



(Sektion Deutschland) e.V., Hannover

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## **DIGNITAS-Germany: 10 years of dealing with politics**

The efforts of Dignitas-Germany in changing a conservative political climate

**Since 1871, assistance with suicide is not a crime in Germany. Or better: was not a crime... Nevertheless, since the founding of DIGNITAS-Germany conservative representatives of the German political establishment have tried to close down our association and to prohibit or narrow the freedom to decide on time and manner of people's own end in life.**

The association DIGNITAS – Menschenwürdig leben – Menschenwürdig sterben (Sektion Deutschland) e.V. was founded by initiative of German citizens on **September 26<sup>th</sup> 2005** in Hannover, in the German Federal State Lower Saxony. At the foundation meeting, Ludwig A. Minelli became first chairman of the association and declared the objectives and purpose of DIGNITAS-Germany as follows: *“The foundation of DIGNITAS in Germany is an act on the level of the European Home Affairs. European Home Affairs mean that everyone within the scope of the European Convention on Human Rights has the right to interfere officially with the policy of the respective nation with intent to assert these human rights. Therefore DIGNITAS-Germany wants first and foremost to change the German debate on assisted dying so that the claim for **voluntary euthanasia** – which infringes the worldwide biggest taboo – will be replaced by the claim for the possibility of **accompanied suicide**. In our opinion, the actual European legal position is already allowing the claim for such a riskless suicide procedure. It is the aim of DIGNITAS-Germany to assert the right of self-determination of every human being in regard of his/her own demise. This is achieved through information of politicians on the one hand and through raising the relevant questions directly before the appropriate courts on the other hand.”*<sup>1</sup>

On the very same day of the foundation of DIGNITAS-Germany, the minister of social affairs of Lower Saxony, Ursula von der Leyen (Cristian Democratic Union CDU), who is a medical doctor by the way, and the evangelic bishop at that time, Margot Kässmann, issued a joint declaration calling for actions against DIGNITAS. They declared: *“Dignitas is following the absolutely wrong way. What we need is a strong Palliative Care to enable our society to accompany dying persons on a painless and dignified way to death.”* This statement shows clearly

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<sup>1</sup> <http://www.dignitas.ch/images/stories/pdf/diginpublic/referat-aufgabe-dignitate-deutschland-26092005.pdf>

the attitude of the Christian politicians and the German health industry. They think to know better what's good for everyone and intend to keep people's destiny under their control until the very end. And they want them to spend as much time as possible in hospitals and care homes because that is something from which they earn good money. However, according to an article of the "Deutsche Ärztezeitung"<sup>2</sup> in 2014 there were still 100 palliative-teams lacking in Germany. Subsequently, the Lower Saxon justice minister, Elisabeth Heister-Neumann (CDU), had a Federal Initiative drafted aiming at introducing an article in the German Criminal Code which foresaw five years imprisonment or a fine for anyone who would intend to incite the suicide of another person and repeatedly procure the opportunity to do so. But as all this was done without the political coalition's agreement, the coalition partner Free Democratic Party of Lower Saxony (FDP) felt left out and did not get into the CDU's negative argumentation. On the contrary, the FDP treated this matter on a very objective basis and organised a high-profile conference on this subject in Hannover, where the first chairman of DIGNITAS-Germany got the opportunity to argue his point of view<sup>3</sup>. After that, Heister-Neumann's intention to adopt a prohibitive law failed.

But the Cristian Democratic Union (CDU) did not give up. Two months later, the CDU governed Federal States Saarland, Hessen and Thuringia took over Heister-Neumann's draft for a Federal Initiative and submitted it to the German Federal Assembly. Hereupon, the board of DIGNITAS-Germany sent a detailed submission to all the 172 members of the German Federal Assembly rebutting false assertions in the introduction of the legislative proposal and pointing out that the planned law would most likely contravene article 8 of the European Convention on Human Rights. Furthermore this submission disproved the claim that without such a prohibition law the number of suicides would rise considerably: Organisations like DIGNITAS or EXIT in Switzerland which can help with an accompanied suicide are credible in the eyes of those who seek help. This opens the door to a conversation, without moralising, without taboo and without patronising in which, together with these individuals, it can be discussed whether there is a sensible, attainable solution towards life for their problem. In this way, many desperate individuals facing a life crisis and difficult health situations could be helped to live on. Since the foundation of DIGNITAS and EXIT in Switzerland, even a decline of the suicide rate can be seen. Therefore the inhuman legal situation regarding end-of-life matters in Germany has to be changed in a way that the one who has taken the self-determined, thoroughly considered decision to end the own life

- does not have to switch to inappropriate methods because the only medication which is leading to a risk- and painless death is not approved in Germany.
- does not to be left all alone during the dying phase, because the accompanying person(s) could be accused of non-assistance of a person in danger.

