



## EUMANS! 1st Open Congress of citizens for sustainable peace, freedom, and democracy

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booklet to complement the talk

## Introduction

Grazie Carla, e buongiorno a tutti.

Prima di tutto, vorrei ringraziare Marco, con Virginia, Carla e tutte le altre persone per organizzare questo congresso e per invitarci a contribuire.

In riguardo alla situazione in Italia vorrei aggiungere – e questo è un commento mio personale – che la non-ammissione dei due referendum, pur essendo un grave colpo nella vostra battaglia, può anche servire come altro esempio per mostrare quanto sono necessari strumenti democratici efficaci per garantire i diritti dei cittadini e il rispetto per la volontà di una maggioranza tra loro da parte di chi li rappresenta a livello politico e istituzionale.

Adesso cambierò in inglese per spiegarvi un po' il lavoro di “DIGNITAS – Vivere degnamente – Morire degnamente” in riguardo ai diritti di fine vita, connessi strettamente con i diritti garantiti dalla Convenzione Europa dei Diritti Umani.

## Talk

The Swiss-based membership association “DIGNITAS – To live with dignity – To die with dignity” (hereafter abbreviated “DIGNITAS”) was founded in 1998; not by a doctor, not by a political activist, but by Ludwig A. Minelli, an attorney-at-law committed to safeguarding and defending human rights – not just the right to a self-determined life but also to a self-determined end of life.

At that time, virtually any form of assisted dying was prohibited in Europe – not so in Switzerland. Ever since its foundation, DIGNITAS' international engagement has been driven by the conviction that individuals everywhere should have not only the right to end their lives and ask for help in doing so, but to exercise this right safely at home, without having to travel to Switzerland. After all, what is the difference between a terminal cancer in Switzerland and one in a country like Poland?

A remarkable breakthrough came in 2011, when the European Court of Human Rights (ECtHR), in the case of *HAAS v Switzerland*, which had been led by DIGNITAS, confirmed an individual's right and freedom to choose the time and manner of their own end in life.

This right, as we all well know, is still not granted to citizens in many European countries. However, the decision of the ECtHR, together with a handful of others, has been very instrumental in quite a few court cases

since then. In the meantime, DIGNITAS has initiated, led, and/or served as an advisory in a number of legal cases, shared its practical experience and legal and human rights know-how with political committees and expert delegations in and outside of Europe.

Fast forward to 2020, the year that brought two major successes for DIGNITAS and the right to die movement in Europe:

On 26 February 2020, the German Constitutional Court, in a ground-breaking judgment, declared void section 217 of the German Criminal Code, which had been introduced in 2015 and prohibited repeated and thus professional assistance in suicide in Germany. Among the plaintiffs at the court in Karlsruhe were DIGNITAS in Switzerland and its German sister association “DIGNITAS – Menschenwürdig leben – Menschenwürdig sterben (Sektion Deutschland) e.V” (hereafter abbreviated “DIGNITAS-Germany”), as well as several individuals who were affected by the ban on assisted suicide in their professional or private lives.

The second success came on 11 December 2020 – just one day after the international day of human rights – when the Austrian Constitutional Court in Vienna declared unconstitutional the blanket prohibition of assistance in suicide and ruled to abolish that part of the relevant provision of the Criminal Code as of 1 January 2022. The judgment was the result of a constitutional complaint against the prohibition of assistance in suicide and voluntary euthanasia; (second fact of § 78 of the Austrian Criminal Code); the case had been initiated by DIGNITAS and led by a Viennese lawyer on behalf of four private persons.

I will now elaborate on the judgment of the German Constitutional Court and activities in Germany since then. Time allowing, I can elaborate a bit on the situation in Austria, which despite the abolition of the blanket prohibition of suicide assistance is quite different to the one in Germany.

Now, regarding Germany: With its judgment, the Federal Constitutional Court in Karlsruhe recognised the right to end one's own life as a human right and declared it part of any individual's personal autonomy. Quoting the court:

*“As an expression of personal autonomy, the general right of personality encompasses a right to a self-determined death. This right entails not only the freedom to take one's own life but also protects the freedom to seek and, if offered, utilise assistance from third parties to this end.”*

*”The right to a self-determined death is not limited to situations defined by external causes like serious or incurable illnesses, nor does it only apply in certain stages of life or illness. Rather, this right is guaranteed in all stages of a person’s existence. Restricting the scope of protection to specific causes or motives would essentially amount to a substantive evaluation, and thereby predetermination, of the motives of the person seeking to end their own life, which is alien to the Basic Law’s notion of freedom.”*

Following this judgment, DIGNITAS-Germany and other organisations which had been forced to cease activities with regard to suicide assistance since 2015 set out to create the structures necessary to inform, advise, and handle requests and prepare and provide professionalised and thus safe assistance in suicide.

