

# Kirchen, Ärztekammern, Staat: Stirb langsam oder brutal!

Wegen § 216 StGB (Verbot der Tötung auf Verlangen), berufsrechtlicher Suizidhilfe-Verbote für Ärzte seit 2011 und § 217 StGB (Verbot der professionellen Suizidhilfe) ist es seit dem 10.12.2015 in Deutschland kaum noch möglich, sinnloses Leiden vor dem Tod mit Hilfe eines Arztes abzukürzen. Den religiösen Hintergrund des § 217 StGB und dessen Unvereinbarkeit mit dem Grundgesetz habe ich ausführlich in meiner – wegen angeblich mangelnder Betroffenheit nicht zugelassenen – Verfassungsbeschwerde dargestellt. Siehe [www.reimbibel.de/217.htm](http://www.reimbibel.de/217.htm) .

Die folgenden Texte entstammen meiner Beschwerde gegen Deutschland beim EGMR und folgen daher dessen strengen Vorgaben (6 Seiten in einem Formular und maximal 20 Seiten an zusätzlichen Erläuterungen). Wolfgang Klosterhalfen, Düsseldorf, 4.2.2018

**Aus der Beschwerde vom Januar 2018 von Wolfgang Klosterhalfen  
beim Europäischen Gerichtshof für Menschenrechte wegen § 217 StGB  
From the complaint of Wolfgang Klosterhalfen to the European Court of  
Human Rights because of § 217 of the German Criminal Code.  
(Jan. 2018)**

## E. Statement of the facts

Physician-assisted suicide has been banned in my region in 2011 by § 16 of the Northrhine Medical Association's Professional Code. Because of the new § 217 of the German Criminal Code, business-like support of suicide is not offered anymore anywhere in Germany. Being an Atheist, I wish to avoid long, severe and senseless suffering before I die. However, it cannot be excluded and even seems to be likely that § 217 will prevent me at the end of my life from dying in peace by committing a soft and secure physician-assisted suicide and will force me to continue to live and suffer or to decide for a preterm, lonesome and brutal suicide on my own which will unnecessarily harm others. See this form and annex 16, p. 142-148, nos. 4-18 for further explanations.

The decision of the German Federal Constitutional Court not to admit my complaint against § 217 because I was not concerned by this law, violates common sense, § 93a (2) of the law for this court and the Court's own jurisdiction. See this form and annex 16, p. 153-156, nos. 36-42 for further explanations.

---

On 29/11/1961, the German Federal Constitutional Court has decided that customers of shops were directly affected by a law on closing times. The law would act on the customers like a directly addressed order of law. See BVerfGE 13, 230 <232f> or annex 1, p. 2.

In 1989, the Protestant Church of Germany and the Catholic German Conference of Bishops have jointly declared that suicide cannot be approved. See [https://www.ekd.de/sterbebegleitung\\_sterbehilfe\\_4.html](https://www.ekd.de/sterbebegleitung_sterbehilfe_4.html) .

In 1992, the Roman Catholic Church has declared in its new catechism: „... *We are obliged to accept life gratefully and preserve it for his honor and the salvation of our souls. We are stewards, not owners, of the life God has entrusted to us. ... Suicide is contrary to love for the living God. ... Voluntary co-operation in suicide is contrary to the moral law.*“ See nos. 2280, 2281, 2282 of the catechism.

On 4/12/1995, in the case of Taura and 18 others v. France, the European Court of Human Rights has stated: *"In order for an applicant to claim to be a victim in such a situation, he must, however, produce reasonable and convincing evidence of the likelihood that a violation affecting him personally will occur; mere suspicion or conjecture is insufficient in this respect."* See <http://hudoc.echr.coe.int/eng/?i=001-87173> , p. 131 .

On 29/4/2002, in the case of Pretty v. The United Kingdom, the European Court of Human Rights has stated in § 65: *"The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the Court considers that it is under Article 8 that notions of the quality of life take on significance. In an era of growing medical sophistication combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity."*

On 7/10/2003, the German Federal Constitutional Court has decided that there is self-concernedness if the act addresses third parties and there is a sufficiently close relationship between the basic-right-position of the complainant and the regulatory action. See BVerfGE 108, 370 <384> or annex 1, p. 8.

On 26/9/2005, a section of the Swiss Organisation "Dignitas" was founded in Hannover/Germany. This caused an immediate protest of the Protestant Bishop of Hannover, Margot Käßmann, and the Christian Democrat Minister of Health of Lower Saxony, Ursula von der Leyen. In a joint press release they warned that there was a cynical tendency in society to get rid of the old and sick. See <http://bit.ly/2FuP4Vh> .

Also members of the German Hospice Foundation ("Deutsche Hospiz Stiftung", today: "Deutsche Stiftung Patientenschutz"), founded by the German section of the Roman Catholic Order of Malta, protested in front of the hotel, where Dr. Bernhard A. Minelli and others were just founding "Dignitate Deutschland" (today: "Dignitas Deutschland").

See <http://bit.ly/2zKlgk7> .

On 27/9/2005, the German Federal Constitutional Court has stated that the complainant's presentation has to show clearly the possibility of a violation of basic rights. The legal norm, blamed as unconstitutional, must change a position of the complainant to his disadvantage, which is protected by a basic right. The Court has also stated that the concernedness is present, if it is clear that and how the complainant will be concerned by the regulation in the future. The vague prospect alone that he will be concerned sometime in the future by the queried law is however not sufficient. The concernedness was also regarded as present, when the attacked norm causes material legal effects only in the future, but the group of addressees is known and it is clear in which way the complainant will be concerned. See BVerfGE 114, 258 <274-278> or annex 1, p. 9-11.

On 15/2/2006, the German Federal Constitutional Court has stated, that there is a direct concernedness, when without needing a further executive act the legal position of the complainant is changed. The chance that a complainant would be killed, because his airplane was hijacked and shot down, was considered by the Court to be likely enough for adjudicating self-concernedness. See BVerfGE 115, 118 <137> or annex 1, p. 12.

On 26/10/2006, the Protestant Church, the Catholic German Bishop's Conference and the Federal Chamber of Physicians („Bundesärztekammer“) declared in a joint press release that they disapproved any public toleration or support of institutionalized assistance of suicide („Suizidbeihilfe“). See <http://bit.ly/2j6YAHe> .

On 29/11/2007, the Berlin Medical Chamber declared to its member Uwe-Christian Arnold that he may not leave a deadly medicine to any of his patients who wished to use it for suicide. Otherwise, he should pay a fine of 50,000 Euro. See <http://bit.ly/2icbDmV>.

In 10/2008, the Chamber of Public Responsibility of the Protestant Church in Germany published a position paper of about 30 pages on physician-assisted suicide. In his preface, the chairman of the council of this church, Bishop Dr. Wolfgang Huber, declared in accordance with that position paper that the church should act upon politicians to get a ban on business-like relaying of opportunities for suicide, which includes a ban on organisations which offer suicidal assistance like in Switzerland.

See [https://www.ekd.de/ekd\\_de/ds\\_doc/ekd\\_texte\\_97.pdf](https://www.ekd.de/ekd_de/ds_doc/ekd_texte_97.pdf), p. 6.

On 15/7/2009, I became (and still am) a member of the International League of Non-Religious and Atheists ("Internationaler Bund der Konfessionslosen und Atheisten").

See annex 2, p. 14.

On 1/10/2009, Help to Die Germany ("Sterbehilfe Deutschland e.V.") was founded. They have reported that over a period of six years they have helped 254 persons to commit suicide. Its chairman is the former member of the Christian Democratic Union and former Senator of Justice of Hamburg/Germany, Dr. Roger Kusch. See annex 16, p. 149f, no. 23 and <http://bit.ly/2zXfahf>, p. 13-18.

