



## Memorandum by Dignitas

1. We thank you for your invitation of 14 July 2004, to present written evidence in connection with the project of the Right Honourable Lord Joffe.

2. Dignitas is an association based on Section 60 ff of the Civil Code of Switzerland. It has been established on 17 May, 1998. Its purposes are:

2.1. To help people to establish a living will (in German: Patientenver-fugung) for the case that an individual would no longer be able to communicate. In this living will, the member has the possibility to accept or to strike-out several paragraphs;

2.2. To assist people to obtain a pain-free suicide, following Section 115 of the Criminal Code of Switzerland; a service which is given also to members living outside of Switzerland and which has lead to considerable discussions as well as in Switzerland as abroad;

2.3. To help its members in institutions for elder people in case of difficulties, especially with the staff of the institution or with physicians which have not been chosen freely by the member.

3. Dignitas is counting actually about 4,300 members in not less than 52 states of the world; about 560 of them (13 per cent) are residents in the UK. British members are interested mainly to be a member of Dignitas in order to have the opportunity to get an assisted suicide on Swiss soil in case they should want to end their lives for a valuable reason.

4. Between 10 October 2002, and 4 April 2004, 22 British residents have choosen this way and have been accompanied to suicide by Dignitas in Zurich. Their birth years have been from 1925 to 1965.

5. They and their family members have all deplored that the work Dignitas is doing in Switzerland is, for the time being, not possible in the United Kingdom, and that this situation is responsible for the fact that even terminally ill subjects of Her Majesty have to leave their bed, their home, their town, their county, their country, and to travel to Switzerland, just in order to make it possible to end their lives in a dignified, risk-free and pain-free manner. And, indeed, this awful feeling to be forced to leave their own country in this respect is also what does make us feel very unhappy in every single case. We would prefer by far to make a visit to our members in the UK in order to accompany them to suicide at their homes, or to know that similar organisations as Dignitas in Switzerland would work in the UK.

6. Dignitas' work starts from the ideas which have been characterised by the European Court for Human Rights in Strasbourg in its Dianne Pretty decision of 29 April 2002.

6.1 In paragraph 61, the Court has said:

"Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the Court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees."

6.2 In paragraph 65, the Court has said:

"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."

6.3 And in paragraph 67, the Court has said:

"The applicant in this case is prevented by law from exercising her choice to avoid what she considers will be an undignified and distressing end to her life. The Court is not prepared to exclude that this constitutes an interference with her right to respect for private life as guaranteed under Article 8 § 1 of the Convention."

7. Nevertheless, the Court did reject the application of Mrs Dianne Pretty who had asked the British authorities to grant to her husband in advance not to prosecute him in case he would assist her planned suicide.

8. This decision is understandable as long as we have a look only to the individual situation in the case of Dianne Pretty. If her lawyers would have presented facts about the general suicide situation in the UK and its consequences, it is at least thinkable that the Court would have decided in an other manner. Cf later points 10 ss.

9. Dignitas had tried to establish itself in the case of Dianne Pretty as *amicus curiae*. It had presented a memorandum to the Court, but as it had got knowledge of the case only after the public hearing of Mrs Pretty in February 2002, and as the Court's work after that hearing had been speeded up to the maximum in order to render its decision in any case prior to the foreseeable death of Mrs Pretty, the presentation of the memorandum came too late. We do add this memorandum in the annex.

10. During the more than six year's work of Dignitas, we have learned that the discussion about the item of euthanasia is, in any case, misleading as long as not a far broader view on facts of life and death are also taken into consideration.

11. In this respect, we do have the impression that the public discussion of euthanasia is influenced mainly by two very different groups, but both do have the tendency to focus only on the fact that the result of euthanasia is just death. The two groups are (a) the press, especially the tabloid one, and (b) the Pro Life organisations and/or some churches.

12. With respect to the said press, we should just look what George Bernard Shaw tells the public about newspaper men in his play "The Doctor's Dilemma", act IV:

"Walpole returns with The Newspaper Man, a cheerful, affable young man who is disabled for ordinary business pursuits by a congenital erroneousness which renders him incapable of describing accurately anything he sees, or understanding or reporting accurately anything he hears. As the only employment in which these defects do not matter is journalism (for a newspaper, not having to act on its descriptions and reports, but only to sell them to idly curious people, has nothing but honour to lose by inaccuracy and inveracity), he has perforce become a journalist, and has to keep up an air of high spirits through a daily struggle with his own illiteracy and the precariousness of his employment. He has a note-book, and occasionally attempts to make a note; but as he cannot write short-hand, and does not write with ease in any hand, he generally gives it up as a bad job before he succeeds in finishing a sentence."

13. With respect to the pro life organisations, we should point out that Dignitas does consider them nearly all as to be hypocrites.

