her free, voluntary, and conscious consent to make the requests. Therefore, it is helpful to have a prior signed document of instructions (or an equivalent document, like a 'living will'. The

119 The Guarantee and Evaluation Commission is a collegiate body that has the competence for the legal recognition of the right to provide assistance in dying. It carries out a legal control over the entire procedure followed, and it is also the body before which patients can present claims against the denials of their application.

120 L.O.R.E. art. 7.

121 *Id.* at art. 14.

responsible doctor is obligated to apply the provisions of the prior instructions document or equivalent documents. If a representative had been designated in said document, this will be the valid interlocutor for the doctor/responsible person. In any case, the doctor/responsible person must certify that the patient is in a situation of de facto disability. This assessment must be carried out in accordance with the protocol approved by the Interterritorial Council of the National Health System.

The provision of aid-in-dying is included in the common portfolio of services of the National Health System and is publicly financed. This benefit consists of providing the necessary means to a person who has expressed his or her desire to die, and in accordance with the procedure and guarantees established in the Law.[122]

To ensure equality and quality of care in the provision of help in dying, the Interterritorial Council of the National Health System prepared a "Manual of Good Practices" that serves to guide the correct implementation of this law.[123]

Healthcare professionals may object to the participation in the process of aid-in-dying for moral reasons. The refusal is an individual decision of health professionals and must be stated in advance. 9,384 healthcare professionals have signed the 'conscious clause' in local registers (register of the comunidades autónomas), which means that they refuse to support cases of euthanasia. This is 1.3 % of the 700,000 concerned professional doctors, nurses, and pharmacists.[124]

In a recent decision the Spanish Constitutional Court[125] expressed its opinion on the right to die under the light of Art 15 of the Spanish Constitution (CE). In essence, a systematic interpretation of the norm in question would lead to a more nuanced understanding of the right to life, rather than seeing the right to die as "the other side of the coin" of the right to life and thus imposing an uncompromising duty to protect life at any cost. Instead, the legislator's duty to protect life must be reconciled with the principles of human dignity and human autonomy, because, in the words of the Court, an absolute interpretation of the duty to protect would lead to a "duty to live", thus undermining the principle of human autonomy and self-determination.[126]

122 *Id.* at art. 13.

123 Ministerio de Sandidad: *Manual de Buenas Prácticas en Eutanasia*, https://www.sanidad.gob.es/eutanasia/docs/Manual_BBPP_eutanasia.pdf (last visited Apr. 18, 2023).

124 Mateo, J. J.: "Un 1,3% de los sanitarios se declaran objetores a la eutanasia", El Pais, https://elpais.com/sociedad/2023-03-09/9300-objetores-el-13-de-los-sanitarios-espanoles-se-niega-a-practicar-la-eutanasia.html (last visited Mar. 9, 2023).

125 STC 22 March 2023 (Tol 9493276).

126 See also De Verda y Beamonte, J. R. & Muñoz Rodrigo, G.: "Los derechos de la personalidad: El derecho a la vida y a la integridad fisica", in AA.VV.: *Derecho Civil I*, (coord. by J. R. de Verda y Beamonte), Tirant Lo Blanch, Valencia, 6th ed., 2026, p. 68.

3. Portugal.

The Portuguese parliament has been trying to legalize assisted suicide and euthanasia for more than three years. The country's debate on making medically assisted death legal under certain conditions started in 2018. Since 2020, the parliament approved three decrees to decriminalize medically assisted death.[127] However, the Constitutional Court declared those unconstitutional. The penultimate one because of "an intolerable lack of definition as to the exact scope of application," noting that the parliament went further in comparison with earlier proposals, changing in essential aspects the previous diploma. Additionally, the president vetoed it.[128]

Under the revised law, people would be allowed to request assistance in dying in case of a terminal disease, or if they have a "serious injury, definitive and amply disabling, which makes a person dependent on a third party or on technology to perform basic daily tasks."[129]

In May 2023 the law was again passed in parliament with a large majority. It will now be reviewed by lawmakers before a final vote after which it will be sent to the president, who can either sign it into law, veto it again or send it to the Constitutional Court.