On 20/1/2011, in the case of Haas v. Switzerland, the European Court of Human Rights has stated in § 51: *„In the light of this case-law, the Court considers that an individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention.“*

On 19/11/2011, the Physician's Chamber Northrhine („Ärzttekammer Nordrhein“), which is responsible for large parts of North Rhine-Westphalia, including Düsseldorf, the city where I live, followed the German Physician's Chamber („Bundesärztekammer“) in stating in § 16 of its Professional Code for Physicians that physicians may not perform assisted suicide.

See annex 3, p. 15f.

On 30/3/2012, the Administrative Court of Berlin decided that the Berlin Physician's Chamber is not entitled to put a general ban on its members (in this case: Mr. Uwe-Christian Arnold) to help a patient to commit suicide by prescribing medicine for this purpose. The Court has argued that in some cases of physician-assisted suicide there has been a highly controversial discussion among physicians. Also, in extreme cases the right of conscience and of professional freedom of a physician were of higher rank than the right of the chamber to regulate the corresponding activities of its members. See annex 4, p. 17 and <http://www.zvr-online.com/index.php?id=116>.

On 30/11/2012, Reuters reported: *“Large majorities of west Europeans favor the legalization of assisted suicide, now allowed only in four countries on the continent, according to a new survey. ... In almost all the 12 countries polled, three-quarters or more of those responding to questions posed by the Swiss Medical Lawyers Association (SMLA) said people should be able to decide when and how they die.”* In Germany, 87% agreed. Other polls in Germany have confirmed those data. See <http://reut.rs/2iS1s7R> and annex 5, p. 18.

On 16/1/2013, the German newspaper "Die Welt" reported that Eugen Brysch, the chairman of the Roman-catholic "Deutsche Stiftung Patientenschutz", has suggested to the Berlin coalition of Christian and Free Democrats to give up their attempt to ban only commercial suicidal help. Rather, to stop organisations which offer "death from the Yellow Pages", any form of organized suicidal help should be banned. According to Brysch there would be a majority for a ban of business-like organized suicidal help in the parliament.

See <http://bit.ly/2n2DEtc> .

In 3/2013, edition 7 of my critical book on the bible appeared: Wolfgang Klosterhalfen, O Gott: die Bibel! Bibelgeschichten in Form von Gedichten. See [www.reimbibel.de](http://www.reimbibel.de) .

On 27/1/2014, the Catholic German Bishop's Conference declared "with emphasis" in a press release that any form of organized assisted suicide should explicitly be forbidden by law. See <http://bit.ly/2zaOxHp> .

On 13/2/2014 the Scientific Service of the German Parliament finished its report on "Sterbehilfe Deutschland" and "Dignitas". See <http://bit.ly/2zXfahf> .

On 8/5/2014, the "Deutsche Stiftung Patientenschutz" presented a draft of a law for the punishment of business-like support of suicide ("Entwurf eines Gesetzes zur Strafbarkeit der geschäftsmäßigen Förderung der Selbsttötung"). This draft obviously served as a blueprint for the later § 217-draft of Brand, Griese and others. See <http://bit.ly/2dOhOao> .

On 12/5/2014, the State Attorney of Hamburg/Germany declared, that Dr. Roger Kusch and Dr. S. (a psychiatrist, who worked for Dr. Kusch's organisation) were charged with indirect killing two women. See <https://www.presseportal.de/blaulicht/pm/11539/2734060>.

On 29/9/2014, the big Protestant social organisation "Diakonie" (about 450,000 employees) declared: The "Diakonie Deutschland" engages for a general prohibition of organized, not only profit-oriented/commercial suicidal help ... . See annex 6, no.3, p. 19 and <http://bit.ly/2AZsFjQ> , p.3, no.3.

Starting on 13/11/2014, the German Parliament discussed assisted suicide. In those debates the following Members of Parliament have presented statements which indicate that for their later decisions on § 217 their religious belief or the opinion of their church was essential: Bareiß, Brehmer, Göring-Eckardt, Griese, Hirte, Jung, Kauder, Michalk, Lanzinger, Liebling, Lücking-Michel, Manderla, Michalk, Obermeier, Schmidt, Selle, Sendker, Sensburg, Spahn, Stauche, Weiß. See annex 11, p.49-54, section 2.8.2.

On 15/4/2015, two German professors have published a position statement, which has been signed by 150 professors of criminal law at German universities. They argued that a new criminal law could not improve the delicate situation at the end of life. Rather it would have negative effects on the work of physicians, including the highly sensible doctor-patient-relationship, and lead to brutal suicides. Also, a ban on physician-assisted suicide would violate the right of self-determination of patients, which had been strengthened in recent time. It would also violate the freedom of consciousness of physicians and would be unconstitutional. See <http://bit.ly/2iDaNzt> .

On 1/7/2015, the Brand/Griese-Draft of a new § 217 of the German Criminal Code was published by the German Parliament. See <http://bit.ly/2DOckUI> .

On 2/7/2015, the president of the big Catholic social organisation "Caritas" (about 600.000 employees), Prälat Dr. Peter Neher, declared in a press release: Urgently needed is a regulation, which prohibits business-like suicidal help. See annex 9, p.22.

On 6/11/2015, the German Parliament held its 2nd and 3rd reading on bills on suicidal help. Katia Keul (Green Party) stated that seemingly Mister Kusch was the reason for the whole debate. For more details on the importance of the person of Dr. Kusch for the process that lead to § 217 (sometimes called "Lex Kusch"), see annex 11, p. 43-45 and 86f.

On 6/11/2015, the German Parliament decided with 360 against 233 votes for a new criminal law ("§ 217 Strafgesetzbuch"), which bans the business-like support of suicide. Part 1 of this law says: *"Wer in der Absicht, die Selbsttötung eines anderen zu fördern, diesem hierzu geschäftsmäßig die Gelegenheit gewährt, verschafft oder vermittelt, wird mit Freiheitsstrafe bis zu drei Jahren oder mit Geldstrafe bestraft."* This means that anyone who

intends to support the suicide of another person and therefore helps this person to do so, will be punished with prison of up to three years or with a monetary punishment.

In 2015, due to the Federal Statistical Office of Germany, 925,200 people have died. Almost half of the women and about one quarter of the men were 85 years old or older. 39% died from cardiovascular diseases, almost one quarter from cancer. 10,078 persons committed suicide; the number of attempted but not "successful" suicides is usually estimated to be about 100,000 per year.

In 2015, 965 persons who lived in Switzerland died in Switzerland from assisted suicide. (Source: Swiss Agency of Statistics, 2017) Suicidal assistance is legal in Switzerland, if it is not done for selfish reasons.

On 2/3/2017, the German Federal Administrative Court has stated that the general right of personality from Article 2 (1) in connection with Article 1 (1) of the German Basic Law included also the right of a severely and incurable sick person to decide how and at which point of time his life should end, provided, that person is free in forming its will and can act accordingly. (Guiding principle of the decision No. 2, see annex 13, p. 138)

On 28/3/2017, Angelika Nußberger, vice-president of the European Court of Human Rights, said in an interview: "We have to prevent that states slide into undemocratic or even authoritarian forms of rule and individual rights don't count anymore." See <http://bit.ly/2ziJQrf>.

On 20/7/2017, the German Federal Constitutional Court has decided on my complaint (see annex 14, p. 139f): "The constitutional complaint is not accepted for admission. It does not fulfil the requirements for acceptance of § 93a Section 2 BVerfGG (Law for the Federal Constitutional Court). Because of a lack of direct (BVerfGK 8, 75 <76>; 15, 491 <502>) and present gravamen (BVerfGE 1, 97 <102>; 43, 291 <385 f.>; 60, 360 <371>; 74, 297 <319>; 114, 258 <277>) the complaint is inadmissible." (My translation and explanation of "BVerfGG")

On 3/8/2017 the New England Journal of Medicine has published an article on euthanasia and assisted suicide in The Netherlands, which are legal there under certain conditions since 2002. It is reported that in 2015, 4.5% of all deaths resulted from euthanasia, 0.1% of assisted suicide. See <http://www.nejm.org/doi/full/10.1056/NEJMc1705630> .