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<sup>2</sup> [http://www.aerztezeitung.de/politik\\_gesellschaft/sterbehilfe\\_begleitung/?sid=870173#comment](http://www.aerztezeitung.de/politik_gesellschaft/sterbehilfe_begleitung/?sid=870173#comment)

<sup>3</sup> <http://www.dignitas.ch/images/stories/pdf/diginpublic/referat-essentialien-zur-praxis-fraktionfdp-28112005.pdf>

After even the German Jurists' Conference spoke clearly against the foreseen criminal law article and stated just as clear a legal possibility pro assisted suicide, political observers assumed that the Federal Initiative would not stand a chance. But even if the Federal States Assembly would have accepted the initiative, DIGNITAS-Germany would not have remained petrified by fear. It would have been an opportunity to discuss right-to-die matters on the level of the German Federal Parliament, something that had been long overdue.

**In April 2008**, the Federal States of Baden Württemberg and Bavaria submitted legal proposals to the Federal States Assembly in order to outlaw Suicide-Assistance-Organisations – however, without any success.

In this time, the board members of DIGNITAS-Germany were very active in public. They participated in reputable TV-shows, panel discussions, expert conferences – for example at the German Judicial Academy where 44 judges and states attorneys (all specialised in the subject of assisted dying) discussed the legislative proposal – and interviews were given to journalists.

On the **4<sup>th</sup> of July 2008**, the Federal Initiative of Saarland, Hessen und Thuringia was finally rejected as being in conflict with the constitution, with the German basic law – that means, it was not even submitted to the vote.

As a counterweight to the attempt of the CDU to adopt a law prohibiting assisted suicide, the physician and second chairman of DIGNITAS-Germany, Uwe Arnold, opened another front against the German Medical Association and their professional code, which strongly aimed to narrow down the right of self-determination not only of the patient at the end of life but also of the physician willing to help with a legal assisted suicide. In **March 2007**, he created a website<sup>4</sup> where numerous healthcare professionals expressed their support for the right to assisted dying. Three months later he told a journalist to have already helped people to end their lives and announced that DIGNITAS would set a precedent by assisting a terminally ill person with suicide within German territory. In this context, Angela Merkel, the German Chancellor, officially stated at the CDU's party convention: "I am absolutely against any sort of active euthanasia. Dignitas' procedure is not compatible with the constitution. Even the organisation's name "Dignitas" (Latin word for dignity) is the ultimate piece of impudence." Her attitude is self-explanatory. Thereupon, the Medical Association of Berlin applied a prohibition order against Uwe Arnold, threatening him with a fine of 50'000 Euros in case he would give the relevant medication to someone for a suicide. In turn, he lodged the complaint against the regional medical associations of Berlin and Thuringia which tried to ban him from helping people with a legal accompanied suicide. Whilst the judgement in first instance protected the action of the Medical Associations, on the **30<sup>th</sup> March 2012**, the Administrative Court of Berlin decided in

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<sup>4</sup> <http://www.prosterbehilfe.de/>

favour of Uwe Arnold and repealed the prohibition order.<sup>5</sup> The court attributed a higher value to the physician's right for freedom of belief and conscience (article 4 of the German constitution) and the right for freedom to practice a profession (article 12 of the German constitution) than to the professional code of the Medical Association.

