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**The Swiss model of assisted dying  
and DIGNITAS' work with the ECHR  
legal + political + practical aspects  
and how to implement a sensible system**

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## **Introduction**

*“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”*

This statement can be found in the judgment of the European Court of Human Rights, case of *DIANE PRETTY v. the United Kingdom* dated 29 April 2002, at the end of paragraph 61. It highlights one of the difficulties of our times: despite living longer and longer, due to the achievements of medicine and other health improvements, a time may come when one feels that barely living is not sufficient, because one's quality of life does not correspond with one's personal views anymore.

More and more people wish to add life to their years – not years to their life. Consequently, people who have decided not to carry on living but rather to self-determinedly put an end to their suffering started looking for ways to do so. This development has gone hand in hand with tighter controls on the supply of barbiturates and progress in the composition of pharmaceuticals, which led to the situation that those wishing to put an end to their life could not use this particular option anymore for their purpose and had to turn to more violent methods. A further, parallel, development was the rise of associations like DIGNITAS focusing on patient's rights, the right to choose a self-determined end of suffering and life, the

negative effects resulting from the narrowing of options, and suicide attempt prevention.

Quality of life, the subjective judgement of well-being, is influenced by several factors. Health is one of them. Quite likely it is the most important. The World Health Organization WHO says in its Constitution:

*“Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”*

and right thereafter:

*“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.*

Every day, we make quite some efforts for our own social, physical and mental well-being. We consume nutritional supplement products, caress our skin with lotions, do sports, eat bio and vegan, book consultations with a therapist, have our looks beautified by a plastic surgeon, take a wellness-holiday in a spa, etc.

But, no matter how well we are feeling and how we make efforts to live healthier and longer: some day, life’s end will come. Even in the last phase of life its quality is very important.

Medically trained professionals – physicians, carers, therapists, etc. – accompany us from birth to death. They hold a special position in regard of maintaining quality of life, because they have not only expert know-how, but those who turn to them bring to them considerable trust in advance.

Quality of life and self-determination, even in “last issues”, is being supported widely by the public. However, some “experts” and “professionals” with anti-liberal and/or religious-conservative approaches within ethics committees, medical boards, politics, research-projects, etc. try to block or undermine the right to freedom of choice and self-determination. Furthermore, some often invoke the picture of a deep ditch between different approaches of help, as if there was only *one* solution for a specific life- and ailment-situation.

How can this be overcome? Why does Switzerland have a sensible system that allows choice to some extent? How is it possible to further develop the law in Europe and around the world towards more freedom of choice? And what is DIGNITAS doing in this field?

## **Who or what is DIGNITAS?**

DIGNITAS is a help-to-live and right-to-die not-for-profit member’s society founded on 17 May 1998 in Forch, near Zürich, by Ludwig A. Minelli,

an attorney-at-law specialising in human rights. In accordance with its articles of association, DIGNITAS has the objective of ensuring a life and an end of life with dignity for its members and of allowing other people to benefit from these values. This is reflected in the full name and the logo of the organisation: DIGNITAS – To live with dignity – To die with dignity. As one can see, the aspect of a dignified life comes first. It is DIGNITAS' first and most important task to look for solutions which lead towards re-installing quality of life so that the individual can carry on living. At the same time, if solutions towards life are not possible, the option of a dignified death must also be looked at.

Today, DIGNITAS, together with its independent partner association DIGNITAS-Germany in Hannover which was founded on 26 September 2005 by initiative of a small group of Germans, has some 7300 members in 70 different countries around the world. DIGNITAS has an office in Forch and a small private house near Zürich where accompanied suicide for members from abroad may take place, if they cannot be helped at their home. There are 20 people working for DIGNITAS in Switzerland, almost all of them part-time, comprising board members, an office-team doing mainly advisory work, and a team of companions/befrienders who visit patients and assist with accompanied suicide.

Contrary to the nonsense spread by incompetent journalists, DIGNITAS is neither a clinic nor a business, DIGNITAS does not offer 'active euthanasia', DIGNITAS does not give poison or a cocktail of drugs to those wishing to end their life, and DIGNITAS is not about 'check in and drop out'.

