

## **EUROPE IN THE PROCESS OF REMODELING INCRIMINATIONS OF ASSISTING IN SUICIDE**

On 26 February 2020, the German Federal Constitutional Court (Bundesverfassungsgericht) delivered a judgement, declaring § 217 (prohibition of assisted suicide services) of the German Criminal Code (Strafgesetzbuch) void. In the judgement (the author thanks Mr. Jure Bergant for preparing studies, necessary for this paper) the given German incrimination of assisting in suicide were declared against German constitutional principles of the autonomy of the individual and its freedom of developing his or her personality, including terminating it in a suicide with help of others. Both the disputed prohibition as well as the judgement, recognizing it for unconstitutional, sparked an intense dispute in the general and professional public alike, unveiling its fragile moral and ethical basis making this dilemma so politically intriguing. The theoretical dogma and relevant circumstances of the judgement were instantly being started analyzed thoroughly in the media and in the constitutional and criminal legal theory, among others also stressing its applicability in foreign criminal law, where such debates over the current criminal regulation of assisted suicide, execution by demand and euthanasia are being called into question regularly, fueled by opposing political beliefs.

In December the same year the Federal Constitutional Court of the republic of Austria followed with a very similar constitutional decision, declaring the Austrian legal regulation (in the Criminal Code of Austria, StGB) - prohibition of assisted suicide as unconstitutional and calling upon the Austrian federal legislator for a thorough remodeling of the legal regulation of the autonomy of the individual in terminating his or her own life, including with the help of others.

Slovenia is one of those countries, that incriminate acts of assistance in suicide. It does so in the provision of the special part of its Criminal Code, the so-called CC1, adopted in the parliament in 2008 (entered into force on November 1<sup>st</sup> 2008, OJ RS Nr.: 50/12 from 29<sup>th</sup> of June 2012, including amendments, adopted until present). In the Chapter, titled “Criminal Offences Against Life and Limb”, in Art. 120, under the title “Solicitation to and Assistance in Suicide” the law states:

“(1) Whoever intentionally solicits another person to kill himself or assists him in doing so, resulting in that person indeed committing suicide, shall be sentenced to imprisonment for not less than six months and not more than five years.

(2) Whoever commits the offence under the preceding paragraph against a

minor above fourteen years of age or against a person whose ability to understand the meaning of his act or to control his conduct was substantially diminished shall be sentenced to imprisonment for not less than one and not more than ten years.

(3) In the event of the offence under paragraph 1 of this Article being committed against a minor under fourteen years of age or against a person who was not capable of understanding the meaning of his act or of controlling his conduct shall be punished according to the prescription for murder.

(4) Whoever treats his subordinate or a person depending on him in a cruel or inhumane manner, resulting in this person's suicide, shall be sentenced to imprisonment for not less than six months and not more than five years.

(5) Whoever, under particularly mitigating circumstances, assists another person to commit suicide, and if that person indeed commits suicide, shall be sentenced to imprisonment for not more than three years.

(6) If, relating to a criminal offence under the above paragraphs, the suicide has only been attempted, the Court may reduce the punishment of the perpetrator.”

It is one of very traditional and most stable incriminations of Slovenian law, found in the almost exact same form in all criminal codes of Slovenia after the Second world war, that is after the constitution of the federative Yugoslav state (of which Slovenia was a constitutional part) and it was continued in Slovenian criminal law all the time after the breaking apart of Yugoslavia in 1991 without relevant changes.

According to newest publications in Slovenia, dealing extensively with the phenomenon of euthanasia and assisted suicide it is to be expected, that the Slovenian legislator will provide for changes in this field of substantive criminal law. According to CC1 all cases of euthanasia, where the perpetrator is a medical practitioner, physician and his patient didn't give a free consent for euthanasive killing, are dealt with as perfidious murders under the definition of Art. 116/I(1) CC1. Slovenia decided in 2008 politically not to provide a privileged, less severe form of manslaughter in cases of euthanasia and prefers the definition of murder in such cases with a physician as perpetrator and patient as victim. It is interesting to know that both the Medical Chamber of Slovenia as well as the National Bioethical Committee are fond of this regulation and oppose strongly any liberalization in this regard. That is why any new regulation of allowed assisting in suicide in Slovenia with a physician as perpetrator and patient as victim will have to distinguish very clearly this form of assisting acts against the life from murder (through commission by omission, in German: *“unechte Unterlassungsformen”*). This will obviously be no easy legal task. But above all, a heated public political discussion, inspired by the cited German and Austrian development in constitutional law is expected in the near future in Slovenia about all possible dimensions of the legal good life and especially in Slovenian substantive criminal law. It would be helpful for the

disputants in this discussion to be informed not only about the newest German and Austrian (criminal) law, but also about the situation in Ukraine in this regard.

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**Krzysztof Wala,**  
Maria Curie-Sklodowska University in Lublin, Poland

**OFFENCE OF DISSEMINATING OR PUBLICLY DISPLAYING  
CONTENT THAT MAY FACILITATE THE COMMISSION  
OF A TERRORIST OFFENCE  
(ART. 255A § 1 OF THE POLISH CRIMINAL CODE)**

Pursuant to Article 255a § 1 of the Polish Criminal Code, whoever disseminates or publicly presents content that may facilitate the commission of a terrorist offence with the intent to commit such an offence, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. Introduction of this crime to the Polish legal system in 2011 resulted from international agreements binding Poland. Currently, this obligation results from Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (Official Journal of the EU L 2017 No. 88, p. 6 - hereinafter referred to as the 2017 Directive). In accordance with Article 7 of the 2017 Directive Member States shall take the necessary measures to ensure that providing instruction on the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or on other specific methods or techniques, for the purpose of committing, or contributing to the commission of, one of the offences listed in points (a) to (i) of Article 3(1), knowing that the skills provided are intended to be used for this purpose, is punishable as a criminal offence when committed intentionally. A similar solution was also included in Article 7 of the Council of Europe Convention on the Prevention of Terrorism, drawn up on 16 May 2015 in Warsaw (Statute Book 2008 No. 161, pos. 998). Criminalization of this type of behavior is an expression of the adoption by the European Union and the Council of Europe of a comprehensive strategy for countering terrorism [1, p. 1235]. It cannot be denied that such acts may actually increase the risk of committing terrorist offences, hence their criminalisation seems justified.

The offence in question was placed by the legislator in Chapter XXXII entitled “Offences against public order”, and thus the main protected value is public order. Public order is a very broad concept, hence the above-mentioned chapter contains various offences, both in terms of the perpetrator’s conduct