In the meantime, the German Medical Association decided at the German Congress of Physicians in **2011** to adapt the Sample Professional Code of Conduct in order to provide German physicians with "a better orientation" in dealing with dying persons. The new wording was: "*All physicians have to bestead dying persons under full protection of their dignity and their will. Direct active euthanasia, killing a patient on request, is forbidden. Physicians are not allowed to help with suicide.*"<sup>6</sup> This Sample Professional Code of Conduct serves to standardise the Professional Codes of the different German Federal States. Every regional Medical Association is free to decide whether and to which part they want to adopt it. Although representatives of DIGNITAS-Germany intervened as soon as it became known that one of the regional Medical Associations starts to discuss whether to adopt the sample professional code, the new prohibition for physician to help in assisted suicide has been implemented in 10 of the 17 Federal States. However, more than a third of the regional Medical Associations decided against it. The President of the German Medical Association, Frank Ulrich Montgomery, a clear opponent of assisted suicide, replied to the question who will be supposed to help with assisted suicide if not physicians: "Let the plumber, the pharmacist or the veterinarian do it, but not the physician."<sup>7</sup> In spite of the above mentioned decision of the Administrative Court of Berlin, the professional codes have not been changed until now.



<http://www.giordano-bruno-stiftung.de/meldung/sterbe-klempner-montgomery>

<sup>5</sup> <http://www.gerichtsentscheidungen.berlin-brandenburg.de/jportal/?quelle=jlink&docid=JURE120012131&psml=sammlung.psml&max=true&bs=10>

<sup>6</sup> [http://www.bundesaerztekammer.de/fileadmin/user\\_upload/downloads/pdf-Ordner/MBO/MBO\\_02.07.2015.pdf](http://www.bundesaerztekammer.de/fileadmin/user_upload/downloads/pdf-Ordner/MBO/MBO_02.07.2015.pdf)

<sup>7</sup> <http://www.giordano-bruno-stiftung.de/meldung/sterbe-klempner-montgomery>

After the initiatives finally had been rejected in July 2008, following two years of political struggle, the whole story started over again. In the coalition contract<sup>8</sup> issued in **September 2009**, by the ruling parties Cristian Democratic Union / Cristian Social Union (CDU/CSU) and Free Democratic Party (FDP), it was agreed on a new law prohibiting any “commercial conveying of an opportunity to commit suicide”. But for a long time, during the election period, nothing happened in this regard. More than two years later, the coalition committee reminded the German Government to submit a legislative proposal of the agreed law. As a consequence, a new article of the German Criminal Code<sup>9</sup> was drafted:

#### Commercial encouraging of suicide

- [1] Who intendedly and commercially grants, procures or convey the option to commit suicide to another person, is liable to a custodial sentence of up to three years or to a monetary penalty.
- [2] As participant is not liable who does not act commercially and who is either a family member of the in [1] mentioned another person or who is close to him/her.

DIGNITAS-Germany commented on this draft law with an in-depth submission<sup>10</sup>. Themed with Montesquieu’s conclusion “If it’s not necessary to make a law, it is necessary not to make a law” DIGNITAS pointed out that already the justification for the law was based on incorrect information and pure assumption: there never ever have been cases in Germany in which individuals provided a quick (assisted) suicide against payment. Furthermore, we advised that the proposed law is violating the German constitution as well as the European Convention on Human Rights. Unsurprising, our objection did not change the course of biased German politics and the draft for the new article of the German Criminal Code was submitted on the **31<sup>st</sup> of August 2012** by the German Government, first to the Federal States Assembly. This chamber did not issue a statement to the draft law, so it was submitted without delay to the German Federal Parliament. In order to rush the draft through as unnoticed to the public as possible, the first reading took place 3 months later at six minutes before midnight (!). No one gave a speech; a few written statements were submitted on record; the draft was consigned to the parliamentary committees – that was it. Nevertheless, this draft was highly controversial. Some members of parliament were worried about the second paragraph: in the preamble of the law, physicians having a longstanding relation with a patient who wished to die were declared to be a participant, “who is close to him/her” and therefore not punishable. These politicians feared this would be the approval of physician assisted suicide. For others the prohibition of commercial encouraging did not go far enough. The Parliamentary Commissioner for the Handicapped, Hubert Hüppe (CDU), stated in this regard: “*Prohibiting only commercial encouraging of suicide is like prohibiting wrongful parking on planet Mars.*” Also, Angela Merkel dissociated herself from the foreseen law and stated

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<sup>8</sup> [http://www.csu.de/common/\\_migrated/csucontent/091026\\_koalitionsvertrag.pdf](http://www.csu.de/common/_migrated/csucontent/091026_koalitionsvertrag.pdf)

<sup>9</sup> <http://dip.bundestag.de/btd/17/111/1711126.pdf>

<sup>10</sup> <http://www.dignitas.ch/images/stories/pdf/digde/digde-stellungnahme-zu-referentenentwurf.pdf>

in an interview that she wants a prohibition of organised assistance with suicide instead of only commercial. Therefore, the draft became dead letter, the intention to adopt a prohibition of assisted suicide within that election period failed.

