

Rohlfing-Dijoux | Hellmann (eds.)

Perspectives of law and culture on the
end-of-life legislations in France,
Germany, India, Italy and United Kingdom



Nomos

Stephanie Rolfing-Dijoux | Uwe Hellmann (eds.)

Perspectives of law and culture
on the end-of-life legislations
in France, Germany, India, Italy
and United Kingdom



Nomos

Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

ISBN 978-3-8487-5492-2 (Print)
978-3-8452-9677-7 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-5492-2 (Print)
978-3-8452-9677-7 (ePDF)

Library of Congress Cataloging-in-Publication Data

Rohlfing-Dijoux, Stephanie/Hellmann, Uwe
Perspectives of law and culture on the end-of-life legislations in France, Germany, India, Italy and United Kingdom
Stephanie Rohlfing-Dijoux/Uwe Hellmann (eds.)
311 p.
Includes bibliographic references and index.

ISBN 978-3-8487-5492-2 (Print)
978-3-8452-9677-7 (ePDF)

1. Auflage 2019

© Nomos Verlagsgesellschaft, Baden-Baden 2019. Gedruckt in Deutschland. Alle Rechte, auch die des Nachdrucks von Auszügen, der fotomechanischen Wiedergabe und der Übersetzung, vorbehalten. Gedruckt auf alterungsbeständigem Papier.

This work is subject to copyright. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to "Verwertungsgesellschaft Wort", Munich.

No responsibility for loss caused to any individual or organization acting on or refraining from action as a result of the material in this publication can be accepted by Nomos or the editors.

Foreword

The book is the outcome of an international symposium held from 25 to 27 June 2018 in Florence. The participants included Professors, students, lawyers and medical professionals from Potsdam and Göttingen (Germany), Nanterre, Paris (France), Delhi (India), Eastern Piedmont (Italy), Port Louis (Mauritius and England). It was jointly organized by Uwe Hellmann, Potsdam, and Stephanie Rohlfing-Dijoux, Paris Nanterre and Prof. Prasannanshu, NLU Delhi.

The topic of the symposium '*Law and Culture: reciprocal regards on end of life*' is currently being conducted in a couple of European and other countries. With the demographic trend towards aging populations in Western countries, the issue has become more and more relevant. The topic should be studied in a multidisciplinary way including its legal, medical, ethical, philosophical and anthropological aspects. The concepts of people associated with death are closely linked to the culture of each country. No two religions or societies consider death in the same way. In most Western countries, the phenomenon of death is linked to medical treatments, hospital environment, and is in dissociation of any family context. One of the efforts of new legislations is to relocate death in the context of family and to enable more and more patients to die at home that most of them would prefer.

That is the reason why we chose countries with a different cultural background for a comparative study on end-of-life questions. France, Germany and Italy as central European countries with a continental legal system; England and Wales with a common law system; and India and Mauritius, as countries influenced by the French and English colonial systems. In all these countries, different religions and cultures exercise an important influence on the development and modernization of the legislations relating to end-of-life.

Most of the examined countries recently changed their legislations, or are in the process of modernizing their legislations. Famous cases such as Lambert in France; Pretty, Purdy, Nicklinson and Conway in England and Wales; and Aruna Shanbaug in India exert an important influence on legislators.

In 2015, Germany changed its civil and criminal end-of-life legislation without legalizing euthanasia. Since the case of Dianne Pretty, new legislation has repeatedly been discussed but has not progressed into the statute

Foreword

books. Since 2006, when the Law Reform Commission proposed a bill, India has been preparing for an end of life Act. Italy adopted a new ‘biological testimony’ legislation in December 2017. On 2 February 2016, France passed a new end-of-life legislation (called Claeys-Leonetti Act) that integrates for the first time a ban on unreasonable therapeutical obstinacy and the possibility of terminal sedation.

Furthermore, the controversial topic of legalizing euthanasia is currently at the core of the legal debate. New rules have been widely discussed amongst legal experts, religious authorities, and politicians. It has led to an increased consciousness of the problem by the population. But in the countries under consideration, until now euthanasia is still prohibited.