In February of this year, on the occasion of a press conference in Berlin marking the two-year anniversary of the annulment of section 217 German Criminal Code, the three organisations DIGNITAS-Germany, “Deutsche Gesellschaft für Humanes Sterben” (DGHS, “German Society for Humane Dying”) and “Verein Sterbehilfe” shared their experiences from the past two years and presented a catalogue of 10 key points to guarantee freedom of choice, the “10 demands for humane assisted suicide in Germany”.

Together, the three organisations, besides providing information and advising hundreds of individuals, have arranged for almost 350 assisted suicides in 2021. All of them were conducted safely, and duly reported to the police. There have not been any irregularities, and there is no need for a special law.

The Constitutional Court’s judgment leaves the Bundestag with the option of enacting legal provisions to create a legal framework for suicide assistance, provided that the autonomy of the individual is fully respected in accordance with the judgment. Although the judges in Karlsruhe did not explicitly ask for a law on assisted suicide, several law proposals have been tabled in the meantime, by various political groups. It will be essential to make sure that any law will not restrict the freedom it pretends to protect. The right-to-die proponents and organisations are ready to go back to court, if necessary, to ensure the freedoms that are also explicitly mentioned in the judgment of the constitutional court are not being restricted again by an illiberal law.

In conclusion: There has been remarkable progress in recent years, as several countries have introduced laws on assisted dying, or are about to

do so, or have abolished existing prohibitions. However, regulations differ widely, and there is no reason why a patient with a certain diagnosis has access to assisted dying in one country but not in another; especially as here we talk about a right which is protected by the European Convention on Human Rights. The same is true of course for other decisions in life, such as abortion, or establishing an advance health care directive / living will, something which your initiative promotes on a European level.

We welcome and support any initiatives on EU level which contribute to balance out discrimination and inequalities, and we encourage debate and discussion about shared values, freedom of choice and self-determination – in life and at life's end.

## Background information

### Austria

On 11 December 2020 – just one day after the international day of human rights – the Austrian Constitutional Court in Vienna declared unconstitutional the blanket prohibition of assistance in suicide and ruled to abolish the specific part of the Criminal Code as of 1 January 2022. It did not explicitly say that Austria has to establish a law to regulate the issue, but politicians set about tabling a law which was approved of in December 2021 and came into force 1 January 2022.

Unfortunately, this law bears witness to the fact that it was created by people with little experience about the practice of assisted suicide and who gave little consideration to the difficult situation of applicants. In this sense, the situation is a bit similar to the one in Italy, where there is the theoretical possibility of assisted suicide but there is still a lack of structures that guarantee access to all the steps necessary.

Basically, the Austrian law defines a number of steps that have to be taken by an individual who wishes to end their own life: a) access to assisted suicide is restricted to persons suffering from a serious chronic disease or terminal illness; b) explicitly excluded are minors, but not persons with a mental illness; c) one has to see two doctors, one of which needs to specialise in palliative care; d) this is to assess the request and make sure it is an informed decision with other options considered too; e) a 12-week waiting period after the first doctor's visit, which can be reduced to two weeks in the case of terminal illness; f) setting up an advance directive for assistance in suicide with a public notary or patient rights lawyer, which

will be deposited in a register; g) after that, the person who wishes to end their life is entitled to obtain a lethal medication from a pharmacy. Alongside this “advance directives for assistance in suicide” law, hospice and palliative care have received additional funding.

## France

DIGNITAS brought a complaint to the Conseil d’État in France in September 2021, with the aim of abolishing the prohibition of sodium pentobarbital for specific use in a suicide. We are still awaiting the Court’s judgment.

The path through the courts can be long and one that results in an unclear situation. Despite this, it is important to do precedent cases so as to provoke a discussion on these issues and to get things moving into the direction of human rights and freedoms and freedom of choice since these are right for and of citizens.

## Schluss.PUNKT [www.schluss-punkt.de](http://www.schluss-punkt.de)

Just a few days after the German Federal Constitutional Court’s judgment, DGHS together with the Swiss DIGNITAS association launched a joint platform called “Schluss.PUNKT” (which translates to “final”, “last” or “end point”). “Schluss.PUNKT2 is a low-threshold free-of-charge advisory hotline for persons in Germany who are thinking about ending their lives.

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DIGNITAS – To live with dignity – To die with dignity

P.O. Box 17 8127 Forch

e-mail: [info@dignitas.ch](mailto:info@dignitas.ch) web: [www.dignitas.ch](http://www.dignitas.ch)

Facebook: [dignitas.ch](https://www.facebook.com/dignitas.ch) Twitter: [dignitas\\_org](https://twitter.com/dignitas_org)