During the heated debate surrounding the new prohibitive law for assisted suicide, the Federal State of Rhineland Palatinate tried to push through another legislative proposal which aimed to criminalise any advertisement for assisted dying. But, this draft was rejected by the Federal State Assembly without further notice.

In the run-up to the parliamentary elections, the Free Democratic Party was attacked by the means of big newspaper advertisements accusing them to have sold and betrayed their liberal values because they agreed to a prohibition of assisted dying in the coalition contract. The advertisements had been initiated by a group named “Free German Citizens”, called for a reasonable attitude towards assisted dying, the abolition of the church employment law, the dismissal of church representatives of the broadcasting councils and other liberal postulates. At the parliamentary election in **September 2013**, the Free Democratic Party did not reach a 5% minimum limit of the vote anymore and had to leave the government. This was the first time since the foundation of the Federal Republic of Germany that the Free Democratic Party was not represented in the German Federal Parliament anymore. The new government included the Cristian Democratic Union / Cristian Social Union (CDU/CSU) and the Social Democratic Party (SPD). In their coalition contract “assisted dying” did not show up as a topic. But this did not mean that there was not more danger. The coalition partner delegated the question of assisted dying to so-called “group applications” of the German Parliament. This means that mixed cross-party groups could submit their own drafts for a new law in this regard. In **November 2014**, an orientation debate on the issue of “end-of-life care and assisted dying” took place<sup>11</sup>. Right from the start it became evident that not even one of the 58 speakers was informed sufficiently about the subject. Some of them did not even know about the different meaning of the umbrella term “assisted dying”. They confused legal assisted suicide with prohibited voluntary euthanasia. Obviously, none of the speakers researched the experiences of those countries which allowed for assisted suicide such as Switzerland or even voluntary euthanasia such as The Netherlands, Belgium, Luxembourg. The debate largely missed the point. But the majority seemed to support the idea of prohibiting commercial as well as organised assistance with suicide without even querying whether such a law would be constitutional. This debate continued until **November 2015**, when the parliament dealt with the diverse drafts for a new article in the German Criminal Code which were developed during that year.

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<sup>11</sup> <http://www.dignitas.ch/images/stories/pdf/diginpublic/stellungnahme-bundestagsdebatte-13112014.pdf>

There were four groups presenting such a draft:

Draft for a new § 217 German Criminal Code by Sensburg/Dörflinger<sup>12</sup>

### **Participation at a suicide**

- [1] Whoever induces another person to commit suicide or aids him in it is liable to a custodial sentence of up to five years.
- [2] The attempt is liable.

This group wanted to prohibit any inciting and assistance with suicide, without exceptions.

Draft for a new § 217 German Criminal Code by Brand/Griese<sup>13</sup>

### **Repeated encouraging of suicide**

- [1] Who intends to stimulate the suicide of another person and repeatedly grants, procures or convey this option, is liable to a custodial sentence of up to three years or to a monetary penalty.
- [2] A participant is not liable, who does not act repeatedly and who is either a family member of the in [1] mentioned another person or who is close to him/her.

This group wanted to prohibit the repeated encouraging of suicide as an abstractly life threatening act. That means it will be punished irrespective of whether or not the suicide took place.

Draft for a new § 1921a German Civil Code by Hintze/Reimann<sup>14</sup>

### **Physician assisted termination of life**

- [1] An adult being capable of consent, whose decease is leading irreversibly to death, can make demands on a physician's aid with suicide in order to prevent him from illness caused suffering.
- [2] The aid of the physician as in [1] is allowed only if the patient's wish for suicide is serious and definite, a medically counselling to alternative therapies and the realisation of the aid with suicide has taken place, the irreversible pathology and the probability of death have been medically diagnosed and the patient's wish for suicide and the capacity of consent have been approved by a second physician.
- [3] The physician's aid with suicide is voluntary.
- [4] The decision on time and manner of his own end of life has been taken by the patient. The realisation of the suicide takes place with medical attendance.

