

Germany (2020-)

On 26 February 2020 a unanimous [decision](#)¹ of the eight judges of the second senate of the Federal Constitutional Court overturned Section 217 of the [German Criminal Code](#) which had been in effect since 10 December 2015.

Section 217 read:

Facilitating suicide as recurring pursuit

(1) Whoever, with the intention of assisting another person to commit suicide, provides, procures or arranges the opportunity for that person to do so and whose actions are intended as a recurring pursuit incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(2) A participant whose actions are not intended as a recurring pursuit and who is either a relative of or is close to the person referred to in subsection (1) is exempt from punishment.²

It had been introduced to stop the increasing practice of groups involved in the facilitation of suicide and to prevent the normalisation of suicide.

Suicide facilitation

The complainants in the case included two organisations based in Germany and one based in Switzerland.

The Swiss organisation Dignitas, is reported in the judgement as claiming that from May 1998 to 2017 the organisation had assisted, in Switzerland, the suicide of 1,150 Germans. Of these 724 suicides had been facilitated between 2005 and 2016 by Dignitas-Deutschland, an organisation based in Hanover, Germany. It had ceased this active facilitation after Section 217 came into effect.

Another German based group is reported to have facilitated 254 suicides of Germans in Switzerland between 2009 and 2015.

A fundamental human right to be helped to commit suicide

Essentially, the eight judges decided that Article 2 (1) of the [Basic Law for the Federal Republic of Germany](#) necessarily includes not just a right to commit suicide but also a right to obtain direct aid in doing so, including by persons or organisations who offer such aid on a commercial basis.

Article 2 (1) reads:

Article 2 [Personal freedoms]

*(1) Every person shall have **the right to free development of his personality** insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.³*

¹ BVerfG, judgment of the Second Senate of February 26, 2020- 2 BvR 2347/15 -, para. (1-343), http://www.bverfg.de/e/rs20200226_2bvr234715.html

² https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1951

³ <https://www.btg-bestellservice.de/pdf/80201000.pdf>

The judgement is very thin on how the free development of one's personality includes extinguishing one's life. Rather it simply asserts:

The decision of the individual to end his life in accordance with his understanding of the quality of life and the meaningfulness of his own existence must be respected as an act of autonomous self-determination by the state and society.

The freedom to commit suicide also includes the freedom to seek help from third parties and to seek help where it is offered.

The judgement did acknowledge the weightiness of the argument for laws protecting people from being coerced or enticed into committing suicide but absolutely ruled out any such law (such as Section 217) that prohibited all organised, third party assistance and even specifically declared that:

due to the constitutional recognition of the right to suicide, which includes the motives underlying an individual's decision to commit suicide and thus detract from an assessment based on objective reasonableness (see margin no.210), it is forbidden to subject the admissibility of help for suicide to material criteria to make them dependent on the existence of an incurable or fatal illness.

This judgement of Germany's highest court goes beyond both the Canadian and Colombian court decisions by rejecting any nexus whatsoever between a right to assistance is suicide and a medical condition involving suffering.

Indeed. it effectively gives legal effect to Phillip Nitchke's notorious [declaration](#):

people have a right to dispose of [their] life whenever they want ... all people qualify ... and someone needs to provide this knowledge, training, or recourse necessary to anyone who wants it, including the depressed, the elderly bereaved, [and] the troubled teen. If we are to remain consistent and we believe that the individual has the right to dispose of their life, we should not erect artificial barriers in the way of sub-groups who don't meet our criteria.⁴

The judgement specifically provided that no one – including a doctor – can be “obliged to provide suicide assistance”.

It also left untouched Section 216 of the German Criminal Code that provides that:

Section 216

Killing upon request

(1) Whoever is induced to kill at the express and earnest request of the person killed incurs a penalty of imprisonment for a term of between six months and five years.⁵

⁴ Kathryn Jean Lopez, “Euthanasia sets sail”, *National Review Online*, 5 June 2002, <https://www.nationalreview.com/2001/06/euthanasia-sets-sail-kathryn-jean-lopez/>

⁵ https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1951

So euthanasia remains unlawful, as does the provision of lethal drugs such as sodium pentobarbital which are subject to narcotic legislation.

As of July 2023, the Federal Institute for Drugs and Medical Devices (BfArM) has [rejected 240 applications](#) to access sodium pentobarbital for the purpose of committing suicide.

A challenge to the position taken by the BfArM failed in the Higher Administrative Court in Munich, with the judgement delivered on 2 February 2022 ruling that, unless the Bundestag explicitly changes the law, and despite the Constitutional Court finding a right to seek assistance in committing suicide, there is no obligation on the BfArM to approve the supply of drugs for the purpose of suicide.

An appeal of this decision to the Federal Administrative Court in Leipzig is [expected to be determined by October 2023](#).

On 6 July 2023 the Bundestag [rejected](#) two different proposals for legislative schemes to regulate access to assisted suicide.