One third of DIGNITAS' daily 'telephone-work' is counselling of individuals who are not members of the DIGNITAS-association. For this, DIGNITAS works with its special advisory concept of combining palliative care, suicide attempt prevention, advance directives and assisted dying, which offers a basis for decision-making to shape life until the end. DIGNITAS also runs a free-of-charge online-forum with more than 3,800 registered users. It is set up as a self-help-community, taken care of by a professional mediator and two IT-technicians.

Furthermore, DIGNITAS assesses requests for the preparation of an accompanied suicide of those members of DIGNITAS who send the relevant documents, such as a medical file, and tries to obtain a "provisional green light" from an independent Swiss physician for such an accompaniment with DIGNITAS. The latter is the 'emergency exit door' which allows people to regain control over their destiny and prevents them having to resort to a lonely and risky suicide attempt. Most important, DIGNITAS works on further legal development and is involved in law-making proceedings and

leading court cases, especially the ones aiming at a judgment by the European Court of Human Rights.

DIGNITAS is connected internationally with other organisations and does not restrict its services to Swiss residents. What is the difference between a metastasising pancreatic cancer in Switzerland and one in a neighbouring country such as France, Germany or Italy? Could we seriously tell the Swiss “we’ll help you” and the individual abroad “sorry, you live in the ‘wrong’ country”? The Good Samaritan did not request to see a passport before he helped the suffering man on the road. DIGNITAS ignores borders as far as possible.

The core goal of DIGNITAS is to disappear, to get obsolete. When DIGNITAS’ advisory concept of combining suicide attempt prevention, palliative care, advance directives and assisted dying, and the right to freedom of choice and self-determination in life until life’s end is implemented in public health care and welfare systems worldwide, no one will need to turn to DIGNITAS anymore. However, as long as most countries’ governments and legal systems disgracefully disrespect their citizen’s basic human right to choice and self-determination, and force them either to turn to risky lonely suicide attempts or to travel abroad to Switzerland, DIGNITAS will continue its work as the international spearhead of ‘the last human right’.

### **DIGNITAS’ philosophy**

The starting point of the principles guiding the work of DIGNITAS is the liberal position that in a free state any freedom is available to a private individual provided that the availing of that freedom in no way harms public interests or the legitimate interests of a third party. These values are:

- Respect for the freedom and autonomy of the individual as an enlightened citizen
- Defending this freedom and autonomy against third parties who try to restrict those rights for some reason, whether ideological, religious, political or greed for power
- Humanity which seeks to prevent or alleviate inhumane suffering when possible: probably the most shining example of this in our history, on a national and international level, led to the founding of the Red Cross
- Solidarity with weaker individuals, in particular in the struggle against conflicting material interests of third parties

- Defending pluralism as a guarantee for the continuous development of society based on the free competition of ideas
- Upholding the principle of democracy, in conjunction with the guarantee of the constant development of fundamental rights

The people who inhabit a country are not property of the state. They are the bearers of human dignity, and this is characterised most strongly when a person decides his or her own fate and carries responsibility accordingly. Very much like British philosopher and economist John Stuart Mill put it:

*“Over himself, over his own body and mind, the individual is sovereign.”*

It is therefore unacceptable for a state or its individual authorities or courts to choose the fate of its citizens, even worse, to deprive them of humanitarian help in suffering and life's end.

The freedom to shape one's life includes the freedom to judge one's own quality of life, whether or not it still complies with one's own measure of value. To personally shape one's own end in life is included in this freedom. To choose the time and manner of one's own end in life is a basic human right, acknowledged by the European Court of Human Rights on 20 January 2011, judgment HAAS v. Switzerland, application 31322/07.

### **The legal base of the ‘Swiss system’ – historical and today**

For many centuries, due to religious-fundamentalist intolerance and abuse of power, people who had committed suicide were often buried outside of graveyards and sometimes their families were punished, for example by seizure of their property.

During enlightenment in the 17th/18th century, suicide was decriminalised in Switzerland. Towards the end of the 19th century, expert committees and parliament discussed the issue of assistance in suicide. It was found that a gentleman who would have lost his good reputation/dignity due to some incident should be able to ask a friend, who is officer in the army, to let him a gun and to show him how to use it so that he could properly end his misery and save his honour. It was considered to be a ‘Freundestat’, an ‘act of friendship’, an assistance which should not be punished. In those days, there was not one criminal code for Switzerland, but each Canton (each Swiss State) had its own.