The law would be applicable only to nationals and legal residents and would not extend to foreigners coming into the country to seek assisted dying.

4. Germany.

A) The German Constitutional Court's ruling[130].

The German Constitutional Court [BVerfG] ruled[131] – several months before the Austrian Constitutional Court – that the prohibition of assisted suicide in Germany, as set out in § 217 of the German Penal Code [dStGB], violates the

127 Partido Socialista Parlamento: "Regula as Condições em que a Morte Medicamente Assistida não é Punível, e Altera o Código Penal," Assembleia da Rebública, https://www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheIniciativa.aspx?BID=121467 (last visited Apr. 18, 2023).

128 The Brussels Times with Belga: "Portugal's Constitutional Court Rejects Decriminalisation of Eutanasia," *The Brussels Times*, Jan. 30, 2023, https://www.brusselstimes.com/362021/portugals-constitutional-court-rejects-decriminalisation-of-euthanasia.

129 Demony, C.: "Portugal's President Vetoes Euthanasia Law Again," *REUTERS*, Nov. 30, 2021, https://www.reuters.com/world/europe/portugals-president-vetoes-euthanasia-law-again-2021-11-30/.

130 BVerfG, Feb. 26, Press Release No. 12/2020, BVerfGE, 2020, *Criminalisation of Assisted Suicide Services Unconstitutional*, https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2020/bvg20-012.html; Fremuth, M. L.: "Rechtsvergleichende Betrachtung", citation 9, p. 863 (which gives a comparative and detailed overview of the Constitutional Court rulings in Austria and Germany).

131 BVerfG Feb. 26, No 153, 182-310, BVerfGE.

German Grundgesetz[132] [GG] [Basic Law] and is null and void because it largely empties the possibilities of assisted suicide. he rulings of both the German and Austrian Constitutional Courts provoke multiple legal questions, which will have to be addressed by the legislator when it comes to creating a new regulation on assisted suicide.[133]

The factual conditions of the underlying case revolve around § 217 dStGB and its prohibition of assisted suicide services. It imposes criminal punishment on anyone who, with the intention of assisting another person to commit suicide, provides, procures, or arranges the opportunity for that person to do so as a professionalized service. This provision was challenged in constitutional complaint proceedings by, among others, associations offering suicide assistance based in Germany and Switzerland, persons with serious illnesses seeking to end their lives with the assistance of such an association, physicians working in outpatient or inpatient care, and lawyers advising on suicide-related matters.

The key consideration of the Court in the previously mentioned ruling was that the prohibition of assisted suicide services violates the general right of personality (Art 2 para 1 in conjunction with Art 1 para 1 GG) in its manifestation as a right to a self-determined death afforded to persons determined to end their own lives. This right entails not only the freedom to take one's own life but also protects the freedom to seek and, if offered, utilize assistance from third parties to this end. The detrimental effects on personal autonomy stemming from § 217 StGB are further aggravated precisely because, in many situations, individuals are left with no actual, reliable options other than seeking suicide assistance to carry out a decision to commit suicide. Where, in the exercise of this right, an individual decides to end their own life, having reached this decision based on how they personally define quality of life and a meaningful existence, their decision must, in principle, be respected by state and society as an act of autonomous self-determination.

In contrast to the Austrian Constitutional Court's pronouncements,[134] the German Court addresses the subject matter of material conditions for a permissible assisted suicide situation. According to the BVerfG, the right to suicide does prohibit linking the permissibility of suicide assistance to certain substantive criteria, such as, the requirement of a diagnosis of an incurable illness. The right to a self-determined death is not limited to situations defined by external causes nor does it only apply in certain stages of life or illness. Rather, this right is guaranteed in all stages of a person's existence. Restricting the scope of protection to specific

132 Art. 1 para 1 phrase. 1, 2 GG, translation at http://www.gesetze -im-internet.de/englisch_gg/index.html.

133 Fremuth, M. L.: "Rechtsvergleichende Betrachtung", citation 9, p. 841 (also providing details on the background of the legislative process in Germany).