In 10/2017, the Parliament of Victoria/Australia passed a bill on assisted dying and voluntary euthanasia. See <http://bit.ly/2mUMN02> .

According to a poll published on 12/1/2018, less than 6% of the Germans regularly read in the bible: <http://bit.ly/2mu8D7h> .

## **F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

### *Article 2 of the Convention (Right to life)*

The new § 217 of the German Criminal Code may prevent me from finding professional suicidal help when needed and may therefore force me to commit suicide earlier than otherwise necessary, because unprofessional forms of suicide require more mental and physical strength than a physician-assisted suicide. This would violate Article 2 of the Convention. For further explanations see annex 16, p. 145-147, nos. 12-14.

### *Article 3 of the Convention (Prohibition of torture or inhuman or degrading treatment or punishment)*

Because the likelihood that I will die suddenly by a stroke, accident or an intense infection etc. is rather small (see annex 16, p. 142f, nos. 4-6), and I am not willing to continue my life in a permanent state of advanced physical or mental decrepitude, § 217 may force me

at the end of my life to live on against my will or to decide (against my will, earlier than necessary and in loneliness) for a frightening, cruel, potentially unsafe and potentially painful form of suicide, which will have unnecessary detrimental effects on others. This law prevents me from making arrangements with professional suicide helpers and may prevent me from receiving professional suicidal assistance. Therefore, it is an inhuman and degrading treatment which violates my rights from Article 3 of the Convention.

For further explanations see annex 16, p. 144-148, nos. 8-18.

*Article 8 of the Convention (Right to respect for private and family life)*

Even after the "Ärzttekammer Nordrhein" banned physician-assisted suicide in 2011, I could still get suicidal help from a physician if I wished to commit suicide for reasonable grounds. I could either become a member of "Sterbehilfe Deutschland" or try to contact a physician with experience in suicidal help, who lived in an area of Germany with less restrictive professional rules than in my region. However, this situation has changed dramatically after the new § 217 became effective. Because of § 217, "Sterbehilfe Deutschland" and probably all persons who had repeatedly offered suicidal help have stopped doing so.

As a first and immediate consequence, my right of private life has been violated, because I must now live on with the fear, that I may come into an irreversible situation of helplessness and suffering, from which I cannot escape by a physician-assisted suicide. As a second, delayed and even more dramatic consequence, my fear may come true. § 217 may violate my rights from Article 8 (1) by forcing me to choose between two horrible alternatives: a) to continue life and suffering against my will or b) to decide against my will for a non-professional, brutal method of suicide.

In their draft of the new § 217, Brand, Griese and other Members of Parliament have argued on page 2 that through the existence of organized suicidal aid, old and/or sick people could be misled or even feel directly or indirectly pressed to commit suicide, a decision which they would not consider or even make without such offers. This speculation, for which no empirical evidence has been presented, has served in the Brand/Griese-Draft as the major reasoning for § 217.

It has not been stated clearly in this draft who shall be protected. Old and/or sick people may decide for suicide for rational reasons and are free to do so. Protection is needed and justified only for those who cannot form their own will. But any inducement to commit suicide was already punishable in Germany as murder or killing before the new § 217 became effective. Therefore, the potential benefits of § 217 are highly questionable.

Also on page 2, Brand et al. have stated that they wanted to stop a normalization of any organized forms of assisted suicide. Indeed, there are good reasons to expect that more and more people will prefer an assisted suicide to a continuation of their suffering or a brutal suicide. But as long as those people are capable of coming to well-considered decisions, it is against the German Constitution and the Convention to prevent them by a criminal law from doing so. The existence of organized suicidal help may have an influence on people's attitude towards suicide. But in a democracy, the churches, journalists, physicians, relatives, friends and others may also influence people's opinion on that controversial matter. The authors claim that § 217 is necessary to protect self-determination. It is, however, not a task of the German State to protect old and/or weak people against offers of suicidal help because those offers are rejected by the churches, many physicians and a minority of citizens.

My allegation that § 217 violates my rights from Article 8 (1), has many flaws and is not justified by Article 8 (2), is explained in more detail in annex 16, p. 142-153, nos. 2-35.

*Article 13 of the Convention (Right to an effective remedy)*

The Federal Constitutional Court has claimed, my complaint did not fulfil the admissibility criteria of § 93 a (2) of the Law on the Federal Constitutional Court (see annex 14, p. 139f). This is not true. § 93 states:

“(1) A constitutional complaint shall be subject to admission for decision. (2) It shall be admitted a) in so far as it has general constitutional significance, b) if it is appropriate in order to enforce the rights referred to in § 90 sec. 1; this may also be the case if the complainant would suffer a particularly severe disadvantage if the Court refused to decide on the complaint.” See <http://germanlawarchive.iuscomp.org/?p=221> .

My complaint is of general constitutional significance because it a) questions whether the aims of § 217 justify severe restrictions on citizens’ self-determination, causing extremely severe disadvantages, and b) presents strong evidence for the allegation that § 217 discriminates citizens who do not reject suicide for religious reasons, but see it as an indispensable part of their self-determination.

Also, I have explained to the Court that my rights from articles 1 (1), 2 (1), 2 (2), 3 (1), 3 (3), 19 (1), 19 (2), 33 (3) and 38 (1) of the Basic Law have been violated (see annex 11, p. 119-125). According to § 90 (1) each of those violations gives me the right to submit a constitutional complaint. Further, the Court has claimed my gravamen was not direct (not „unmittelbar“). However, the Court has stated in BVerfGE 13, 230 <232f> (see annex 1, p. 2) that a law on closing times of shops has a direct effect on their customers. Also, the Court has stated in BVerfGE 50, 290 <320f> (see annex 1, p. 5) that the possibility of self-concernedness, which cannot be excluded, was sufficient for assuming self-concernedness, that it was not necessary to be formally addressed by a law, that it was not critical, whether the effects of the law occurred soon or later in time.

Since the main detrimental effect of § 217 may only occur at the end of my life, it is inadequate that the Court insisted on a gravamen at the present time. There is a great likelihood that I will not die suddenly, but become permanently so sick or weak, that I wish to end my life in a humane way by an physician-assisted suicide, but will be prevented by § 217 from doing so. Therefore, I should have had the right to be heard by the Court. My allegation that the Court’s rejection of my complaint was not justified is explained in more detail in annex 16, p. 153-156, nos. 36-42.

*Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention  
(Prohibition of discrimination)*

*Article 9 of the Convention (Freedom of thought, conscience and religion)*

Both the Protestant (Lutheran, Evangelic) and the Roman-catholic Church traditionally regard human life as a “present of God”, which may not be ended by suicide. From 2005 on, business-like suicidal assistance has been rejected by high-ranking representatives of those churches. The churches and later also important church-associated organizations like Caritas and Diakonie have asked the German Parliament to ban any business-like support of suicidal help. The Parliament has followed those demands and finally 360 of its members (326 Christians, 5 Muslims, who confess to Islam, 27 persons with unknown confession, two confession-free persons and zero Atheists) have voted for a new § 217.

Largely on the basis of their conservative religious attitude towards suicide, a minority of powerful Germans has succeeded in establishing a law, which exclusively threatens citizens, who don’t share this attitude and wish to have the right to provide or receive business-like suicidal assistance. Believers who think that nobody has a right to end his or her life by suicide don’t decide to offer or wish to receive suicidal assistance and therefore have no disadvantage from § 217. In contrast, § 217 discriminates against me and the majority of Germans because of my/their religious, philosophical and political view on human life and

society, in which individual freedom, self-determination and the desire to avoid senseless suffering play a central role. The religious norm “Die in accordance with the (presumed) will of God!” has been forced on me and others.

For more details see my German complaint (annex 11, p. 28-60) and annex 16, p. 156-161, nos. 43-60.