An interesting aspect is that in Switzerland, from 1848 until 1973, the Constitution prohibited priests/theologians to be elected into the Federal Parliament. Furthermore, from 1848 until 1920, the Liberal Party was the main force in the Swiss Federal Council and Parliament – at a time, when

the big codifications of law such as the civil code, criminal code, etc. were drafted. One may dare to claim that these two aspects were influential for the still valid liberal approach in Switzerland.

The aspect of assistance/help which should not be punished was also taken into consideration when discussions started about a criminal code for all of Switzerland. In 1918, in its comment (a so-called federal council dispatch) accompanying the proposal for a Federal Criminal Code, the Federal Council (which is the Swiss government, consisting of 7 members, each head of one or several departments) stated that if the aforementioned assistance was done with selfish motives, it should be punished. As examples for such selfish motives the Federal Council stated: if someone intended to inherit 'earlier' or if someone intended 'to get rid' of having to support a family member. Clearly, the aim was and is to sanction 'pushing' a person towards suicide out of an immoral motivation. Thus, the initial aim/purpose of the regulation was upheld and additionally specified. It took many more years for the Swiss Federal Criminal Code to be finalised in 1937 and to come into force on 1 January 1942. The wording of article 115:

*Inciting and assisting suicide*

*Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty.*

The legal consequence, in the sense of '*e contrario*', of the specific article 115 in the now federal Swiss Criminal Code is: anyone can help (assist) any person to commit suicide as long as (s)he who helps does not have selfish motives in the sense of the examples stated above. Of course, in these specific circumstances of being assisted, the person self-determinedly ending his or her life must not lack capacity of judgment, in plain words: must be competent.

Aspects of a severely ill and suffering individual was not really discussed in context of article 115 of the Swiss Criminal Code, but rather in context of article 114. The wording of article 114:

*Homicide at the request of the victim*

*Any person who for commendable motives, and in particular out of compassion for the victim, causes the death of a person at that person's own genuine and insistent request is liable to a custodial sentence not exceeding three years or to a monetary penalty.*

“Homicide at the request of the victim” = killing on demand = voluntary

euthanasia. Article 114 of the Swiss Criminal Code thus prohibits voluntary euthanasia, but offers relatively mild penalty if violated.

Note: because English is not an official language of Switzerland, the two translations of articles 115 and 114 are not official legal text; however, they are nonetheless provided on the website of the Swiss Federal Council.

Based on article 11 of the Swiss Federal Act on Narcotics and Psychotropic Substances and article 26 of the Swiss Federal Act on Medicinal Products and Medical Devices a Swiss medical doctor may prescribe narcotics under certain circumstances, mainly in line with the ‘recognized rules of medical science’ respectively ‘recognized rules of pharmaceutical and medical science’.

The Swiss Academy of Medical Science SAMS in 2004 issued guidelines for the “care of patients at life’s end”, saying that a medical doctor, based on a personal decision, may assist in suicide if a) the illness of the patient justifies the assumption that life’s end is close, b) alternatives to suicide have been discussed and c) the patient is competent and his wish well-considered, without pressure from third parties, and stable – something which, additionally, must be double-checked by another person who does not need to be a medical doctor.

The guidelines by the SAMS are taken on by the Swiss Medical Association (FMH) which is the union of medical doctors in Switzerland, comprising some 95 % of Swiss medical doctors and being the roof for 71 medical organisations.

However, both the SAMS and the FMH are private institutions which do not have any power to set law. Furthermore, the SAMS guideline restricts/applies itself to the situation that “life’s end is close”. What about patients who are not near death? Such as patients suffering from long-term ailments: MS, ALS/MND, Parkinson, dementia, handicapped, multimorbid, etc. – all of them not necessarily ‘close to death’? There are no guidelines for them and the SAMS-guideline of 2004 does not apply to all of these cases. This has been acknowledged at the European Court of Human Rights (ECHR) case Alda GROSS, application 67810/10.

