

Self-Determined Dying in Prisons? – Constitutional and Criminological Implications

Abstract

The prison system is a mirror of society – social developments generally do not stop at the walls of prisons. At times, issues that concern society even take on a particular significance and urgency under the conditions of the prison as a ‘total institution’. In Germany, this currently applies to the realization of the ‘right to a self-determined death’, which the Federal Constitutional Court recognised in a fundamental decision in 2020. In this decision, the court stated that a freely responsible decision to commit suicide must be respected as an act of autonomous self-determination by the state and society, and that the freedom to take one's own life also includes the freedom to seek help from third parties and to make use of help where it is offered. With reference to these principles, individual prisoners have applied for the prison authorities to grant them access to medically assisted suicide. As far as can be seen, such applications have not been successful to date; however, they raise complex questions. For example, it should be discussed whether it is even possible to speak of a ‘freely responsible’ suicide decision under prison conditions and, if so, how access to medical suicide assistance and to lethal medication could be organized in the closed setting of a prison. These questions are all the more intricate as the prison system has so far seen its task exclusively in the prevention of self-harming behaviour by prisoners through psychological intervention and security measures. The presentation will discuss the challenges posed by these developments for the prison system and possible solutions.