### **G. Compliance with admissibility criteria laid down in Article 35 § 1 of the Convention**

**For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.**

On 7/12/2016, I sent my complaint against the new § 217 of the German Criminal Code to the Federal Constitutional Court of Germany. For copies of this complaint see annex 11, p. 24-133 and <http://bit.ly/2AD8dCc> . On 20/7/2017, the Court has decided that my complaint (2 BvR 2507/16) was inadmissible and its decision incontestable.

See annex 14, p. 139f). I received this decision on 26/7/2017 (see annex 15, p. 141).

In my complaint I asked the Court to examine whether § 217 also violates protective norms of the European right (see annex 11, p. 1, section 4). I claimed that § 217 may violate inviolable and inalienable human rights. See annex 11, p. 121, section 7.2.

#### *Violation of Article 2 (Right to life)*

I complained about a violation of my right from Article 2 of the Convention by referring to Article 2,2,1 of the German Basic Law and stating that I wished to avoid a long and severe suffering before I die and would presumably prefer to commit suicide. Because any suicidal assistance has been banned in my region in 2011 by the Medical Association’s Professional Code and since 12/2015 also § 217 bans business-like suicidal assistance, I might be forced to commit suicide before I got too weak to do so without a physician’s assistance. Therefore, § 217 would take away time from my life, which would not be compatible with my right of life. See annex 11, p. 121, section 7.4 a).

#### *Violation of Article 3 (Prohibition of inhuman or degrading treatment)*

I complained about a violation of my right from Article 3 of the Convention by referring to Article 1,1 of the German Basic Law: Human dignity shall be inviolable. See annex 11,p. 119f, section 7.1.

I also complained about a violation of Article 2,1 (every persons’ right to free development of his personality). See annex 11, p. 121, section 7.3. I further complained about a violation of Article 2,2,1 (right of physical integrity) and stated that § 217 might force me to live and experience extreme physical and mental suffering. See annex 11, p. 98f, section 7.4 b). I further complained about a violation of Article 2,2,2 (inviolable freedom of the person), because § 217 a) prevents me from undertaking precautionary measures (arrangements with an experienced helper or an organisation), b) forces me to live with the anxiety not to find competent help when needed, and c) may prevent me from getting help from an experienced helper or organisation when needed for a well-considered suicide. See annex 11, p. 122, section 7.5.

#### *Violation of Article 8 (Right to respect for private and family life)*

I complained about violations of my right from Article 8 of the Convention to decide when and how to die by referring to Article 8 of the Convention and a statement of the European Court of Human Rights in the case of Haas v. Switzerland (see annex 11, p. 121, section 7.2). Also, I complained about violations of the related Articles 1,1 and 2,1 and 2,2,2 of the German Basic Law.

#### *Violation of Article 13 (Right to an effective remedy)*



In Germany, my only possibility to defend my rights against § 217 was to send a complaint to the German Federal Constitutional Court. After the Court did not admit my complaint, no remedy is available in my country.

*Violation of Article 14 and Protocol No. 12 (Prohibition of discrimination)*

*Violation of Article 9 (Freedom of thought, conscience and religion)*

I complained about violations of my right from Articles 14 and 9 of the Convention by referring to three articles of the German Basic Law: Article 3,1 (All persons shall be equal before the law. See annex 11, p. 122, section 7.6), Article 3,3 (No person shall be favoured or disfavoured because of ... faith, or religious or political opinions. (see p. 99f, section 7.6), Article 33,3 (No one may be disadvantaged by reason of adherence or non-adherence to a particular religious denomination or philosophical creed. (see p. 124f, section 7.10) and Article 38,1 (Members of the German Parliament ... shall be representatives of the whole people, not bound by orders or instructions, and responsible only to their conscience.) See p. 125, section 7.11. I have presented evidence that a) § 217 has been driven by the churches, church-associated organisations and an informal coalition of Christian plus Islamic Members of the Parliament. See annex 11, chapter 2, p. 28-60. And I have argued that § 217 does not cause a disadvantage for people who share the churches' religious attitude on suicide or professional suicidal help, but may cause severe disadvantages to people who are less orthodox believers or disbelieving. See annex 11, p. 123, section 7.7.

#### **.I. List of accompanying documents**

- .1. Relevant pages from the two collections of decisions of the German Federal Constitutional Court (BVerfGE and BVerfKG)
- .2. Confirmation that the complainant became a member of the International League of Non-Religious and Atheists (15/7/2009)
- .3. Two pages from an announcement of the Physicians's Chamber Nordrhein, which include the prohibition of physician-assisted suicide by a new version of § 16 (19/11/2011)  
[https://www.aekno.de/page.asp?pageID=57#\\_16](https://www.aekno.de/page.asp?pageID=57#_16)
- .4. Press release of the Administrative Court Berlin: Decision in the case Uwe-Christian Arnold v. Chamber of Physicians Berlin (30/3/2012) Decision of the Court:  
[www.zvr-online.com/index.php?id=116](http://www.zvr-online.com/index.php?id=116)
- .5. Poll by Isopublic: 87% of the Germans find that everybody should decide himself, when and how he dies. (24/9/2012-9/10/2012) <http://bit.ly/18v6caB>
- .6. The "Diakonie Deutschland" engages for a general prohibition of organized, not only profit-oriented/commercial suicidal help (29/9/2014) <http://bit.ly/2rsC3bE>
- .7. Report on a poll of the Second German Television ("Zweites Deutsches Fernsehen") and the Daily Mirror ("Tagesspiegel"): 81% of Germans are in favour of physician-assisted suicide (10/2014) <http://bit.ly/116dLlc>
- .8. Poll by Infratest/Dimap for the First German Television ("Erstes Deutsches Fernsehen"): 79% of Germans are in favour of physician-assisted suicide (10/2014)  
<https://www.presseportal.de/pm/7899/2848032>
- .9. The Catholic organisation "Caritas" demands to prohibit business-like suicidal help (2/7/2015) <http://bit.ly/2mV3Goc>
- .10. Top-50 causes of death in Germany among 80 to under 85 years old men (2015)  
<http://bit.ly/2mVDKZJ>

- .11. My complaint to the German Federal Constitutional Court against the new § 217 of the German Criminal Code (110 pages, 6/12/2016) <http://bit.ly/2AD8dCc>
- .12. My challenge on grounds of bias against judge Peter Müller, member of the 2. Senate of the German Federal Constitutional Court (1/3/2017) <http://bit.ly/2DFQJGw>
- .13. German Federal Administrative Court: Guiding decision No. 2 on the right to decide how and when to die (2/3/2017) Decision of the Court:  
[www.bverwg.de/entscheidungen/pdf/020317U3C19.15.0.pdf](http://www.bverwg.de/entscheidungen/pdf/020317U3C19.15.0.pdf)
- .14. Decision of the 2. Chamber of the 2. Senate of the German Federal Constitutional Court on my complaint against § 217 (2 BvR 2507/16, 20/7/2017) <http://bit.ly/2FYISF3>
- .15. Accompanying letter of the German Federal Constitutional Court (2 BvR 2507/16, 25/7/2017)
- .16. Supplementary information and explanations provided by the applicant  
[www.reimbibel.de/Annex16.pdf](http://www.reimbibel.de/Annex16.pdf)

Note: The links provided in this section have been added by W. Klosterhalfen on 21/1/2018. They were not part of the complaint to the ECtHR.

### **Any other comments**

**Do you have any other comments about your application?**

The „margin of appreciation“ which the European Court of Human Rights concedes to the national authorities in Europe is exceeded, when a state prevents citizens from practicing their right to decide when and how they die. This is especially true for Germany, where the morals of the churches with respect to suicide and suicidal assistance are not shared by the majority of the population and about 80 percent of the citizens want physician-assisted suicide to be legal. I am afraid that even in the case of extreme and hopeless suffering I will have to live on or to decide for a brutal form of suicide.

