

Zurich-Forch, 11 December 2020

A note from “DIGNITAS – To live with dignity – To die with dignity”

Success for DIGNITAS at the Constitutional Court of Austria: the prohibition of assisted suicide is unconstitutional

On 11 December 2020 – just one day after the international day of human rights – the Austrian Constitutional Court in Vienna judged on the constitutional complaint against the prohibition of assistance in suicide and voluntary euthanasia; the case was initiated by “DIGNITAS – To live with dignity – To die with dignity” (abbreviated “DIGNITAS”) through the Vienna law firm ETHOS.legal: The prohibition of assistance in suicide (second fact of § 78 of the Austrian Criminal Code) is unconstitutional.¹ With this judgment, the people of Austria finally receive the freedom of choice and the human right which they have been entitled to for a long time: to decide themselves on the time of end of their suffering and life and to make use of help of third persons, thus also professional help.

Strengthening human rights

The freedom to decide on time and manner of one’s own end in life is a basic right confirmed by the European Court of Human Rights in 2011. Since then, this principle has been further developed in several further court proceedings initiated, led or supported by DIGNITAS, in Germany, Italy and Canada.² The legal principles in Austria ignored this right so far. Through this, Austrian citizens and residents were forced to endure their suffering sometimes for a long time, to choose a “hard” and, for the majority, bound-to-fail suicide, or to travel to Switzerland.

This situation was (and is) undignified for a modern democratic state in the heart of Europe. After careful weighing of the arguments and analysis of the legal situation, the Austrian constitutional court handed down a judgment based on expertise. Austrians who wish to self-determinedly end their suffering and life with professional help at home, surrounded by their family, and those who help them, will no longer be criminalised.

A court proceeding by ETHOS.legal and DIGNITAS

DIGNITAS asked Austrian attorney-at-law Mag. Dr Wolfram Proksch of the Vienna law firm ETHOS.legal to file action with the Austrian constitutional court; this was done after long drawn

1 https://www.vfgh.gv.at/medien/VfGH_Es_ist_verfassungswidrig_jede_Art_der_Hilfe_zu.de.php: facts and live-streaming video of the judgment (in German)

2 <http://www.dignitas.ch/images/stories/pdf/medienmitteilung-26022020-e.pdf>

out preparation in May 2019. The court proceeding aimed to have the constitutional court check on the constitutionality of the criminal code provisions regarding suicide assistance,³ so that freedom to decide over one's own end in life becomes real, something a majority of Austrian have been in favor of. At the same time, the Austrian constitutional court was encouraged to make a preliminary ruling procedure with the European Court of Justice (ECJ / CJEU) in Luxembourg, so that this court could provide its opinion regarding the compatibility of the existing Austrian law provisions with the legal status of the European Union.

Hearing at the constitutional court

For 24 September 2020, the Austrian constitutional court scheduled a hearing which served further clarification of the legal situation; it was attended by the attorney-at-law of the plaintiffs, DIGNITAS, and the Austrian Association for a Humane End in Life (ÖGHL). In the hearing, several legal questions were discussed in connection with article § 78 of the Austrian Criminal Code (öStGB), that is the prohibition of suicide assistance. Questions regarding voluntary euthanasia (“Tötung auf Verlangen”) were not part the hearing.

The legal situation in Austria so far

The Republic of Austria had one of the most rigid prohibitions against the self-determination over one's own end in life. § 78 “participation in self-murder” (sic!) of the Austrian criminal code, which was set up in the Austro-fascist 1930s, said: “Any person who incites another to commit suicide [literally: “kill himself”], or provides help in this, is liable to a custodial sentence of six months to five years.” Additionally, § 64 para 1 cipher 7 provides that § 78 is valid even if the “act” takes place abroad, for example in Switzerland where, for many years, assisted suicide is basically not a crime. The § 64 provision had the effect that the Austrian prosecution authorities could start proceedings against a person in Austria, if the authority knew that this person – if he or she was Austrian citizen and resided in Austria – had assisted another Austrian residing in Austria to travel to DIGNITAS in Switzerland in order to be able to end their suffering and life self-determinedly, legally, supported by physicians and professionally accompanied.

Implementation of the judgment

Due to decades of prohibition Austria does not have the structure and experience with professional assistance in suicide. However, due to its 22 years of international activities, the nonprofit membership association DIGNITAS has such expertise. Together with the ÖGHL, DIGNITAS will provide its know-how to those professionals in the health care system who, in the frame of the law and with respect and humanism, will help individuals who wish to self-determinedly end their suffering and life and with professional help.

The constitutional court judgment will come to effect as of 1 January 2022.

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³ <http://www.dignitas.ch/images/stories/pdf/medienmitteilung-29052019.pdf>

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BACKGROUND:

DIGNITAS – To live with dignity – To die with dignity was founded in May 1998 with the aim, through international legal and political work, to make the proven Swiss model of freedom of choice, self-determination and personal responsibility in life and at life's end also accessible to individuals abroad.

DIGNITAS' advisory concept – combining palliative care, suicide attempt prevention, advance directives/decisions and assisted dying – offers a basis for good decision-making to shape life until the end.

Through litigation, DIGNITAS obtained a judgment of the European Court of Human Rights in 2011 acknowledging the right/freedom of a competent individual to decide on the manner and time of his or her own end in life and confirming this to be protected by Article 8 of the European Convention on Human Rights.

DIGNITAS has been engaged in many lawsuits in Europe and Canada, and has provided in-depth submissions and received visits by expert and parliamentary committees from Great Britain, Australia, Canada, etc. when laws were discussed and planned for the protection of a patient's autonomy and human dignity.

The founder of the charitable DIGNITAS organisation is Ludwig A. Minelli, an attorney-at-law specialising in human rights. The team of DIGNITAS consists of 28 part-time employees and it is supported by several external experts in the fields of medicine, law, IT and auditing.