In conclusion, such ‘recognized rules of medical science’ do not really exist, and as far as they exist (such as the SAMS-guideline of 2004 to which courts and health authorities tend to refer, their legal validity is questionable. Besides, these rules are not evidence-based professional rules, which they should be. In fact, these ‘rules’ are opinions by a small group consisting, amongst others, of ethicist/moralists, because, of course, there is again an ethics committee which raises its voice, the ‘Na-

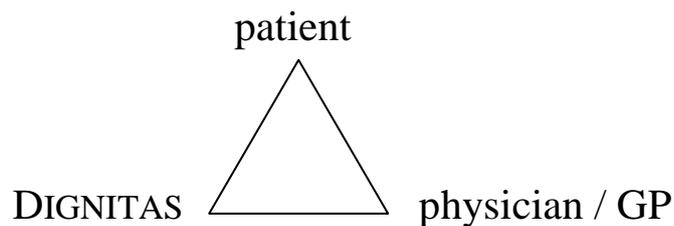
tional Advisory Commission on Biomedical Ethics’ – which lacks a democratic base and it too has no power to set law. Still though, it is referred to by politicians, medical boards, courts...

### The practical side of the ‘Swiss system’

Common denominator and in legal practice accepted is that a Swiss medical doctor (physician) can prescribe the psychotropic substance Sodium Pentobarbital for the purpose of an assisted suicide, if he/she:

- 1) checked the medical file = found that there is some medical diagnosis, a suffering;
- 2) has seen/spoken the patient and found that he/she really wants to self-determinedly end his/her suffering and life by own action;
- 3) found that the patient does not show signs of lacking capacity of judgment – therefore found the person to be able to make a rational decision on his/her end of life.

Based on the legal situation and this common denominator, in Switzerland, a system like a triangle developed over 30 years ago:



In the ideal case, a relation develops between the patient, his/her treating physician and a private not-for-profit member's society enabling assisted/accompanied suicide such as DIGNITAS. That means: a patient experiencing severe suffering, maybe a terminal illness, would be of course under treatment and care of his general practitioner (GP)/physician and/or specialists. In the frame of this relation, the patient could express the wish for an assisted suicide. If the physician agreed, he would assure the patient to help in this venture and recommend that he or she make contact with an organisation like DIGNITAS. Sometimes, a GP would contact DIGNITAS directly, explaining the situation of his or her patient. In any case, the patient would engage in a relation with an organisation like DIGNITAS no matter whether the physician agreed or not with the wish for an accompanied suicide.

The core point is that a medical doctor prescribes 15 grams of Sodium Pentobarbital (20 grams in rare cases of severe overweight of the patient) and gives the prescription to an employee of DIGNITAS. The employee would then fetch the medication from a pharmacy. Generally, the patient

never receives the prescription or the medication to take it home. There are a few pharmacies which store/provide Sodium Pentobarbital. The medication is then used in the frame of an assisted/accompanied suicide, usually at the home of the patient living anywhere within Switzerland, in the presence of one or more employees (sometimes called companions or befrienders) of the organisation. Family and friends are always encouraged and welcomed not only to attend but in fact to get involved in the preparation procedure right from the start. If the patient does not make use of the medication on that particular day, an employee of DIGNITAS brings it back to the pharmacy.

There is the possibility that a medical doctor prescribes Sodium Pentobarbital *and* does the assistance/accompaniment himself/herself. However, today, being that the professional handling of requests for assisted/accompanied suicide and advisory work on alternative options such as palliative care and continuous deep sedation, voluntary refusal of food and fluids (VRFF), etc. is established with not-for-profit members' societies like DIGNITAS, physicians will rather leave the handling of preparation and accompaniment to such organisation.