## **Annex 16: Supplementary information and explanations provided by the applicant**

1. My complaint against § 217 to the German Federal Constitutional Court is available as Google-translations. See my homepage: [www.reimbibel.de/217t.htm](http://www.reimbibel.de/217t.htm) .

2. Since 12/2015 I live with the fear and the expectable risk that because of an accident, a chronic disease or decrepitude I might come into a desperate long lasting state of weakness, helplessness, senselessness and boredom, anxiety, depression and anger, from which I could not escape by an assisted suicide. It has been clear to me for a long time that I would not wish to live on in such a hopeless situation and that I would need professional suicidal assistance, which I consider to be the only humane and secure form of suicide. In contrast to Switzerland, where more than 100,000 people have joined EXIT, I cannot reduce my fear by becoming a member of an organisation, which would help me to shorten my suffering by

suicide. Also, it would not make sense to ask an experienced single physician whether he would help me despite § 217. This fear may accompany me until the end of my life and reduces its quality.

**3.** Suicidal assistance by a non-professional helper (according to § 217, section 2) would not give me access to a humane and secure form of suicide. For this I would need an anti-emetic drug, a lethal drug (like pentobarbital or chloroquin) and in the case of chloroquin also a tranquillizer, which all have to be prescribed by a physician. Or I might even need a special apparatus, which starts an deadly injection, when I move my eye-lids or a finger. Arrangements for such help have to be made early enough and need an expert. Right now, I don't know any physician, psychiatrist (to evaluate my mental status) or other person, who could help me to commit a soft and secure suicide. § 217 prevents that this will change to the better.

**4.** A law which threatens professional suicide helpers has terrible consequences for people who wish to receive and irrefutably need professional suicidal help (usually from a physician). Provided that § 217 will not be repealed soon, I believe that there is a chance of clearly more than 50 and probably more than 70 percent that I will become a victim of § 217 also at the end of my life.

**5.** In Germany, most people die slowly by a chronic disease or a combination of diseases. Almost half of them are at least 90 years old. See <http://bit.ly/2j4fLG8> . As annex 23 shows, taken from an interactive internet page of the German state, [www.gbe-bund.de](http://www.gbe-bund.de), the chances of dying suddenly have been rather small in 2015 for 80 to under 85 years old men. From a total of 77.504 men, 62.602 (80.8%) died from one of the top-50 lethal events, including 4,558 men (5.9%), who died from an acute heart attack, and 1569 (2.0%), who died from atrial flutter or fibrillation. Other reasons for a sudden death were stroke (1,370, 1.8%), brain infarct (1,355, 1.7%), intracerebral bleeding (792, 1.0%) and brain injury (600, 0.8%). From other tables of [gbe-bund.de](http://www.gbe-bund.de) I learned that 1,706 died from one of several different types of accidents. When 510 suicides are subtracted, 1,196 (1.5%) are left. This sums up to 14.7 percent plus deaths from more rare diseases and events plus further diseases in the top-50, which – like infections – may sometimes lead to death within a few days. Those data indicate that my chances of dying suddenly are probably smaller than 30 percent.

**6.** When an old person is diagnosed as having died suddenly, it cannot be excluded that this person has suffered severely for a month or more before dying because of a strong impairment of physical and/or mental health. It seems clear that most people suffer severely before they die.

**7.** On the other hand, official rates of suicide are quite low in Germany even among old people. Reasons for this may include a) a strong will to live, b) a fear of dying, c) personal relationships, d) religious reasons, e) unwillingness or inability to use a brutal method of suicide, f) no access to professional suicidal assistance, g) permanent unconsciousness, h) (partial) palliative sedation, reasons which don't enter the statistics like i) termination of (part of) medical treatment, j) voluntary abandonment of eating and drinking, k) undetected suicide with or without assistance from a physician or a relative and l) undetected killing with or without request by a physician or a relative.

**8.** I still wish to live and would prefer to die without a suicide. However, it is more likely than unlikely that I will come into a situation, in which I would prefer to die. A major reason could be that I wish to avoid a situation from which I could not escape anymore by suicide. Being tied to the bed all the time and thinking of my past life, my horrible present and future situation and the – to a great extent horrible - world in general without having real pleasure or meaningful work, would be a form of heavy, unacceptable torture for me. My father died from cancer and did not receive adequate pain relief (which still happens today). My mother became disoriented, fell down and suffered from a fracture of the femoral neck and presumably died from a series of apoplectic strokes. My sister died from Parkinson's disease and had lost her ability to speak long before she finally died. My sister-in-law and my brother killed themselves in 2014 and in 2015 by means of a train. I wish to avoid to die as awfully as they did.

**9.** The typical reasons, which prevent others from committing suicide, don't prevent me for: a) I would not hurt or otherwise interfere with a partner's feelings, because I live alone since many years and don't expect that this will change, b) my only child is 38 years old and does not depend on me, c) I don't believe in a church

or a god, who want me to die slowly, d) I am not afraid of thinking of dying and death. I wish to die in dignity.

**10.** In order to commit suicide without professional help, I would have to choose one of the brutal methods, because other methods seem to be unreliable and would only aggravate my situation if not successful. This is documented by the fact that in Germany about 100,000 persons per year use an insufficient method and survive their attempts to commit suicide. One soft method of suicide, which seems to be fairly (though not perfectly) reliable, is to use a charcoal-grill in a closed room. But such a fire could cause an explosion or fire, and would be life-threatening to others. I could not fix a warning sign at the door of my apartment, because the people who live in apartments one floor above me, may come home late at night. (There is no elevator.) Also, this method requires that I still could leave my bed and that I don't live in a retirement home or nursing home.

**11.** For a long time I considered to use a plastic bag. However, I am not sure that this would work without much suffering during suffocation. Also, I have been told by an expert that my face would become blue and thus would additionally shock people who find me. Furthermore, it could be impossible or risky to use this method when living in a home for old people. I might be rescued and survive with a brain damage.

**12.** About half of the men who die from suicide hang themselves. To be killed immediately, it seems necessary to fall down at least two meters and then not to touch the ground. This means that I'd have to climb up a tree and/or carry with me a big ladder. To do this, I'd need to be still in relatively good shape. I doubt, if I'd be capable of doing so. Jumping from a bridge or high building also has to be done before I got too weak. I'd have to drive to a very high bridge with my car and to climb over a handrail. There is a high building in my neighbourhood, in which many children from immigrants live. If I jumped at night, a child might find my dead body in the morning. Therefore I would prefer the bridge, but don't know if I would be mentally able to jump. Desperate enough, I might try to get a pistol for shooting myself. This would also require a certain degree of mental and physical power and could not be done in a very weak state. About one kilometre from my home, I would have access to a

rail track, if I still could walk. Of course, I don't wish to use this terrible method. But I might feel forced to do so. As one of about 800 a year.

**13.** I assume that I would prefer to live rather than kill myself even in a state of advanced physical weakness. But because of § 217 I might come to the conclusion that it will be too risky for me to postpone suicide. I am very aware of the fact that there are a lot of people, associations, commercial and non-commercial interest groups in Germany, who for religious, financial or other selfish reasons might try anything to keep me alive against my will for months or even years. It is for example not rare, that patient's provisions are ignored. Therefore, I might feel forced to decide for one of the brutal methods of suicide much earlier than if I were sure of the possibility of an assisted suicide. I find it shocking and unacceptable that by means of § 217 the German state might steal time of my life and force me to commit suicide earlier than otherwise necessary.

**14.** Because of § 217, it became impossible for me to become a member of Dignitas/Switzerland, see <http://bit.ly/2FHN8st> . But in any case, for receiving suicidal assistance in a foreign country, I would be forced to end my life earlier than necessary and spend a lot of time, energy and money on arranging this. Problems that may arise for British people who join Dignitas have been described here: <http://bit.ly/2BTinCH> .

