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

Right to a self-determined end of life in France

A group of 31 persons residing in France applies to the European Court of Human Rights (ECHR)

A group of 31 persons filed a series of applications against France with the European Court of Human Rights on 28 April 2023. This unprecedented legal action, coordinated by DIGNITAS, aims to ensure that freedom of choice at the end of life is respected and to pave the way for assisted dying in France.

In France, individuals still do not have the freedom to decide on their own end in life. They have no access to a safe medical means to end their own life and cannot request professional assistance to be accompanied in this process. According to the Swiss association “DIGNITAS – To live with dignity – To die with dignity” (DIGNITAS for short), which is active at an international level, this undermines, in particular, the right of any person capable of discernment to determine the time and manner of his or her own end in life, a right already confirmed by the European Court of Human Rights in 2011¹.

A group of 31 persons residing in France, represented by Patrice Spinosi, lawyer at the Council of State and the Court of Cassation (Conseil d’État and Cour de cassation), filed a series of applications with the European Court of Human Rights on 28 April 2023. This unprecedented legal action, coordinated by DIGNITAS, aims to break the political deadlock on the right to die and ensure freedom of choice at the end of life in France.

The lawyer Ludwig A. Minelli, founder and Secretary General of DIGNITAS, says: “*Freedom of choice at the end of life is a fundamental individual freedom and a human right. Despite existing European case law, French politics continues to protect the special interests of paternalistic-conservative parties and circles and to ignore the will of the overwhelming majority of the*

¹ Judgment by the ECtHR of 20 January 2011, n° 31322/07, HAAS v. Switzerland, <http://hudoc.echr.coe.int/eng?i=001-102940>; “In the light of this case-law, the Court considers that an individual’s right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention”.

country's citizens²."

Lawyer Patrice Spinosi says: *"Regrettably, the French courts have sidestepped the essential question of the right to die with dignity, despite the French Constitution, the European Convention on Human Rights and the case law of the European Court of Human Rights (ECHR). The supreme national courts of other countries in Europe, however, agreed to deal with the question and have even ruled in favour of the right to a self-determined end of life."*

Proceedings lasting several years

In 2021 and 2022, DIGNITAS submitted two applications to the "Conseil d'État", France's highest administrative court, supported by several dozen private individuals residing in France, the majority of whom are DIGNITAS members. The first application (filed in September 2021) dealt with the legality of the current total ban on the medication sodium pentobarbital in human medicine. The second application (filed in July 2022) addressed the question of whether it is legally permissible for the law currently in force in France, known as the "Claeys-Leonetti law", to leave aside any form of assisted dying (i.e., assisted suicide and/or voluntary euthanasia).

However, the Conseil d'État twice refused to refer a "question prioritaire de constitutionnalité" (QPC) to the Constitutional Council, considering, irrespective of the seriousness of these questions, that the legislative deficiencies could not be challenged. On 29 December 2023, the Conseil d'État ruled against both of DIGNITAS' applications. The French judiciary thus missed the opportunity to ask the legislator to guarantee the right of people in France to decide themselves on the time and manner of their own end in life and to seek help to do so. But these French decisions now make it possible to refer the crucial legal questions raised to the European Court of Human Rights for a judgment.

The "Convention citoyenne sur la fin de vie" – a citizen's committee debating end-of-life issues between December 2022 and March 2023 – has certainly reopened a wide public and media debate on legalising a form of assisted dying (assisted suicide and/or voluntary euthanasia) in France. Despite all the debates and political promises, it is far from certain when a draft law will be available, whether it will guarantee real freedom of choice over one's own end of life and whether it will find a majority in parliament.

The ECHR will now have to rule on these applications and, within the next few months, could potentially invite the French government to explain itself.

DIGNITAS – To live with dignity – To die with dignity

For 25 years, the Swiss non-profit organisation "DIGNITAS – To live with dignity – To die with dignity" has been campaigning internationally – both legally and politically– for the right of the individual to end his or her own suffering and life. Among other things, it helped to ensure that

² http://www.dignitas.ch/index.php?option=com_content&view=article&id=70&Itemid=138&lang=fr (in French)

this right was recognised by the constitutional courts in Germany³ and Austria⁴ in 2020. Since 1998, DIGNITAS has made it possible for people all over the world to choose the option of an assisted suicide on the basis of Swiss law and thus end their lives in a safe manner and with professional support. The association's members include more than 1000 persons living in France⁵.

In Switzerland, assisted suicide has been an undisputed practice for almost 40 years; the general legal basis is sufficient to allow it, and the legislator explicitly decided against a special law in 2011. This liberal regulation has proved its worth. In contrast, what remains prohibited in Switzerland is voluntary euthanasia, i.e., the administration of a lethal medication, by a third party (homicide at the request of the victim).

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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 34 part-time employees and it is supported by several external experts in the fields of medicine, law, IT, and auditing.

³ <http://www.dignitas.ch/images/stories/pdf/medienmitteilung-26022020-e.pdf>

⁴ <http://www.dignitas.ch/images/stories/pdf/medienmitteilung-11122020-e.pdf>

⁵ http://www.dignitas.ch/index.php?option=com_content&view=article&id=32&Itemid=72&lang=en