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Press release by

DIGNITAS – To live with dignity – To die with dignity

Federal Administrative Court of Germany issues Landmark Decision

On Thursday 2 March 2017, the Federal Administrative Court of Germany (Bundesverwaltungsgericht) in Leipzig issued a landmark decision in regard of access to the means for ending one's suffering and life by one's own action, and the right to die in general. The case concerned the wife of the claimant who, after an accident, had been almost totally paralysed (quadriplegic), needed 24/7 ventilation and suffered from pain and cramps. In 2005, she ended her ordeal by an accompanied suicide at DIGNITAS – To live with dignity – To die with dignity, however, before this, she started litigation continued by her husband which led to the now decision. The court battle has taken almost 13 years.

Determined and Strong-Willed

Coming back home one evening in 2002, Mrs. Koch, at the entrance of her house, stumbled and fell over in such an unfortunate manner that she broke her neck. Despite emergency intervention and therapies she remained almost completely paralysed, required 24/7 ventilation and suffered from pains and cramps – being entirely dependent on others. Exploring options to end her ordeal, she contacted DIGNITAS – To live with dignity – To die with dignity. DIGNITAS suggested that she try to obtain the preferable means for an accompanied suicide from the German Federal Institute for Drugs and Medical Devices (Bundesinstitut für Arzneimittel und Medizinprodukte BfArM) so that she could end her life at home, instead of having to do a practically and emotionally challenging journey to DIGNITAS in Switzerland. Mrs. Koch did so in 2004, however, to little surprise, the Institute rejected her plea. Still, in this she set the base for what was to become a 12 year court battle, continued by her husband after she passed away by accompanied suicide at DIGNITAS in 2005, with her husband at her side.

German Courts ignored husband's rights – European Court of Human Rights corrected this

Mr. Koch took over the fight for the right to die at home from his brave wife and appealed to the decision of the Institute. However, all German Courts rejected his arguments by stating that he was neither entitled to the claim brought up by his now deceased wife nor to own rights. In conclusion, he brought the case to the European Court of Human Rights, which, on 19 July 2002, decided that based on article 8 (Right to respect for private and family life) of the European Convention on Human Rights, the German Courts at least should have looked into whether Mr. Koch's plea had been reasonably justified. The case went back to square one, however, this time with the German Courts being forced to deal with the matter.

Landmark Decision

Finally, on 2 March 2017, the Federal Administrative Court of Germany (Bundesverwaltungsgericht) in Leipzig corrected the decisions by the Lower Courts and acknowledged that the decision of the German

Federal Institute for Drugs and Medical Devices had been unlawful. The general right to personality article 2,1 (right to life) in connection with article 1,1 (protection of human dignity) of the Basic Law (Constitutional Law) of Germany comprises the right of a severe and incurably ill patient to decide how and at what time his or her life shall end, provided that he or she is in a position to make up his or her own mind in that respect and act accordingly. The Court found, even though it was generally not possible to allow purchasing a narcotic substance for the purpose of suicide, there had to be exceptions. This, if a severe and incurably ill patient, due to his or her unbearable suffering, freely and seriously decides to wish an end to his or her life, and if there was not reasonable alternative available – such as to end treatment accompanied by palliative care. Such patients should not be barred from accessing prescribed narcotics for a dignified and painless suicide. The Court found that the Institute at least should have assessed whether such a case had been given with Mrs. Koch.

False Information in the German Press

In the days after this landmark decision, some of the German press spread false information, stating that the decision was about “passive euthanasia” (to let die) and others claimed that this would undermine the law prohibiting “commercial assistance in suicide”. Both are wrong. The decision is about access to the means for self-determinedly ending one’s life by own action, not about passive euthanasia. Furthermore, there is no law prohibiting “commercial assistance in suicide” in Germany and such commercial assistance has never existed. As with earlier cases of such misleading news, these ‘mistakes’ are due to the entanglement of the German press with politics and the two state churches, the latter having a strong influence in Germany, a country which does not yet have a clean division between state and church.

Clear Statement by a Member of the German Ethics Council

In regard of the decision by the Federal Administrative Court, Prof. Dr. Reinhard Merkel, member of the German Ethics Council, pointed out: “This is a very sensible and very well substantiated judgment . . .” And in regard of the Law of 10 December 2015 (article 217 German Criminal Code) which prohibits repeated and thus professional assistance in suicide: “I can only hope that the Federal Constitutional Court looks at it closely and withdraws this unconstitutional law”. DIGNITAS and several further organisations, physicians and patients have filed Constitutional Complaints against that law / article 217.

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BACKGROUND:

DIGNITAS – To live with dignity – To die with dignity was founded in May 1998 with the aim, to make the proven Swiss model of freedom of choice, self-determination and personal responsibility in life and at life’s end also accessible for 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.

The non-profit member’s society has 7,760 members in 84 countries around the world.

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 time and manner 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 more 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 board members, twenty part-time employees and it is supported by several external experts in the fields of medicine and law.