**15.** It is quite possible that I wouldn't dare to kill myself by means of a brutal suicide or that I'd suddenly come into a state of helplessness, which prevents me from committing suicide. Because of § 217 potentially I'd have to live on under conditions which I consider to be inhuman and degrading. Examples would be a strong and irreversible decay of sensory, motor or cognitive functions, strong pain with the necessity of permanent sedation, incontinence, bedsores, frequent vomiting or even miserere, artificial nutrition or respiration, inability to engage in satisfying activities such as reading or writing or combinations of such health problems, which frequently occur at the end of life and can become as horrible as torture. § 217 may bring me into such an awful situation. I consider this kind of legal suicide prevention to be inhuman and therefore unconstitutional.

**16.** Furthermore, § 217 may degrade me by forcing me to become criminal: for instance buying a pistol in a non-legal way from a criminal and/or traumatise a train driver or neighbours and others, who find my corpse after suicide or have to deal with it later. I would find it also degrading, if I were forced to spend a lot of my saved money for my care, although I wished to die. I would definitely prefer to leave that money to my son.

**17.** § 217 violates my right from Article 8 (1) to decide when and how I die. § 217 may force me a) to die earlier than I wish, b) to use a brutal rather than a humane method of suicide, c) to die in the absence of my son or a friend, or d) to live longer than I wish and suffer unnecessarily for months or years.

**18.** While it still seems possible that a small number of German physicians might still perform assisted suicide, it will probably not be possible for me to find such a person because a) those physicians will be rare and b) physician-assisted suicide is forbidden by medical professional law in the region where I live.

**19.** The fact that possible main violations of my rights from Article 8 have not occurred so far and may occur not earlier than in ten years or even later, make those violations neither just nor reasonable. The fact of a chance of up to 30 percent that I never will actually wish to receive professional suicidal help is not sufficient to disregard the violation of my rights from Article 8.

**20.** In a modern liberal-democratic society it is to be expected that the legal situation will adapt to an increasingly liberal attitude of the population towards suicidal assistance, but not that this will be counteracted by the legislator. Also, it is not necessary to violate Articles 2, 3, 8, 9 and 14 of the Convention to prevent an abuse of organized suicidal help. For a more detailed critique of § 217, see my German complaint (whole annex 11, especially p. 76-112).

**21.** Members of the German Parliament have been afraid that physician-assisted suicide may become “normal”. However, such a “normalisation” would be a necessary progress in humanity, because many people would not be forced at the end of their lives to use unreliable or brutal methods of suicide or to suffer

unnecessarily and against their will. Recent data from Switzerland and from The Netherlands show that there is a great need for abbreviating the suffering at the end of life. In 2015, 965 persons who lived in Switzerland died in Switzerland from assisted suicide. This would correspond to about 9.400 cases in Germany. The Dutch cases of euthanasia in 2015 (4.5% of all deaths, <http://bit.ly/2D5cX4K> ) would correspond to about 40.000 cases in Germany. The numbers from “Sterbehilfe Deutschland” (never more than 600 to 700 members, a peak of 92 cases of assisted suicide in 2015) indicate a very different development in Germany.

**22.** The fear of Brand, Griese and others that especially old and/or sick people could be enticed or feel pressed by offers of business-like suicidal help to commit suicide, might to a considerable extent be pretext and does not justify violations of Article 8. Mentally incompetent people usually don't look for and find an organisation or specialist which/who would assist them in suicide. There is no evidence that this has really happened in Switzerland (see [bit.ly/2m3ocTg](http://bit.ly/2m3ocTg), p. 8-11), Germany or the United States, where such offers have been made and used over several years by a great number of people. Why should somebody do something he doesn't wish to do? Nobody buys a car or goes to a massage-salon only because cars and massage are offered in a business-like manner. Why should somebody change his or her mind on suicide only because suicidal assistance is offered? The main reason to accept such an offer is the availability of a humane (as opposed to a brutal) method of suicide rather than a general change in attitude towards suicide, which was induced by public offers of suicidal help.

**23.** On 5/5/2014, the State Attorney of Hamburg has accused Dr. Roger Kusch and his associate Dr. Johannes Spittler, a psychiatrist, of having indirectly killed two women. But the “Landgericht Hamburg” has concluded – five weeks after § 217 passed the Federal Parliament – that it was not very likely that the women have not been free in their will to die. See [bit.ly/2jWWG9T](http://bit.ly/2jWWG9T). This case may have influenced many parliamentarians to vote for § 217 (see for example annex 11, p. 45). The “Landgericht Hamburg” has just published its acquittal of Dr. Spittler, which included a careful analysis of the assisted dying of the two women, which shows that the accusations against Dr. Kusch and Dr. Spittler were not justified: <http://bit.ly/2qE4lQ7> .



**24.** § 217 has not been well prepared by the Parliament. There was no workgroup, which carefully analysed the German and the international situation with respect to assisted suicide. Neither have the leaders of Dignitas or “Sterbehilfe Deutschland” or the physician Uwe-Christian Arnold been heard, nor have EXIT or similar organisations in the United States been asked about their experiences. The German Ethics Commission has offered on 18/12/2014 not much more than its concern on normalisation and an enticement of the weak. See <http://bit.ly/1E12hR4> .

**25.** Since 1871, suicide is not punishable in Germany. As a consequence, any suicidal assistance was not illegal. § 217 circumvents this reasonable and logical tradition by constructing a special crime, in which not the act itself is criminal, but its assumed (but never observed) potential effect on old and/or sick people.

**26.** According to Article 19,1,1 of the German Basic Law, “the law [that restricts a fundamental right] must specify the basic right affected and the Article in which it appears”. See <http://bit.ly/2yLf7mr>. The Brand/Griese-Draft has a short section on p. 15f on the consequences of the law (“Gesetzesfolgen”). There is no word in this section on a violation of basic rights. According to Article 19,2, “In no case may the essence of a basic right be affected”. With the exception of the freedom of occupation and conscience, there is no word in the draft, that the essence of the Basic Law – the protection of individual liberty – is violated by § 217. Neither violations of Articles 1, 2 and 3 of the Basic Rights nor violations of Articles 2, 3, 8, 9 and 14 of the Convention have been mentioned. Also, the law does not differentiate between mentally incompetent and mentally competent people. The law could have made a psychiatric evaluation obligatory and banned only business-like suicidal assistance provided to mentally incompetent persons.

**27.** § 217 increases the risk that people will be mentally hurt by being confronted with dead persons who killed themselves in a brutal manner. § 217 even increases the risk that uninvolved people will be violated or killed because of deliberate accidents, fires or explosions.

**28.** The term “business-like” is misleading. It suggests in the usual common understanding that it is only about cases where money was earned. Business-like suicidal assistance has often been criticised by stating that “business with death” was immoral. For example, chancellor Merkel said on 19/6/2015 to a large assembly of the Protestant workgroup of the Christian Democratic and the Christian Social Union, that there should be no business with death and dying. See <http://bit.ly/2jY7C77>, p.4. Many Members of Parliament may have thought that § 217 bans only commercial suicidal assistance and that this would have been necessary. It was not necessary, because taking excessive sums of money from people who are in great need was already punishable by § 291 of the German Criminal Code.

**29.** The German state should rather care about over-therapy at the end of life (see Matthias Thöns: “Patient ohne Verfügung”), which contributes to the reasons why people may prefer suicide to waiting for a “natural” death. Over-therapy is indirectly supported by § 217.

**30.** The term “business-like” is unclear. However, legal clarity is a constitutional requirement and a criminal law should give a clear signal to everybody. The term means that there is an intention of repeating the act. But physicians practically always act in a business-like manner and repeat what they have done when confronted with a similar case. An oncologist who has performed suicidal assistance will be inclined to do that again, when the next similar patient asks him. According to § 217 he could even be punished, when he did it for the first time (see Brand/Griese-Draft, p. 21, section 2). Not surprisingly, of the physicians and nurses who answered a questionnaire on § 217, “54% felt that the law did not sufficiently differentiate between an illegal form of assisted suicide and a form exempt from prosecution.” See <http://bit.ly/2yll9UN> .

