Austria (2022-)

In a decision handed down on 11 December 2020, the Constitutional Court of Austria held that section 78 of the Criminal Code which provided that "*Anyone who induces another to kill himself or helps him to do so is punishable by imprisonment from six months to five years*", was unconstitutional in relation to the words "*helps him to do so*".

The Court claimed that this provision violated the right to self-determination and other rights under the European Charter of Human Rights.

The Court set an expiry date for the provision effective from 31 December 2021 to give the legislature the opportunity to make a law governing assisted suicide and euthanasia that was compatible with the (alleged) right to these means of ending one's life.

On 16 December 2021 the Parliament of Austria passed the Federal Law on the Establishment of Death Wills, effective from 1 January 2022.

Eligibility criteria

The new law will permit the prescription and supply of a lethal dose of sodium pentobarbital – or other lethal poison specified by regulation - to a person who either has a terminal illness likely to cause death in 6 months or a serious chronic illness.

Once a person has been examined by two medical practitioners – one of whom must have a qualification in palliative medicine – and assessed by them both as qualifying under the Law, the person can sign a "death will" with a notary. This must take place within 12 months of the second medical consultation.

The supply of the lethal poison authorised by a "death will" can, in the case of a terminal illness likely to cause death in 6 months, be made 2 weeks after the first medical examination and in the case of a chronic illness, 12 weeks after that examination.

The "death will" can specify persons who are authorised to assist the person end the person's life by ingesting the prescribed lethal poison – including by actively administering it, apparently even if the person loses decision-making capacity.

This makes Austria the first jurisdiction to legalise euthanasia by lay persons (non-health practitioners), including family members, of a person who is unable to self-administer the lethal poison or who has lost decision-making capacity.