Each case of assisted/accompanied suicide is immediately reported to the Swiss police. This prompts them, a state attorney (Switzerland does not have 'coroners'), and an official medical doctor (usually, but not necessarily, one from an Institute of Forensic Medicine) to come to the place of the accompaniment and investigate the case, that is, to check on the sort/manner of death (= ingestion of 15 grams of Pentobarbital), and to find out whether article 115 of the Swiss Criminal Code was violated or not. In order to make the situation up front less difficult for the authorities, DIGNITAS provides them with the medical file, documents signed by the patient, the passport/ID, etc. There is no legal obligation to provide such file, neither to film the procedure. DIGNITAS has generally stopped filming because doing so has been felt to have a voyeuristic touch, an intrusion on privacy and intimacy which is undesirable given the situation. In fact, by law, there is no legal obligation to provide the state authorities with anything at all. However, Swiss good practice is that evidence is provided as otherwise the investigation would be extremely cumbersome if not impossible for the authorities – which could have repercussions on the medical doctors having supported the accompanied suicide, the employees of the organisation, and not to forget family and friends of the patient being present in the last hours.

Since 1998, DIGNITAS has done nearly 2'200 accompanied suicides in cooperation with Swiss physicians and never has there been a conviction of

violation of article 115, let alone article 114, of the Swiss Criminal Code. In conclusion, in Switzerland, assisted/accompanied suicide – also for patients suffering from psychiatric ailments, as long as they do not lack capacity of judgment – basically has been possible since the 18th/19th century. However, Switzerland does not have a specific law, a specific act, regulating the procedure of such professional assisted suicide – as it is the case in some states such as The Netherlands, The US-State of Oregon, etc. Still, there is a certain legal and practical ‘frame’ in Switzerland.

The Swiss practice basing on freedom and self-responsibility was again supported in a people’s initiative (referendum) by 84 % of voters in the Canton of Zürich on 15 May 2011. Despite – or really rather because of – this 30 years of relatively liberal practice, the number of those actually making use of an accompanied suicide is very small, just around 1,5 %, in relation to the overall number of deaths in Switzerland.

Still though, some politicians, religious-conservatives, some pseudo-‘researchers’ and self-declared ‘experts’, ‘ethics commission’ members, interest groups of psychiatrists, and ‘health authorities’ including the SAMS and FMH, are rather against freedom of personal choice and attack the legal status on political and legal level with an aim to narrow and undermine an individual’s right to self-determination.

To rebut their attacks, and also the goal to “export” the ‘Swiss model’ as far as possible so that one day people will not need to turn to DIGNITAS and Switzerland anymore, is the main reason why DIGNITAS has become a spearhead of Swiss and European ‘right-to-die’-litigation.

### **Litigation - Legal further development by DIGNITAS**

In 1977, many years earlier than when he founded DIGNITAS, Ludwig A. Minelli founded SGEMKO – the Swiss Society for the European Convention on Human Rights, a non-profit organisation spreading information about the European Convention for the Protection of Human Rights and Fundamental Freedom (ECHR) and doing litigation to further develop human rights issues. Already at that time, he and one of his colleagues found that the right to life as stated in article 2 of the ECHR should have been completed with ‘the right to die’. With SGEMKO, Ludwig Minelli brought some of the first cases from Switzerland to the European Court of Human Rights – and won.

In Switzerland, the ECHR came into force 28 November 1974. According to its article 34, it allows individuals, groups of individuals, and NGO to file a complaint. As to Swiss law, winning a case at the ECHR Court in

Strasbourg would give the right, within a 90 days respite, to request a revision of the negative appealed against Swiss Supreme Court decision.

The case of Diane PRETTY v. the United Kingdom, ECHR application no. 2346/02, decided 29 April 2002, was one of the earlier cases with DIGNITAS being involved. In that case, the applicant Mrs. PRETTY, who was paralysed and suffering from motor neurone disease, alleged that the refusal of the Director of Public Prosecutions to grant an immunity from prosecution to her husband if he assisted her in committing suicide and the prohibition in domestic law on assisting suicide infringed her rights under articles 2, 3, 8, 9 and 14 of the ECHR.

When DIGNITAS became aware of the case, Mr. Minelli immediately contacted the law firm representing Mrs. PRETTY in Court and in accordance with article 36 of the Convention, DIGNITAS started preparing a written comment as a third party, that is, as *amicus curiae* of the Court.