This topic remains a wide research field, that should be extended to more countries. The inconclusive discussion about legalizing euthanasia, currently at the core of the legal debate, should be analyzed deeply. This book has to be considered as a starting point for further comparative law research projects. The book’s structure follows the structure of the symposium:

The first part, dedicated to a general historical approach to end-of-life and euthanasia introduces the topic, before focussing on philosophical and ethical aspects. The second part addresses a country by country status of current legislations, and reform projects, and the particularities of each legal system are explored. The third part revolves around case studies to illustrate the application of end-of-life legislations. Recent cases, such as Lambert in France, Conway in England and Wales and Fabiano Antoniani in Italy are pointed out. A fourth part deals with the criminal liability of the medical team and general criminal law questions related to end-of-life in the reviewed countries. Finally, the last part revolves around the instruments of law on the legal protection of adults in France and Germany.

Our warm thanks to all participants of the colloquium and contributors of the book, and last but not least to the German-French University in Saarbrücken that sponsored this scientific event. Thanks are also due to Jessica Storey's assistance in bringing out this volume.

Paris, December 2018

Co-editors: Uwe Hellmann and Stephanie Rohlffing-Dijoux

Inhalt

Foreword	5
The end-of-life; a historical and legal perspective <i>Soazick Kerneis</i>	11
The Invention of the Dying Person, a new medical norm? <i>Guillaume Le Blanc</i>	21
Les desillusions du droit bioethique dans les legislations sur la fin de vie <i>Jeanne Mesmin d'Estienne</i>	29
La loi Claeys-Leonetti sur la fin de vie (France) : évaluation de sa mise en œuvre et recommandations pour une meilleure application <i>Louis-Charles Viossat</i>	45
Petite philosophie de la loi Léonetti-Claeys <i>Christophe Pacific</i>	53
Comparative end-of-life legislation in Germany, France, Italy, Great Britain and India	
Patient Autonomy, Advance Directives, and Decisions by Proxy in Germany <i>Volker Lipp</i>	73
Legislative approach regarding end of life in France <i>Christine Laquitaine, Philippe Poulain</i>	85
The difficult balance between patients' rights and the liabilities of medical practitioners <i>Stephanie Rohlfing-Dijoux</i>	93

Inhalt

“Una buona legge buona”: la l. n. 219 del 2017 e la relazione medico-paziente 107

Stefano Canestrari

English translation of the paper of "A good good law": Law nr. 219 of 2017 and the doctor-patient relationship 115

Stefano Canestrari

End-of-life studies in France, Great Britain, Italy and India

Assisted Dying in England and Wales: Conway’s Challenge – Déjà Vu or Jamais Vu? 123

Kartina A. Choong, Richard Law

The Lambert Case 135

Sabine Boussard

Sallekhana: linguistic, legal, philosophical, and religio-cultural perspectives 149

Prasannanshu Prasannanshu

Recognition of Right to Die with Dignity and Comparative Approaches to Adoption of Laws on Palliative Care and End-of-Life 167

Pierre Rosario Domingue

Should the right to life include the right not to life? A multi-jurisdictional case-law analysis 179

Arvin Halkboree

End of Life legislation under German Civil Law 187

Kerstin Peglow

The judge’s power over life and death 197

Jörg Luther

Criminal liability for accompanying death

Lawful and unlawful terminal care in Germany 217

Uwe Hellmann

Businesslike Assisted Dying – a Legal Comparison 229

Géraldine Demme

Is assisted dying a victimless crime? Reflections about the role of consent and motive in criminal law 239

Sabir Kadel

When does life end? The moment of death in criminal law 251

Anja van Bernum

Qualification of suicide and assistance in German law 261

Marie Rossier

Specific questions of civil and public law on the end of life

The will of the patient, up to where must it be respected?
Analysis focusing on minor patients and Jehovah's Witnesses 275

Victoria Roux

Respecting the will of protected adults at the end of life: comparative study of the French and German laws 291

Charles Walleit

The right to live/ the right to die: the differences between the acts of suicide and passive euthanasia under Indian law
Position of euthanasia in India (analytical study) 303

Berquis Bestvater