14. They are arguing just dogmatically and not at all reasonable. What Arthur Schopenhauer, the well known German philosopher, has said about dogma might apply to them:

"The power of early imprinted religious dogma is so enormous that they are apt to suffocate the conscience and, at last, all compassion and all humanity. If you would like to see with your own eyes and at short distance what early imprinted religion may cause, do observe the Englishmen. Look at this nation which has been favoured first of all other nations by nature and which is endowed with reasonableness, esprit, faculty of judgement and firmness of character; look at them, deep beneath all others disparaged, even run down by their stupid church belief which makes the impression, among their remaining capabilities, of a fixed religious mania, a monomania. They do owe all that only to the fact that their education lies in the hands of the clergy which does see that all articles of faith are imprinted yet in the earliest youth in a way which goes even to a sort of partial brain palsy and is manifested a life long in that imbecile bigotry by which even most intelligent and sophisticated people among them do accept to be de-graded and what takes us any possibility to understand them."

15. The Swiss Government had told Swiss Parliament in an official answer of 9 January 2002, to a question of Andreas Gross, MP, that in Switzerland every year about 1,350 people are dying by suicide, and that up to about 67,000 people every year do suffer from missed suicide attempts.

16. Sarah Payne and Rachel Lart (<http://www.radstats.org.uk/noO70/> notes) have shown that in the UK, every year more than 5,000 people do commit suicide, and that about 50,000 to 100,000 people will attempt suicide (their paper arises from a project carried out by Rachel Lart, Lesley Doyal and Sarah Payne, School for Policy Studies, and David Gunnell, Department of Social Medicine, University of Bristol. The project was funded by the NHS Research and Development Programme). Whilst those authors do calculate the rate of suicide attempts in relation to committed suicides between 10 and 20 times, the Swiss Government had pointed out that the rate might be even 50 times, which would lead to a number of about 250,000 attempts per annum in the UK. It is unknown if newspapers or pro life groups pay any attention to these facts, and nobody until today in the UK seems to have made estimations of the costs

which are caused by the suicidal situation for the National Health System and/or for public economy or even by what means these terrific numbers and costs might be reduced.

17. If we compare the number of more than 5,000 deaths by suicide every year in the UK and the number of 22 UK residents having come to Switzerland in order to have an assisted suicide with Dignitas in a period of 18 months, we do see a complete disproportion in relation to the public interest for the two different facts. It is a clear indicator for the fact that even enlightened people do have difficulties to consider these facts under an angle of reasonableness instead of an angle of emotion. Reasonableness is an item related to the cerebrum; emotion instead is related to the brain stem.

18. There has been, in former decades (or, for Switzerland, years) a similar problem which had caused analogous discussions: the item of abortion. We do remember here in Switzerland how happy Swiss women were who had the opportunity to make a trip to the Netherlands or the UK in order to get an abortion, whilst in Switzerland abortion had been, in principle, illegal until 2002. Where abortion has been illegal, clandestine abortions took place, at high risks for the mothers health. Since there is a legal possibility to get abortion, these risks do no longer exist. And as the problem of abortion can be discussed openly, there is also a lot of information about contraception. The result: The number of illegal abortions is tending to zero, the number of legal abortions has a clear tendency to be reduced. Such a solution will, of course, not lead to an ideal situation but to an optimum.

19. Human societies do face the same problems with euthanasia. Euthanasia has been and is a primordial human need *vis-a-vis* a situation of illnesses which do have a dignity-affecting effect on human beings in their own view and feeling. Do listen again the European Court for Human Rights:

"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."

20. This means, that also for the problem of ending the lives of human beings by suicide the society should look for an optimum.

21. The Swiss Society for the European Convention on Human Rights (SGEMKO) has published on 11 September 2003, a study, compiled by Peter Holenstein, one of the best Swiss investigating journalists, in order to get an estimation of the costs of the suicidal situation of Switzerland. He showed that these costs are as high as at least 2.4 milliard Swiss Francs (about 1.1 milliard GBP) every year. In order to get the equivalent in the UK, this sum might be multiplied by a factor between 3.7 (relation between 1,350 Swiss suicides and 5,000 UK suicides) up to 8 (7.2 million Swiss people to 59.1 million UK people). The respective sums would be between 2.4 and 8.8 milliard GBP. Even only a slight reduction of the terrific numbers of suicide attempts would bring considerable relief also in public economy. And not to forget: every suicide and every suicide attempt does affect normally first the members of rescue and police bodies and a whole family. We should never forget the people around the one who has suicidal ideas.