They wanted to provide legal security for physicians and to consolidate the self-determination of terminally ill patients.

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<sup>12</sup> <http://dip21.bundestag.de/dip21/btd/18/053/1805376.pdf>

<sup>13</sup> <http://dip21.bundestag.de/dip21/btd/18/053/1805373.pdf>

<sup>14</sup> <http://dip21.bundestag.de/dip21/btd/18/053/1805374.pdf>

## Draft for a separate law for exemption of punishment in case of assisted suicide by Künast/Sitte<sup>15</sup>

In this law, the aid with suicide is codified as not punishable whilst commercial assistance with suicide is forbidden. Furthermore, criteria for counselling and documentation are established. This draft contained 4 pages of which the index of contents is listed below.

- § 1 Purpose of the law
- § 2 Principle of exemption of punishment
- § 3 Prerequisites
- § 4 Commercial assistance with suicide
- § 5 Commercial encouraging of suicide
- § 6 Physician assisted suicide
- § 7 Advise obligation in case of organised and repeated assistance with suicide
- § 8 Documentation obligation in case of organised and repeated assistance with suicide
- § 9 Breach of obligation
- § 10 Implementing regulations
- § 11 Evaluation

During 2015, DIGNITAS-Germany was very active to prevent the worst from happening. The board members participated in panel discussions, informational events were organised, the protocols of the parliamentary debates on this issue were commented<sup>16</sup> and spread via internet, newspaper articles showing DIGNITAS' point of view were published. Furthermore, from July to November 2015, twice a week, the 593 members of the German Federal Parliament received messages from the first chairman of DIGNITAS-Deutschland providing them with facts about the deficiencies of the law proposals and the likelihood of the violation of constitutional rights<sup>17</sup> of each of the drafts, as well as about the development in right-to-die matters in other countries around the world. In September 2015, a campaign was started pointing out the absurd proportion of 200'000 failed suicide attempts with heavy long-term consequences for the concerned ones – whilst the German policy is characterised by inactivity on the one hand – and 250 assisted suicides of terminally ill individuals – for which the parliament wanted to adopt a prohibition law on the other hand.

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<sup>15</sup> <http://dip21.bundestag.de/dip21/btd/18/053/1805375.pdf>

<sup>16</sup> <http://www.dignitas.ch/images/stories/pdf/diginpublic/stellungnahme-bundestagsdebatte-02072015.pdf>

<sup>17</sup> [http://katja-keul.de/userspace/NS/katja\\_keul/Dokumente\\_2015\\_3/WD\\_3-188-15-A.pdf](http://katja-keul.de/userspace/NS/katja_keul/Dokumente_2015_3/WD_3-188-15-A.pdf)

[http://katja-keul.de/userspace/NS/katja\\_keul/Dokumente\\_2015\\_3/WD\\_3-155-15\\_A.pdf](http://katja-keul.de/userspace/NS/katja_keul/Dokumente_2015_3/WD_3-155-15_A.pdf)



There were corresponding posters in the Berlin underground stations, video clips in the underground trains and vans with big posters driving around in the government district.



But nothing helped. On **6<sup>th</sup> November 2015**, 360 members of the parliament voted in favour of the draft by Brand/Griese for a now § 217 of the German Criminal Code prohibiting any repeated encouraging of suicide – 233 against it. Although the number of the opponents would have been more than sufficient to claim an “abstract judicial review” (158 members necessary), only few politicians were ready to even at least consider such an action. Finally, the German Federal President, Joachim Gauck, signed the new law and it came into force on **10<sup>th</sup> December 2015**, ironically on the Human Rights Day which commemorates the day on which, in 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights (!).

Towards the end of all this, the outcome was foreseeable and as you can imagine, DIGNITAS-Germany will not accept such a law, which is infringing the German constitution and the Convention on Human Rights. In consequence, preparations to take legal actions are in full swing.

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