

Repercussions of the (partial) criminalisation of medical suicide assistance to the significance of patient autonomy at the end of life

Summary

The work compares and analyses the significance of patient autonomy at the end of life before and after the introduction of § 217 StGB as intended by the legal system.

The central question of the investigation is whether the partial criminalisation of medical suicide assistance, which took place with the introduction of § 217 StGB, can be understood as an expression of a paradigm shift: Is the partial criminalisation symptomatic of a reawakening paternalism in medical criminal law, which - far beyond the scope of § 217 StGB - encompasses patient autonomy at the end of life as a whole?

The work consists of three parts. The work begins with a *fundamental part*, which contains an introduction to patient autonomy and paternalism and points out the human and constitutional requirements for patient autonomy at the end of life.

The second part is devoted to the (partial) criminalisation of medical suicide assistance associated with the introduction of § 217 StGB. § 217 StGB has been examined from various angles with regard to its effects on the status of patient autonomy. The verdict for the regulation, whose paternalistic traits are obvious, is extremely poor. According to the opinion held here, § 217 StGB is an unjustifiable paternalistic intervention that does not meet human rights requirements or constitutional requirements and reduces the status of patient autonomy in several respects: Firstly, conceptual shifts in the understanding of autonomy can be discerned. The penalisation of commercial aiding of suicide suggests a change of perspective of the autonomy reference point and seems to favour a gradual understanding of autonomy, which makes it more difficult to operationalise patient autonomy. Secondly, § 217 StGB causes changes in the doctor-patient relationship. The (partial) criminalisation of medical suicide assistance favours defensive medicine and limits patient autonomy in the doctor-patient relationship.

The investigation focuses on the question of whether the partial criminalisation of medical suicide assistance represents a turning point: The third part of the work shows that the introduction of § 217 StGB beyond its scope of application has been accompanied by effects on the status of patient

autonomy. At the centre of this consideration are the two probably most significant achievements of the last decade in the field of patient autonomy at the end of life: On the one hand, the legally standardized binding nature of the living will and the associated decriminalization of the demanded discontinuation of treatment. On the other hand, the tendency to decriminalize a doctors omitted rescue efforts with regards to an autonomous suicide. In them, the demarcation of areas of responsibility, which in turn have a decisive influence on the doctor-patient relationship, becomes particularly evident. In both areas, since the introduction of § 217 StGB, the willingness to question the continuous increase in the significance of patient autonomy until 2015 and to place the binding nature of an autonomous patient decision under a paternalistic reservation can be observed with increasing frequency. The third part analyses the extent of this willingness and discusses the current challenges for patient autonomy resulting from it; however, it also points out opportunities for the significance of patient autonomy at the end of life.