

The state has a duty to allow an end of life in dignity behind prison bars

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1. Prison inmates may also make use of assisted dying

Based on the provisions of the European Convention on Human Rights (ECHR) and the Swiss Federal Constitution, the Swiss Federal Supreme Court has ruled that every person capable of judgement has the right to freely choose the manner and time of their own end in life (BGE 133 I 58 p. 67 E. 6.1; EGMR 31322/07; BGE 142 I 195 P. 200 E. 3.2). It is now recognised in Switzerland that persons deprived of their liberty may also make use of assisted dying.¹

In Switzerland, anyone capable of judgement may therefore assert their right to a self-determined dying process. If the person is incapacitated and there is a living will (advance decision/directive), this must be followed. This also applies in the event of the deprivation of liberty. However, no medical doctor can be forced to provide assisted suicide, nor can prison staff be ordered to do so. On the contrary: as part of the so-called special duty of care, prison staff have the task of warding off the harmful consequences of the deprivation of liberty for the prison inmates (article 75 para. 1 Swiss Criminal Code). This means that outside of the situation of a physician-supported assisted suicide, the prison staff must do everything in their power to prevent suicides or to provide first aid after suicide attempts and initiate immediate life-saving measures. However, an exception to this care, support and assistance obligation exists if a prison inmate has given the prison doctor and the prison management a living will which prohibits resuscitation or other life-prolonging medical interventions, and if the prison doctor, at the time the living will was deposited, had confirmed that the prison inmate in question had written it in a state of capacity (BGE 142 I 195 p. 213 E. 6).

2. The state must allow assisted dying in its institutions

According to the case law of the Swiss Federal Supreme Court, state institutions, i.e. institutions under public law as well as private institutions receiving state subsidies, must allow assisted suicide on their premises (BGE 142 I 195 p. 213 E. 6). However, state institutions have no obligation to provide assisted dying as the right to a self-determined end of life is a freedom to choose when and how one wants to die but it is not a subjective, i.e. enforceable legal title. By analogy, based on the above-mentioned supreme court case law, it can be deduced beyond doubt, according to the opinion expressed here, that prisons and penal institutions, as public institutions, must also allow assisted suicide on their premises. This applies regardless of whether the prisoner has already been convicted by a final judgement or has already served their sentence and is being held in detention. The right of prisoners to self-determination regarding the end of their own life must not be made dependent on their criminal status: such an extraneous restriction of patient autonomy would contradict the fundamental right to a self-determined end of life under the Swiss Federal Constitution and the ECHR, and it would unconstitutionally degrade the prison inmate to the status of an object of punishment or even of a desire for revenge.

¹ see, for example, “Neue Zürcher Zeitung”, 5/5/25: “[Jetzt ist der ‘Babyschänder’ René Osterwalder hinter Gittern gestorben – durch assistierten Suizid](#)” (“Now the ‘baby abuser’ René Osterwalder has died behind bars – by assisted suicide”); article behind paywall.

3. Poor prison conditions must not incite assisted dying

The Belgian case of Frank van Bleeken has shown that inadequate prison conditions for mentally ill offenders, or the lack of prospects for those in detention, can lead to a desire to end one's life by suicide. It is therefore always necessary to explore in depth whether the wish to die has not just been expressed because of inadequate prison conditions. Sufficient medical-therapeutic care and a prison regime that aims at intramural and extramural prisoner progression can make the wish to die fade away. This is impressively demonstrated by the case of van Bleeken. After this prison inmate was transferred to an institution specialising in treating his specific mental health disorder, he no longer expressed a wish to die. This case shows that the wish to die requires detailed and specialised medical exploration, particularly in the case of mentally ill patients.

4. Switzerland lacks secure, state-run care institutions for prison inmates

The current extremely restrictive release practice for violent or sex offenders undergoing inpatient therapeutic measures in accordance with article 59 of the Swiss Criminal Code, or in detention in accordance with article 64 of the Swiss Criminal Code, combined with the current legal situation and case law regarding a self-determined end of life, poses major challenges for the prison system and especially for prison staff. This is not least due to the rapidly emerging demographic trend which shows that the number of prison inmates over the age of 60 is increasing rapidly and steadily due to the long periods of imprisonment on the one hand and the increased number of new convictions of senior citizens on the other. From 2014 to 2023, 23 persons died of natural causes while in detention, which represents 51% of the causes for ending detention during this period. Even today, there is a lack of sufficiently adapted places for elderly prison inmates, secure forms of accommodation specialising in care and, in particular, secure places for intensive medical and/or palliative care and support. Finally, no prison yet has a dedicated room in which prison inmates can end their lives in a self-determined and dignified manner within a secure perimeter and by making use of an external assisted dying organisation and medical doctors.

The three Swiss regional prison concordats should therefore operate a prison ward specialising in elderly prisoners and offering sufficient security, as well as high-quality long-term, intensive and palliative care. Finally, these institutions must also enable life behind bars to end with dignity, regardless of whether or what type of assistance in dying is desired by the inmate concerned. If the state wants to keep people behind bars until the end of their lives, it must also provide comprehensive care and grant a dignified dying process.

The aphorism by Marie Freifrau von Ebner-Eschenbach which states that we must always learn and, at the end, even learn to die, is not only valid for us humans, but also for detention facilities.

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