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

Right to access to a self-determined end of life in France

DIGNITAS challenges sodium pentobarbital ban at the Conseil d'État of France

The internationally active Swiss association “DIGNITAS – To live with dignity – To die with dignity” considers the current French ban on the prescription of the medication sodium pentobarbital for a self-determined end of life to be unconstitutional. It requests the Conseil d'État (Council of State) for this ban to be lifted so that people living in France can in future claim the right to a self-determined end of life in their own country. DIGNITAS is represented in these legal proceedings by the renowned French lawyer Patrice Spinosi.

The association “DIGNITAS – To live with dignity – To die with dignity” (abbreviated: DIGNITAS), represented by the lawyer Patrice Spinosi, Avocat au Conseil d'État et à la Cour de cassation (lawyer admitted to the Council of State and the Court of Cassation), filed a complaint with the Conseil d'État on 22 September 2021. With this legal action, DIGNITAS wants to unblock the political standoff regarding assisted dying and enable freedom of choice over one's own end of life in France. In doing so, the association relies on the French constitution, the European Convention on Human Rights (ECHR), the case law of the European Court of Human Rights (ECtHR) and other courts, as well as Switzerland's positive experience from 35 years of freedom of choice and professional support for a self-determined end of life.

Together with the complaint, a so-called “QPC” (question prioritaire de constitutionnalité; request for constitutional review of a legal provision) was submitted to the Conseil d'État. The Conseil d'État is to refer the QPC to the Conseil constitutionnel (Constitutional Council) for review or, if necessary, to review itself whether the lack of an exception in favour of a safe and self-determined ending of one's own life in the current ban on the prescription of sodium pentobarbital is constitutional.

Lawyer Patrice Spinosi says: “*Today's ban curtails the right of every person capable of judgement to determine the manner and time of his or her own end in life, a right already*

confirmed by the European Court of Human Rights in 2011¹. This right also derives from the French Constitution and must be fully respected in France”.

Sodium pentobarbital is considered the most reliable and safest means of ending one's own life. In Switzerland, it has been used for assisted suicide for many years already.

Legal situation inadequate and contrary to human rights

Lawyer Ludwig A. Minelli, founder and Secretary General of DIGNITAS, says: “*Freedom of choice over one's own end of life is a fundamental freedom and human right. Despite the existing European case law, French politics continues to protect the partisan interests of political parties and paternalistic conservative circles, ignoring the will of an overwhelming majority of French citizens²*”.

The current French end-of-life legislation, the so-called “Loi Claeys-Léonetti”, is inadequate. Assistance in dying is only allowed in the form of palliative sedation for individuals whose death is imminent. This means that many seriously suffering individuals are still excluded from the right to end their lives legally and safely in France at a time of their own choosing. Due to the legal situation, they are often forced to either take the often arduous path to an assisted suicide in Switzerland, to obtain a lethal medication illegally or to attempt suicide using risky methods and means; the majority of such suicide attempts fail, with serious consequences for the persons concerned, their relatives, and third parties.

This is discriminatory, inhumane and violates the constitutional principle of «Liberté, Égalité, Fraternité» (Liberty, Equality, Fraternity) as well as human rights.

Proceedings lasting several months, with possible referral to Strasbourg

The complaint was preceded by a so-called “demande d'abrogation” to the Prime Minister and the Ministry of Health. The demande d'abrogation claimed that it was against the constitution to have the medication sodium pentobarbital on the list of narcotics banned from prescription, as is the case today, without making an exception for its use to end one's own life.

After the two-month deadline set by law for a response had passed without any reaction from the Ministry, the way forward was cleared for the complaint. The Conseil d'État now has three months to consider the QPC submitted by DIGNITAS in support of the complaint. It is also possible that the Conseil d'État will decide to submit it to the Conseil constitutionnel. The latter also has a time frame of three months to decide on the matter.

If the complaint does not produce the desired result, DIGNITAS will submit the case to the European Court of Human Rights in Strasbourg.

¹ Judgment by the European Court of Human Rights of 20 January 2011, application no. 31322/07, HAAS vs 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.»

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

DIGNITAS – To live with dignity – To die with dignity

The Swiss non-profit association “DIGNITAS – To live with dignity – To die with dignity” (abbreviated: DIGNITAS) has been campaigning for the right to end one's own suffering and life for over 20 years, both legally and politically. Among other things, it was instrumental in having this right recognised by the constitutional courts in Germany³ and Austria⁴ in 2020. Since 1998, DIGNITAS has made it possible for individuals from all over the world to make use of assisted suicide on the basis of Swiss law and thus to end their lives in a safe way and with professional support. In France, the association has more than 1000 members⁵.

In Switzerland, assisted suicide has been an established practice for more than 35 years. The general legal basis is sufficient, and in 2011 the legislator explicitly spoke out against a special law. This liberal regulation works very well. However, direct active euthanasia, i.e. the administration of a lethal drug by a third party (homicide at the request of the victim), remains prohibited in Switzerland.

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³ Judgment by the German Constitutional Court of 26 February 2020 - 2 BvR 2347/15 -, Rn. 1-343
http://www.bverfg.de/e/rs20200226_2bvr234715.html (in German); key findings of the judgment available in English in the court's press release:
<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-012.html>; see also:
<http://www.dignitas.ch/images/stories/pdf/medienmitteilung-26022020-e.pdf>

⁴ https://www.vfgh.gv.at/rechtsprechung/Ausgewahlte_Entscheidungen.de.html (in German); see also:
<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

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