134 Compare the contrast situation in Austria based on the ruling of the Austrian Constitutional Court, *see* chapter III.A. of the present remarks.

causes or motives would essentially amount to a substantive evaluation, and thereby, predetermination, of the motives of the person seeking to end their own life, which is alien to the Basic Law's notion of freedom. The individual's decision to end their own life, based on how they personally define quality of life and a meaningful existence, eludes any evaluation on the basis of general values, religious dogmas, societal norms for dealing with life and death, or considerations of objective rationality. It is thus not incumbent upon the individual to further explain or justify their decision; rather, their decision must, in principle, be respected by state and society as an act of autonomous self-determination.

Regardless, there can never be an obligation on anyone to assist in another person's suicide. Additionally, it is explicitly not an implication of the discussed judgment that the legislature is barred under constitutional law from imposing any rules on suicide assistance.[135] Nevertheless, a concrete legislative mandate has not been imposed on the legislature by the Constitutional Court.

In conclusion, the rulings of the German and the Austrian Constitutional Courts represent the first time that both legal systems have explicitly recognized – yet with different justifications – a fundamental right or constitutionally guaranteed right to self-determined dying, to suicide, and to seek the help of a third party who is willing to assist.

B) The current legal state.

In Germany, like in Belgium, assisted suicide has never been qualified as a criminal offense. Therefore, assisted suicide in principle always was legal, although the medical associations have long prohibited their members from practicing it[136] and the legal opinion has often been expressed that this could constitute failure to render assistance.[137] Since the decision of the Constitutional Court in 2020, the status of assisted suicide has changed.[138]

135 However, when enacting legislative provisions, the legislator will have to ensure that sufficient space remains for the individual to exercise their right to a self-determined death and to pursue and carry out the decision to end their life on their own terms.

136 The (Model) Professional Code of Conduct for German Physicians has provided until 2021: "Physicians may not provide assistance in suicide". After the decision of the Constitutional Court in 2020 the passage was repealed by the German Medical Congress 2021 (available online on the website of the German Medical Association: https://www.bundesaerztekammer.de/). Model Professional Code for German Physicians, Sec. B. subsec. III, art. 16, (2021).

137 This was the prevailing opinion until 2022. Model Professional Code for German Physicians, Sec. B. subsec. III, art. 16, (2022).

138 In addition, the obiter dictum from the Bundesgerichtshof decided that it is to be qualified only as assistance to suicide, if the person could have prevented the death still (e.g., by call for medical assistance) and likewise, if the person could not convert otherwise its dying desire, BGH , Neue Juristische Wochenschrift, no. 41, 2022, pp. 3021-3024.

Currently, assisted suicide is recognized as a right if the decision is made in a state of self-determination. If the suicide is self-responsible on the basis of an informed consent, suicide and assistance to it is permitted without restriction (lex lata),and also for organizations such as euthanasia associations. Until now, Germany has not provided legal regulations. Just the penal does not qualify assisted suicide as an offense. Euthanasia, in form of administering a lethal injection to the patient, is still prohibited and a criminal offense.

At the moment, a very lively discussion is taking place whether it is necessary to make a law similar to Austria's which defines the details. The main requirements seem to be clear (e.g., free responsibility). However, some are questionable, like: may the assistance be provided for payment and on a professional basis, by physicians only or also by nurses, etc.; should access to narcotics be opened and if so, how? The three existing draft laws in Germany differ in their answers to these questions.

The most important question is: What does free responsibility actually mean? Its existence determines whether the suicidal decision is to be accepted or not. If "free responsibility" in a holistic sense, which also includes social relationality, is not given, the person willing to commit suicide must be prevented from doing so. The Constitutional Court's decision of February 2020 is with regard to "free responsibility" based on the following principles:

- capacity for insight and judgment for the concrete decision (maturity, capacity for insight, and judgment);

- knowledge of all aspects relevant to the decision, in particular the alternatives to suicide and the consequences;

- thoughtful and serious decision (permanence; not ambivalent or arising from crisis);

- independent decision (coercion, threat, deception, other pressure situations?).