**31.** Relatives and related persons, who perform direct suicidal assistance and therefore suffer from the cruelty of the suicide, also become victims of § 217, if the suicidal person would have preferred professional suicidal assistance, but could not get it.

**32.** § 217 prevents suicidal people to talk to physicians, who perform suicidal assistance or work for an organisation like EXIT. § 217 may also reduce the number of open talks about suicide in

normal doctor-patient-relationships. Thus, § 217 may prevent suicide prevention by such talks.

**33.** The German lawmaker has not tried to control and evaluate private and organized suicidal assistance by a criminal or administrative law, which makes it obligatory to report to state authorities on any suicidal help. By this the German state could have learned about problems and desperation at the end of life.

**34.** § 217 has been intensely defended in the German Parliament, the Brand/Griese-Draft and the media with suggestions and plans to expand offers of palliative therapy. This “argument” failed from the start. According to Eugen Brysch, only a minority of those who need palliative care in Germany (533,000), can get it (90,000): <https://bit.ly/2Bk2yBx>. And usually palliative care is only provided for a short period of time. In general, I would prefer an assisted suicide to a prolongation of a highly restricted life under palliative care or sedation.

**35.** The flaws of § 217 have been described in legal journals by Duttge; Grünewald; Hecker; Hilgendorf; Hoven; Roxin; Weißer. Jacqueline Neumann has explained why § 217 cannot be interpreted in jurisdiction in a way which is compatible with the German Basic Rights or the Convention: <http://bit.ly/2D6V3hV> .

**36.** The German Federal Constitutional Court has stated on its internet page and in many of its decisions, that an individual complainant has to be concerned himself (“selbst”), directly (“unmittelbar”) and presently (“gegenwärtig”) by a legal act. However, for good reasons the Court has made exceptions from this rule. According to those exceptions, my gravamen is direct and present (see below).

**37.** In the cases of BVerfGK 8, 75 <76> (see annex 1, p. 7) and BVerfGK 15, 491 <502> (see [bit.ly/2prnX9y](http://bit.ly/2prnX9y)) the complainants erroneously thought they could be punished according to the law which they attacked. Therefore, their complaints were not admitted. In contrast, I have argued for good reasons that I could be punished by § 217 for helping an acquaintance to commit suicide. And I wrote that I wanted § 217 to be abolished so that I could legally help acquaintances to commit suicide. See annex 11, p. 115, 5.10.

**38.** Because many people know (because of personal contacts or my activities in the internet) that I have a positive attitude towards well-considered assisted suicides, the chances that I might (repeatedly) help a person to commit suicide and will then be punished according to § 217 are more than only theoretical. In BVerfGE 115, 118 <137>, see annex 1, p. 12, the Court has stated a) that an own and present concernedness is always given, when the complainant explains that there is some likelihood (in this case: to be shot down in the future in a hijacked airplane) that consequences of the attacked regulations affect him in his basic rights, and b) that direct concernedness is given, when – like in my case - no further administrative act is necessary to change the legal position of the complainant. In BVerfGE 50, 290 <320>, annex 1, p. 5, it was sufficient, that a self-concernedness could not be excluded. Therefore my fear that I might be punished according to § 217 is not unreasonable and it does not make sense that the Court has cited cases in which it excluded that the complainants could be punished.

**39.** But primarily, I have claimed violations of my basic rights (see annex 11, p. 119-125) caused by the effects of § 217 on third parties (professional suicide helpers). According to BVerfGE 13, 230 <232f>, annex 1, p. 2, a law on closing times, which addresses owners of shops, prevents the customers from shopping like it was a legal order addressed to the customers. This situation is very similar to my situation, in which the “shops” of suicide helpers have even been permanently closed by § 217. In BVerfGE 50, 290, <320f> (see annex 1, p. 5) the Court also has stated that it was not necessary to be formally addressed by a law to be concerned. Again, the Court has stated in BVerfGE 108, 370 <384> (see annex 1, p. 8), that there is self-concernedness, if the legal act addresses third parties and there is a sufficiently close relationship between the basic-right-position of the complainant and the regulatory action.

**40.** In BVerfGE 1, 97 <102>, the Court has stated that it was not sufficient to be concerned at one time or another (“irgendwann”) in the future (“virtually”). Such a “virtual” concernedness would lead to an unwanted “actio popularis”. (So far, it seems that I was the only person who has started – according to the Court – an “actio popularis” against § 217.) In BVerfGE 43, 291 <385 f.>, the Court also has stated that a „virtual“ concernedness was not sufficient.

Page 386 is not relevant for my case, because there will be no administrative act against which I should complain first. BVerfGE 60, 360 <371> (see annex 1, p. 6) repeats that a “virtual” concern was not sufficient. Such extension would be not tenable when it was actually hard to assess how the concrete gravamen would look like, when the law was applied. BVerfGE 74, 297 <319> repeats the “actio popularis”-concern and adds that the right of complaint cannot be extended to situations, in which it is actually hard to assess how the concrete gravamen will look like, when the law is applied. BVerfGE 114, 258 <277> also repeats that the vague prospect alone, that the complainant will be concerned sometime in the future by a law, is not sufficient.

**41.** In the following decisions the Court has regarded a concern in the future as present and as sufficient for admitting the complaint. In BVerfGE 50, 290 <321>, see annex 1, p. 5, the Court has stated that it was not critical, whether the claimed effects of the law occurred soon or later in time. In BVerfGE 114, 258 <277f> (see annex 1, p. 10f) it has been stated that the concern is present if it is clear that and how the complainant will be concerned in the future by the regulation. In fact, violations of basic rights of the German Basic Law or of rights of the Convention are violations, whether they become concrete presently, soon or later in time. As has been required in BVerfGE 114, 258 <277>, I have clearly stated in my complaint, how I am impaired presently and also possibly at the end of my life in my basic rights by § 217 or by effects of § 217 on third parties. See annex 11, p. 24f, p. 114-116, p. 116-125.

**42.** The decision of the German Federal Constitutional Court of 20/7/2017 (2 BvR 2507/16) on my complaint against the new § 217 of the German Criminal Code is not in accordance with § 93a section 2 BVerfGG. My complaint is of constitutional importance, because § 217 discriminates me and others as Atheists and causes directly and via third parties severe disadvantages, which – according to the Court’s own jurisdiction – concern me and others directly and presently. The danger that § 217 violates my rights from the German Basic Law and from the Convention is realistic rather than “virtual”.

**43.** According to the German Basic Law (Article 140 in connection with Article 137,1 WRV) there is no state church. But as a

consequence of the principle of subsidiarity, the churches have become very powerful after 1949 as social organisations, and it has become common that state and church consider each other as partners. Although the Catholic party “Zentrum” has helped Hitler in 1933 to become a dictator, the Protestants have helped the Nazis to persecute Jews, German bishops have supported Hitler’s wars and both churches have exploited children in children’s homes and especially priests of the Catholic church have abused children mentally, physically and sexually (which has been covered up by bishops), there is still a widespread irrational belief that the churches were indispensable for public morals.

**44.** To influence legislation, both churches have special offices in Berlin and in all federal states. They use “bridgeheads” in the parliaments, who are especially closely connected to them. Examples are Michael Brand, a member of the Chamber of Public Responsibility of the Protestant Church, Kerstin Giese, who already was a member of the Synod of the Protestant Church and became a member of the Council of the Protestant Church shortly after § 217 passed the Parliament, and Katrin Göring-Eckhardt of the “Greens”, who was President of the 11. Synod of the Protestants.

**45.** On 27/3/2006, the states of Saarland, Thuringa and Hesse, all ruled by the Christian Democratic Union, started an unsuccessful attempt to establish a ban on business-like support of suicide. See “Bundesrat-Drucksache 230/06”, <http://bit.ly/2jHwDT5> .