Alas, the Court pressed for a decision because Diane PRETTY was in a very bad state of health. She lost her appeal and died about two weeks afterwards. Still though, the Court acknowledged the challenge in our society that

*“in an era of 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.”*

It seemed that the Court became sensitised for the issue – an issue which had led to the founding of a right-to-die organisation in England as early as the 1930s, the VES – Voluntary Euthanasia Society.

A new chance for DIGNITAS to further develop the European human rights jurisdiction arose in 2004. Mr. E. HAAS called DIGNITAS and explained that he was suffering from bipolar – manic-depressive – disorder, that he had attempted suicide twice and obviously failed, that he had been an in-patient in psychiatric clinics nine times and that he wanted the help of DIGNITAS to end his suffering and life.

Knowing how difficult it was to obtain consent from a Swiss physician for an accompanied suicide in the case of a patient who was perfectly lucid yet suffering predominantly from a psychiatric ailment, DIGNITAS asked him whether he would be able to pull through at least for some time and challenge the Swiss legal status quo by requesting the means to an accompanied suicide – 15 grams of the barbiturate Sodium Pentobarbital – directly from the Swiss health authorities, and if not accessible, to recourse to the courts.

Mr. HAAS, a bright, self-determined and strong-willed man agreed and DIGNITAS arranged for a lawyer to take on the case with him. To little surprise, the Swiss health authorities rejected the claim. This was the starting point of legal proceedings at several levels of jurisdiction which led to a Swiss Supreme Court decision of 3 November 2006. In that landmark decision, despite rejecting Mr. HAAS claim for access to Pentobarbital, the highest Swiss Court acknowledged that

- 1) someone who is able to freely form his/her will and act upon this (= a competent person) has the freedom/right to choose time and manner of his/her end in life;
- 2) this is part of the right to self-determination, protected by article 8,1 of the European Convention on Human Rights;
- 3) this also applies to someone who suffers from a psychiatric ailment;
- 4) and, as to point 3, a Swiss physician may prescribe Sodium Pentobarbital if such person, such as the claimant, would be carefully assessed by a psychiatrist and an in-depth psychiatric appraisal established – confirming that the wish to die was not expression of a treatable psychiatric problem but an autonomous, the overall situation considering decision.

Of course, as always with such legal leading cases it is indispensable to make claims not only based on domestic law but also based on the rights enshrined in the ECHR right from the start so that domestic courts can deal with the matter. This in line with article 35 of the Convention, which states that the Human Rights Court may only deal with the matter after all domestic remedies have been exhausted.

What happened next shows how the right or freedom to one's own end of suffering and life can become dead letter due to practical obstacles. After the Swiss Supreme Court decision, Mr. HAAS wrote to 170 psychiatrists, asking them whether they would be ready to take him as a patient, assess his situation and establish an in-depth appraisal in the sense of what the Swiss Supreme Court had ruled. However, all 170 of them rejected his plea, one psychiatrist even sticking his response to Mr. HAAS' postal box located in a public post office (!)

A mission impossible? The matter was then taken to the European Court of Human Rights – and the Court, for the first time in history on this ECHR-level, stated in its judgment of 20 January 2011, application no. 31322/07: *“In the light of this jurisdiction, the Court finds that the right of an individual to decide how and when to end his life, provided that said individual was in a position to make up his own mind in that respect*

*and to take the appropriate action, was one aspect of the right to respect for private life under Article 8 of the Convention”.*

However, in conclusion, the European Court of Human Rights rejected Mr. HAAS’ claims because they found the dispute in his case concerned rather the question whether or not under article 8 of the ECHR the State had a ‘positive obligation’ to enable him to obtain, without a prescription, a substance enabling him to end his life without pain and without risk of failure. For several reasons, such as that most of the ECHR contracting states had more restrictive-protective rules putting weight on the right to life, the margin of discretion of Switzerland, and the Court not being persuaded that Mr. HAAS would have finally found a psychiatrist ready to help, the bold initial claim was rejected.