22. SGEMKO had proposed in its media conference of 11 September 2003, to establish a programme in order to reduce the number of suicides and of suicide attempts. For SGEMKO, such a programme should be composed of at least the following elements:

22.1 A permanent information campaign which informs the public about the risks of past suicide methods with today high risks to harm body and mind (told in details);

22.2 The establishment of a broad network in order to give people with suicidal ideas the opportunity to get advice in any direction; first of course in order to look at the principal problem which has induced the suicidal idea and whether this problem could be solved; importance is required in order to give the individual the possibility to speak frankly and without fear about his ideas and problems. So there should be no coercion in order to put a person to a psychiatric institution, if the person is looking for help.

22.3 The possibility to grant an assisted suicide without risks and without pains in cases where an individual, after serious information and counselling, still wants to end their own life (as long as the individual has capacity of decision in this respect).

23. As the European Convention on Human Rights (ECHR) does guarantee the Human Right to risk-free and pain-free suicide, there will be no possibility to reduce this right only to terminally ill people—an idea which is frequently discussed in British newspapers but would violate article 14 of the ECHR which prescribes that the rights and freedoms enshrined in the Convention have to be granted to every-body without any discrimination. Why should politics or paternalistic law reduce the autonomy of human beings in this respect and for what legal purpose?

24. It might be of some interest that section 115 of the Swiss Criminal Code has the following wording:

*"Abetting and assisting suicide.* Is punished with heavy prison up to five years who is abetting or assisting someone else to suicide by selfish motives, if suicide has been committed or attempted."

25. Therefore, abetting and assisting suicide without selfish motives is not a crime and legal.

26. On the other hand, section 114 of the Swiss Criminal Code punishes with prison between three days and three years a person which has committed a mercy killing.

27. So, in Switzerland, euthanasia in the form of the new laws in the Netherlands or Belgium allowing physician to kill patients would not be possible. It is always the persons themselves who wants do end their own lives who have to do the last act themselves.

28. This has the consequence that misuses are nearly totally excludable. And this Swiss pattern has also the effect that the world wide working taboo against killing a person by an other person is not violated.

29. There are clear indications that the "slippery slope argument" has no reasonable background. After that the City Council (executive) of the City of Zurich has decided in October 2000 not to exclude any longer assisted suicide organisations from visits in old people's homes or nursing homes, the number of assisted suicides in those institutions of the City of Zurich did not raise at all. It has been stable within the range of less than five cases per year.

30. Dignitas has made the experience that less than 20 per cent of its members which have been given the "green light" by a Swiss physician in order to get an assisted suicide do really commit suicide. More than 80 per cent do live on after that Dignitas has opened for them the

door of the emergency exit and will die the natural way. They are always telling Dignitas what a big relief the "green light" has been for them: they have been delivered from their dilemma either to be forced to follow the path through the hell of their suffering or to intend a high risk suicide attempt at their own.

31. Therefore, Dignitas would be grateful if the British legislator would approach the Swiss model.

32. Dignitas is, in this respect, very near to one of the most brilliant British state philosophers of all the times, Thomas More, who, in his famous "Utopia", has said as early as in 1517:

"I have already told you with what care they look after their sick, so that nothing is left undone that can contribute either to their ease or health: and for those who are taken with fixed and incurable diseases, they use all possible ways to cherish them, and to make their lives as comfortable as possible. They visit them often, and take great pains to make their time pass off easily: but when any is taken with a torturing and lingering pain, so that there is no hope, either of recovery or ease, the priests and magistrates come and exhort them, that since they are now unable to go on with the business of life, are become a burden to themselves and to all about them, and they have really outlived themselves, they should no longer nourish such a rooted distemper, but choose rather to die, since they cannot live but in much misery: being assured, that if they thus deliver themselves from torture, or are willing that others should do it, they shall be happy after death. Since by their acting thus, they lose none of the pleasures but only the troubles of life, they think they behave not only reasonably, but in a manner consistent with religion and piety; because they follow the advice given them by their priests, who are the expounders of the will of God. Such as are wrought on by these persuasions, either starve themselves of their own accord, or take opium, and by that means die without pain. But no man is forced on this way of ending his life; and if they cannot be persuaded to it, this does not induce them to fail in their attendance and care of them; but as they believe that a voluntary death, when it is chosen upon such an authority, is very honourable."

*28 August 2004*

#### REFERENCES

- Memorandum of Dignitas to the European Court of Human Rights, Strasbourg, in the case of Dianne Pretty vs the United Kingdom (original in English).
- Lecture of Ludwig A Minelli to the Giessen Congress on Physician Assisted Suicide (original in English).
- Article of Ludwig A Minelli (in German) "Die EMRK garantiert das Recht auf Suizid", published in "Aktuelle Juristische Praxis", May 2004.
- Study about annual costs of suicide situation in Switzerland (in German) "Der Preis der Verzweiflung", of 11 September 2003.