**46.** On 8/5/2014 the “Deutsche Stiftung Patientenschutz” (chairman: Eugen Brysch) published a draft of a law for the culpability of business-like support of suicide (see <http://bit.ly/2dOh0ao> ). To a large extent, this draft has been adopted by Brand, Giese and others for their draft of a new § 217. The text of the law, its aims and reasoning are virtually identical in both drafts. This means that the draft of § 217 did not arise from the German people or its elected parliamentarians, but from a Roman-catholic foundation.

**47.** On 12/10/2014, the Catholic German Union of Women called on the lawmaker to ban any form of organized suicidal assistance by law: [bit.ly/2Dv9XO7](http://bit.ly/2Dv9XO7).

**48.** On 17/10/2014, the Central Committee of the German Catholics appealed to the “Bundestag” to protect self-determination by banning any form of organized suicidal assistance: [bit.ly/11C52rK](http://bit.ly/11C52rK). How close religion and politics are connected in Germany is illustrated by the fact that the following members of that organisation were also Members of Parliament and have voted for § 217: Böhmer, Dörflinger, Fischbach, Flachsbarth, Grübel, Grütters, Lücking-Michel, Schön, Weiss; Hartmann, Hendricks.

**49.** On 7/3/2015, the Federal Workgroup of the Greens (to mention a smaller party) demanded a prohibition of the business-like support of suicide by organisations and individual persons: <http://bit.ly/2Bawqin>, p. 13.

**50.** In 2015, 28.9% of the Germans were members of the Catholic, 27.1% of the Protestant Church. 36% held no religious membership, 4.4% were believing Muslims. 3.6 percent belonged to small religious organisations: <http://bit.ly/2hoLvr5> . On a normal Sunday in 2015, only 10.4% of the Catholics (<http://bit.ly/2tw28az> ) and 3.5% of the Protestants went to church. In 2002, only 23% of the Protestants and 36% of the Catholics believed in a personal god; more popular was a belief in a higher being or a spiritual power, which was shared by about 41 percent (see <http://bit.ly/2DyNRdE> ).

**51.** In 2012, 87% of the Germans thought that everybody may decide for himself when and how he wished to die. 77 percent could imagine considering suicidal assistance for themselves. 80% said suicidal help should only be performed by professional helpers (<http://bit.ly/18v6caB> , p. 6-11). In 10/2014, 79% agreed with the question whether physicians should be allowed to provide extremely sick people with deadly medicine for self-application (<http://bit.ly/2CtvhEn> ) and in 11/2014, 81% declared they would approve a legalisation of assisted suicide (<http://bit.ly/116dLlc> ). In 2016 (?), 86% of the Catholics, 83 % of the Protestants, 42% of the Muslims and 90% of the Confessionless in Germany thought that an incurably ill person, who explicitly wished to die, should have the right to die (<http://bit.ly/2xiJ3GK> , p. 22). On 31/10/2016, a German journal reported that 78% could imagine very well to finish the own life with the help of a physician, when they were incurably or deadly ill, suffering or dying. For 79% it belonged to human dignity to be able to decide how and when to die: <http://bit.ly/2zQiWY3> .

**52.** As I have shown in my German complaint (see annex 11, p. 154-160), 89 percent of the Members of Parliament, who voted for § 217, were Christian or Muslim believers. After further research, I found that of the 360 Yes-votes for § 217 a total of 92% came from Christians (326) or followers of the Islam (5), see [www.reimbibel.de/217e.htm](http://www.reimbibel.de/217e.htm) :

<b>Group</b>	<b>Votes</b>	<b>Yes</b>	<b>No</b>	<b>%</b>
<b>Christians</b>	413	326	87	79
<b>Muslims</b>	5	5	0	100
<b>Unknown</b>	154	27	127	18
<b>No confess.</b>	18	2	16	11
<b>Atheists</b>	3	0	3	0
<b>Total:</b>	602	360	233	60

Votes for § 217 according to confession

**53.** As the table shows, voting for or against § 217 depended to a large extent on the religious attitude of the politicians. A clear majority for § 217 was only seen in the Christian fraction (CDU/CSU) of the parliament. Among the Christians who voted “No”, there were seven persons, who had earlier voted for the Sensburg/Dörflinger-Draft, which proclaimed up to five years in prison for any suicidal assistance. If concern about socially weak persons had been of central importance in this voting, majorities of the Social Democrats and the Left party should have voted for § 217. This was not the case. The observed effect of the general religious attitude on voting or not voting for § 217 was strongest in the believing Muslims and in the extremely small group of politicians who dared to state in public, that they were Atheists. That all of the Muslims, who were known to me as believers, voted for § 217 is not surprising because suicide is strictly forbidden in Islam (see annex 11, p. 40f). That religion was important is also reflected by the data of the Social Democrats: a majority of the Christians in this party voted for § 217, but of those with an unknown religious attitude, a large majority voted “No”. See annex 11, p. 57-60.

**54.** The judges of the Federal Constitutional Court are usually suggested to the Federal President of Germany by the Christian and by the Social Democrats. It is not to be expected that the Christian Democrats suggest judges who are known for a critical attitude



towards the churches. Because the Social Democrats need the support of their Christian colleagues for success in their proposals, they may also prefer candidates, which are mentally close to the churches. That the German Federal Constitutional Court might indeed have a bias towards “Christian values” is illustrated by the following observations:

**55.** Already in 2006, Judge Peter Müller, a member of the 2. Senate of the Court, which will probably decide on the remaining eleven complaints against § 217, has presented a draft of a new § 217, which was similar to the actual § 217. See my challenge against judge Müller on the basis of bias (annex 12, p. 134-137).

**56.** Since 2007, the Protestant bishop of Baden and the Catholic Bishop of Freiburg have a lobby-office in Karlsruhe, which is the home of the German Constitutional Court, the Federal High Court of Justice and the Federal State Attorney. Once a year, there is a big reception with presentations of church officials, to which the high judges and lawyers are invited. Four times a year also smaller sessions are organised by a workgroup, which includes clerics and many judges.

**57.** On 20/07/2012, the Appointee for Culture of the Protestant Church, Dr. Petra Bahr, who for religious reasons rejects suicide, gave a lecture on „Salafisten, Atheisten und Co.“. It is already strange enough that a speech with such a title could be presented to high judges and lawyers. A blogger (Matthias Krause) has documented and critically commented Dr. Bahr’s – later silently modified - speech: <http://bit.ly/2CmGUj0> .

**58.** On 12/7/2016, bishop Bedford-Strohm, professor of theology, chairman of the Council of the Protestant (Evangelical) Church and a supporter of § 217, spoke on “Right and justice. Prerequisites and escalations from a Christian perspective”. The bishop tried to convince the high judges that the church is self-critical, not dangerous and has much to offer from the bible (stories of failing and humanity). See <http://bit.ly/2DFxTOR> .

**59.** On 16/5/2017, the Catholic professor of theology Eberhard Schockenhoff, a promotor of § 217, spoke about “Responsibility to protect”. Schockenhoff defended Christian pacifism, suggested an

intelligent form of love of the enemy and considered military interventions to be necessary in certain cases of a violation of human rights.

**60.** Teachings like those of the three theologians named above have no basis in Germany's Basic Law or in the Law for the Federal Constitutional Court. These strange events even greatly exceed a church-state-partnership, because it reminds of a teacher-student-relationship with theologians as the teachers and high judges as the students. Judges, who show their appreciation for the churches in this way, cannot be supposed to be neutral, when they have to decide on § 217, a law that has been intensely demanded and promoted by the churches. Six of the former judges of the 2. Senate of this court have already received a medal from the Pope.

Text der Verfassungsbeschwerde von W. Klosterhalfen gegen § 217:

<http://www.reimbibel.de/Bundesverfassungsgericht-Beschwerde-217-StGB.pdf>

Links zu weiteren § 217-Artikeln von W. Klosterhalfen und anderen Autoren:

[www.reimbibel.de/217.htm](http://www.reimbibel.de/217.htm)