The Federal Constitutional Court has already obliged the Bundestag in its decision in 2020 to create a legal regulation for assisted suicide. Now two different proposals are discussed.[139] It remains to be seen how the legal and factual situation in Germany will develop.

139 Entwurf eines Gesetzes zur Strafbarkeit der geschäftsmäßigen Hilfe zur Selbsttötung und zur Sicherstellung der Freiverantwortlichkeit der Entscheidung zur Selbsttötung [Draft of a law on the punishability of commercial assistance in suicide and to ensure the free responsibility of the decision to commit suicide]: https://dserver.bundestag.de/btd/20/009/2000904.pdf (last visited June 19, 2023); Entwurf eines Gesetzes zum Schutz des Rechts auf selbstbestimmtes Sterben und zur Regelung der Hilfe zur Selbsttötung sowie zur Änderung weiterer Gesetze [Draft Law on the protection of the right to self-determined dying and on

5. Switzerland.

Assisted suicide, but not active euthanasia, is legal in Switzerland under certain conditions. The Swiss law allows assisted suicide as long as the person providing the assistance has no selfish motives and does not benefit from the person's death.[140] In Switzerland, there are organizations such as Dignitas[141] and Exit[142] which provide assistance to individuals who wish to end their lives due to incurable illnesses or unbearable suffering.

Similar to Germany, there is no explicit legal regulation of assisted suicide, but the penal law does not qualify it as a criminal offense. Active euthanasia is prohibited by Art. 114 Swiss Penal Code, inducement to suicide and assisted suicide on the basis of selfish motives is prohibited by Art. 115 Swiss Penal Code.[143]

The Swiss Academy of Medical Sciences (SAMS) recently published medical and ethical guidelines.[144] Those provide, among other specifications, that it must be documented that incapacity has been carefully excluded by the physician. If a mental order such as dementia or another condition associated with a lack of capacity is present, capacity and the potential for influencing capacity by therapeutic means must be assessed by an appropriate specialist.

A survey shows a significant increase of assisted suicide between 1999 and 2018, from 63 in 1999 to 1,176 in 2018.[145] The fear that the legalization and the increase in use of assisted suicide may also lead to a growing number of young people choosing this option (slippery slope hypothesis) is not confirmed. On the contrary, the median ages increased over the study period.[146]

Recently, the question arose whether a person in permanent custody such as a prisoner has the right to assisted suicide. It was the first case of its kind and the assisted suicide was carried out outside the prison in late February 2023 with the

the regulation of assistance in suicide, and on the amendment of other laws]: https://www.helling-plahr.de/files/dateien/Suizidhilfegesetz.pdf (last visited June 19, 2023).

140 Hurt, S., Mauron, A.: "Assisted Suicide and Euthanasia in Switzerland: Allowing a Role for Non-physicians", *BMJ*, no. 326, Feb. 1, 2003, p. 271-273, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1125125/.

141 See the organization's website online at http://www.dignitas.ch/index.php?lang=en (last visited Apr 18,2023) Dignitas, , http://www.dignitas.ch/index.php?lang=en (last visited Apr. 18, 2023).

142 See EXIT, https://www.exit.ch/ (last visited Apr. 18, 2023).

143 Swiss Penal Code, Art. 115 (Fed. Ass. Swiss. Conf. 2020).

144 Swiss Academy of Medical Sciences: "Medical Ethical Guidelines: Management of Dying and Death", *Schweizerische Akademie der medizinischen Wissenschaften*, (May 2022), (last visited Apr 18,2023), www.sams.ch/guidelines.

145 Güth, U. et al.: "ICD-Based Cause of Death Statistics Fail to Provide Reliable Data for Medical Aid in Dying", *INT.J. PUB. HEALTH*, no. 68, Aug. 11, 2023, p. 1.

