



Federal Administrative Court  
Supreme Court  
(<https://www.bverwg.de/en>)

# Press release

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## **In extreme exceptional situations, access to narcotic drugs that allow painless suicide must not be refused**

The general right of personality under article 2 (1) in conjunction with article 1 (1) Basic Law (GG, *Grundgesetz*) also covers the right of a patient suffering from a severe and incurable disease to decide in which way and at what time to end his or her life, provided he or she can form a free will and act accordingly. This may, in extreme individual cases, lead to the conclusion that the state must not refuse access to narcotic drugs that allow the patient to commit suicide in a dignified manner and without pain. This was decided by the Federal Administrative Court (BVerwG, *Bundesverwaltungsgericht*) in Leipzig today.

The claimant's wife suffered from high-grade, almost complete paraplegia after an accident in 2002. She was paralysed from the neck down, needed artificial ventilation, and depended on permanent medical assistance and care. Frequent spasms caused strong pain. Due to this situation of suffering, which she experienced as unbearable and humiliating, she had the wish to end her life. She had discussed her wish to die with her husband, their daughter, the treating physicians, a psychologist, the nursing staff and a minister of religion. In November 2004, she applied for a licence from the Federal Institute for Drugs and Medical Devices (BfArM, *Bundesinstitut für Arzneimittel und Medizinprodukte*, hereinafter Federal Institute) to acquire a lethal dose of a narcotic drug. The Federal Institute rejected the application in December 2004, stating that a licence aimed at enabling a suicide is not covered by the objectives of the Narcotic Drugs Act (BtMG, *Betäubungsmittelgesetz*). In February 2005, the claimant and his wife travelled to Switzerland where she committed suicide with the assistance of an association for euthanasia. In February 2006, the Cologne Administrative Court (*Verwaltungsgericht*) dismissed as inadmissible the lodged action for declaration that the refusing notice had been unlawful and that the Federal Institute would have been obligated to grant the requested licence. The Administrative Court was of the opinion that the claimant did not have standing, as his own rights could not

have been infringed by the refusal of the licence requested by his wife. The appeal to the Münster Higher Administrative Court (*Oberverwaltungsgericht*) and the constitutional complaint to the Federal Constitutional Court (BVerfG, *Bundesverfassungsgericht*) were not successful. In its judgment of 19 July 2012, the European Court of Human Rights (ECtHR) held that the claimant had a right to examination of the merits of the case by the national courts, based on his right to respect for private and family life under article 8 of the European Convention on Human Rights (ECHR). In the proceedings that were resumed as a consequence of this decision, the claimant's request for a declaratory judgment was dismissed as unfounded by the previous instances, on the grounds that the Federal Institute correctly assumed that the requested licence had to be refused under the provisions of the Narcotic Drugs Act, and that this constituted neither an infringement of basic rights nor of the rights and freedoms under the ECHR.

Upon the claimant's appeal on points of law, the Federal Administrative Court amended the judgments given by the previous instances, and determined that the refusing notice issued by the Federal Institute was unlawful. In as far as the claim goes beyond this, the appeal on points of law was dismissed. The provisions of the Narcotic Drugs Act, as a matter of principle, do not allow the granting of a licence for acquisition of a narcotic drug in order to commit suicide. In view of the described right to self-determination, an exception from this is to be made in extreme cases for severely and incurably ill patients, provided that they have decided freely and earnestly to wish to end their lives due to their unbearable situation of suffering, and provided that they have no reasonable alternative - for instance in the form of an abortion of treatment under palliative medical care. They must not be prevented from access to a marketable and prescribable narcotic drug that allows them to commit suicide in a dignified manner and without pain. The Federal Institute would have been obligated to examine whether an exception such as this applied here. This examination is no longer possible after the death of the claimant's wife. Therefore, the matter could not be referred back to the previous instance for a further inquiry into the facts, nor was the Court able to determine that the Federal Institute would have been obligated to grant the requested licence.

### **BVerwG 3 C 19.15 - judgment of 2 March 2017**