Still, the right/freedom to decide in this ‘last matter’ is now in place – and it is for us to further develop it. It would fill many pages to go more into details of just these two cases. And it would fill a book to deal with the further ECHR cases DIGNITAS was or is involved, such as the one dealing with the matter of old age rational suicide, GROSS v. Switzerland, decided 30 September 2014 by the Grand Chamber, application no. 67810/10 or the matter KOCH v. Germany, no. 497/09. Furthermore, DIGNITAS was involved in the CARTER v. Canada case which resulted in the Supreme Court on 6 February 2015 to strike down Canada’s criminal code laws prohibiting physician-assisted suicide. Not to forget the many more Swiss domestic law cases which DIGNITAS led or orchestrated.

Another important line of DIGNITAS’ legal work is engaging in legislative proceedings. DIGNITAS has written in-depth submissions in consultations of the Crown Prosecution Service of England and Wales, the Scottish, Austrian, Australian Parliament and more. Besides, DIGNITAS drafted a comprehensive law proposal to regulate assisted/accompanied suicide by non-profit associations (Accompanied Suicide Act–ASA) which was presented, for example, to the Parliament of New Zealand and the External Panel on Options for a Legislative Response to Carter v. Canada in connection with their visit to DIGNITAS.

## Conclusion

The development of the ‘right-to-die’ issue can be approached in two ways: political or legal. Some organisations mainly focus on political lobbying, trying to reach majorities in parliaments to introduce a Rtd-law. However, in some countries, such as England & Wales, the political process to implement right-to-die laws is to little or even no avail and has

been blocked again and again by conservative majorities who oppose freedom of choice.

In Europe, a further and efficient approach is possible: legal further development by court cases aiming at decision by the European Court of Human Rights. Since 4 November 1950, Europe has the ‘Convention for the Protection of Human Rights and Fundamental Freedoms’, to which apart from Belarus and the Vatican all European States and Russia have signed up over the years. The Convention and its Court in Strasbourg plays an important but often overlooked role in the implementation of right-to-die regulations.

In the translation of Judge Lord Denning’s 1963 Report on the Profumo Affair, the German lawyer and press law specialists Martin Löffler pointed out: *“In England, big political decisions have not been reached by acts of legislation but by court judgments, such as the abolition of serfdom. Famous is the court decision which ended the medieval witch trials. The judge found the accused woman who allegedly had flown through the air riding a broomstick not guilty, on the grounds that he could not find a law which would prohibit a subject of His Majesty to do so.”*

Even though there are laws in place prohibiting assistance in suicide and/or voluntary euthanasia, it is important to question them through court cases: usually, such prohibitive law clauses have come into force years ago, under circumstances and views which do not match today’s.

The rights enshrined in the Human Rights Convention are not like an erratic block. In fact, the Convention is considered to be a ‘living instrument’ allowing for further development. Furthermore, since the ECHR case of ARTICO v. Italy on 13 May 1980, it is a basic principle *“that the Convention was intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective”*.

Therefore, just like DIGNITAS taking the ‘Swiss system’ as a base, all European right-to-die organisations, in fact, all such organisations around the world should put some efforts into legal further development through court cases whenever possible. This would be in the best interest of the issue and the public who, as we know, wishes for freedom of choice in life until the end.

The ‘court case route’ has proven to be successful Canada. It is also happening in South Africa, thanks to the work of Professor Sean DAVIDSON’S group Dignity SA in the case of STRANSHAM-FORD v. the Minister of Justice. There have been Debbie PURDY and Tony NICKLINSON in

the UK, Robert BAXTER in the US-State of Montana, and many others – more need to follow.

Assisted dying is a personal choice. It is also a human right. In order to have a choice, the right to self-determination, which includes the right to decide on time and manner of one's own end in life, must be further developed. The 'naked' right to die is not effective. The right to receive access to effective professional help and practical means must be implemented too.

According to Professor Axel TSCHENTSCHER at the University of Berne in Switzerland, „*it is for the State to justify narrowing access to medication for assisted dying but not for the citizen to plea receiving access to it.*” However, human rights are often minority rights. They must be fought for and defended again and again. Something, which very much applies to assisted dying, being that large majorities – as proven through many polls – wish for such freedom of choice but only a small number of people actually have access to it.

One may fail in a court case today. However, losing a case is not necessarily a defeat as the HAAS v. Switzerland case has shown. It is a matter of persistence and legal wits. And one can win tomorrow.

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DIGNITAS – To live with dignity – To die with dignity  
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