146 Montagna, G. et al.: "Long-term Development of Assisted Suicide in Switzerland: Analysis of a 20-year Experience (1999–2018")*, Swiss Medical Wkly.*, no. 153, March 2023, p. 1, https://pubmed.ncbi.nlm.nih.gov/36971666/.

help of the organization "Exit".[147] The question is, if a person in permanent custody has the right to self-determination when it comes to assisted suicide, would this lead to the right of a voluntary death penatly? This would make it possible to avoid a long stay in prison by choosing assisted suicide. In this specific case, a serious illness was also present, as is typical in other cases of assisted suicide. The law itself does not require a serious illness, but the assisting associations do.

According to the Federal Constitution and the European Convention on Human Rights (ECHR), the right to self-determination also includes the right of every person capable of judgment to freely choose the manner and time of his or her death. If the person wishes to contact an organization like Dignitas or Exit, the detention center is required to make it possible. Therefore, the right to assisted suicide applies in Switzerland in principle also to prisoners and must not be made dependent on their criminal status.

A national consultation has shown that the cantons generally approve of euthanasia in prison. For this reason, the Swiss Competence Center for Corrections has defined central principles. According to these principles, assisted suicide in prison should only take place as an "ultima ratio" and in cases of "unbearable physical or psychological suffering" confirmed by external medical experts. Like in other cases, it has to be clarified whether the person is capable of judgment and has made the decision voluntarily.

Assistance in dying shall not be legal if the deprivation of liberty itself is the reason for the death wish. It shall not be possible to choose between custody and death penalty. In addition, it should not be ignored that the demand for assisted suicide could be used in individual cases as leverage against prison conditions.[148]

V. CONCLUDING SECTION.

European countries provide very different legal systems in dealing with assisted suicide. On the one hand, all kinds of euthanasia and assisted suicide are forbidden in most European countries (especially in Eastern Europe). On the other hand, assisted suicide is common already for a long time (e.g., Switzerland) or even active euthanasia is legalized (BeNeLux-countries and since recently Spain). The development seems to be obvious: the liberalization of this topic is progressing

147 Scherrer, G.: "Ein Verwahrter will sterben – und begeht mithilfe von Exit Suizid. Darf er das?", *Neue Züricher Zeitung* (https://www.nzz.ch/zuerich/zuerich-verwahrter-begeht-mit-exit-suizid-darf-er-das-ld.1729636?reduced=true, Mar. 9, 2023) (last visited on January 27, 2024).

148 Flach, L.: „Erster Fall in der Schweiz: Darf ein Verwahrter Sterbehilfe in Anspruch nehmen?", https://www.srf.ch/news/schweiz/erster-fall-in-der-schweiz-darf-ein-verwahrter-sterbehilfe-in-anspruch-nehmen, Mar. 8, 2023, (last visited Apr. 18, 2023).

steadily and if a country does not take part in it, it is easy for the citizens to take advantage of the opportunity in another European country.

European countries, within the European Union or not do have very similar legal principles, deriving mainly from the European Convention on Human Rights (ECHR). Art. 8 of the ECHR (Right to Privacy) guarantees everybody to shape the living conditions according to one's own ideas. Thus, everybody has, in principle, the right to choose the circumstances of dying, which still is a part of life. Self-determination, therefore, is a paramount fundamental right which may only be interfered with if this is necessary for the protection of vulnerable persons. People must not be forced to use assisted suicide and euthanasia because of social pressure. Nevertheless, according to the European Court on Human Rights, very liberal and very conservative regulations are compliant with the ECHR. Each country can decide whether restrictions on assisted suicide and active euthanasia are necessary to protect vulnerable people in the own country. Member states of the ECHR have a "margin of appreciation".

In Austria, the Dying Disposition Act 2022 implements the Constitutional Court's ruling from 2020 on assisted suicide. With this law, assisted suicide is legalized within narrow limits for the first time in the Austrian legal system.[149] The administration shares similarities with the Oregon Death with Dignity Act: pharmacies may dispense a lethal drug if the requirements are fulfilled.[150]

In many European countries, intensive discussions continue: recently, Spain's Constitutional Court has dismissed a challenge by far-right party Vox against the euthanasia law approved in 2021.[151] In February 2023 the French citizens' convention supported active aid in dying under certain conditions.[152] Also, in February 2023, Italian Activists of Legal Euthanasia knowingly committed an act of civil disobedience against Italy's law against euthanasia and assisted suicide by accompanying an 89-year-old woman suffering from a severe form of Parkinson's Disease to Switzerland where assisted suicide was carried out in a Dignitas Clinic.[153] In Poland, as an example for a very conservative system, euthanasia is illegal and

149 Assfahani, S.: "VfGH Im Dunkeln", citation, p. 42.

150 Death With Dignity Act 127.815 § 3.01 (1)(B)(i)-(ii).

151 Latona, D.: "Spain's Top Court Upholds Euthanasia Law in Blow for Far-Right Party", *National Post*, Mar. 22, 2023, https://wfrtds.org/spains-constitutional-court-upholds-euthanasia-law/, , (last visited Apr. 18, 2023).

152 *See* Jérôme, B.: "French citizens' convention supports 'active aid in dying' under certain conditions", *Le Monde*, Feb. 21, 2023, https://wfrtds.org/french-citizens-council-votes-for-assisted-dying/ (last visited Apr. 18, 2023) (explaining that the convention, created at the request of President Emmanuel Macron, consists of 180 randomly drawn citizens. Of the 167 citizens who voted, 84% said the current law was ill-suited to 'different situations encountered'). "Citizens' Convention Supports 'Active Aid Dying' Under Certain Conditions," https://wfrtds.org/french-citizens-council-votes-for-assisted-dying/,(last visited Apr 18, 2023).

153 "Luca Coscioni accompanies Bologna woman to Switzerland", World Fed'n Right to Die Soc'ys, https://wfrtds.org/luca-coscioni-association-accompanies-bologna-woman-to-switzerland/, Feb. 12, 2023, (last visited Apr. 18, 2023).

the Polish Constitution recognizes the inviolability of human life not only when it comes to euthanasia but also to abortion.

In practice, the decision of whether active euthanasia and assisted suicide are allowed or not is not only a question of rational considerations but also of religious beliefs. It can be observed that euthanasia and assisted suicide are more often legal in Protestant regions than in Catholic ones.

From an individual perspective, interesting aspects can be detected. Assisted suicide and active euthanasia are generally chosen by older people (median age of death at 78 years according to a Swiss survey),[154] which is no surprise. There is also a stable predominance of women (57.2%), whereas "classical" suicide is committed with a rate of 70% by men. Women are on average approximately two years older than men (79 years vs 77 years). The main aspect, both to enable self-determination and to protect vulnerable persons, is the voluntary nature of the decision and the proof of decision-making ability. The fundamental rights of the ECHR guarantee individual self-determination. They are based on an anthropological conception of man, according to which man, as a conscious subject, can determine his own actions in a goal-oriented manner and, as a community being, pursues the well-being of individuals and social groups because he is dependent on their support. Within this scope suicidal states of mind require a careful balance to be struck between risk and liberty, between paternalism and self-determination.[155]

This correlates with the principles of biomedical ethics by Beauchamp and Childress.[156] Autonomy is central; non-maleficence, beneficence, and justice are the duties of not only the attending physicians but of the health system in general and, therefore, the public authorities and the state in particular.

154 Montagna, G. et al.: "Long-term Development", citation, p. 1.

155 For people who lack decision-making capacity, and are therefore not able to decide and act autonomously, there might be a greater legal and ethical justification for intervention, *see* Allen, N.: "The Right", citation, p. 355.

156 Matthew, S.: "Forty years of the four principles: Enduring themes from Beauchamp and Childress," *J. Med. and Phil*., no. 45, 2020, pp. 387-395.

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