DIGNITAS in Switzerland – its philosophy, the legal situation, actual problems, and possibilities for Britons who wish to end their lives

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Dear Mr. President,
Ladies and Gentlemen,

I am very glad indeed to stay in London today, and the reason is quite simple: It has been Sir Winston Churchill who has always been one of the good examples for me who has left a very deep impression. As a boy of 14 years, I began to read the many volumes of his memoirs of the Second, and later of the First World War, as well as his other publications and speeches, and at about the same time, he paid a visit to Zurich in 1946 where he held a speech at Zurich University to the youth of Europe ending with the sentence: «Let Europe arise». I have, of course, visited the War rooms of his Cabinet and the Churchill museum in Whitehall, and I still remember that I, standing on a ladder at Bürkli Square in Zürich, have seen him in an open car in 1946. Thus, for me, London has always been his city, and I am glad to be here. And I thank you very much for your invitation.

But it is not only Winston Churchill, whom I did admire; I admired also the very early efforts and successes for personal freedom in British history – which I knew from the lecture of Churchill's «A History of English Speaking Peoples». To me, the Magna Charta and The Bill of Rights have always been to me decisive footsteps in the History of Human Rights, to which I have been attached since I started to think about politics, and this began when I was at about 12 years old.

My work within the Swiss association with the name «DIGNITAS – To live with Dignity – To die with Dignity» has exactly to do with the last Human Right: The ability to decide, how and when somebody would like to end one's own life. For years, I have been persuaded that this is really the last Human right, and I have also been fighting for this goal for many years.

In my life, I have first been a journalist, and I was the first Swiss correspondent of the German News Magazine «Der Spiegel» in the years 1964 to 1974. In

1973, I have got in touch with the European Convention on Human Rights for the first time, which Switzerland ratified one year later as the last western European country on November 28th, 1974. I began to work with this Convention just as a simple citizen interested in public problems, and this has led to the fact that, being 44 years old, I went to Zurich University in order to make my law studies. At the age of 48, I received the academic degree of a licensee of law – today, we would say Master of Law –, and at the age of 54, I received my lawyers diploma.

Shortly after my law studies, two Right-to-die organisations have been founded in Switzerland; the first in February 1982 in Geneva, for the French speaking part of Switzerland, and in April of the same year in Zurich for the German speaking part of Switzerland. Both carry the name «EXIT».

I very well knew one of the founders of the Zurich association, and after he passed away, one of my best friends has been the vice-president of EXIT, and he – also a lawyer – consulted me in a situation which has been very difficult for the Director of EXIT: In the Board of the association, there was a power struggle; a majority of the Board intended not to discuss with the minority any longer, to dismiss not only the minority but also the Director, in order to have full access to the millions of Swiss francs in the funds of the association. As the majority and the minority knew me personally, they appointed me as neutral Chairman for the General assembly of 1992, and this assembly decided to get rid of this majority in the Board and to confirm the Director and the minority members of the Board.

Six years later, with a new Director of EXIT, a similar situation arose. However, opponents of the Director, who has also been a close friends of mine, had organised a claque who held the majority in the General assembly; we were outvoted, no democratic discussion had been possible. In the following night, I designed the statutes of DIGNITAS in order to create an association which would defend the Right to Die in a peaceful manner and without power struggles. Therefore, the structure of DIGNITAS is somewhat different to a so called «normal» association: The General assembly is formed by only two «active members». In order to make changes to the Charter of the association or to decide other major questions, the two active members have to be unanimous, and there will never be majority or minority. In addition, the Secretary General has, by the Charter, the power to exclude the second active member at any time. People wishing to be part of DIGNITAS may only join the group of «destinatary members» which means, as members to whom the services of the association are meant. They have the right to information and to access the services, but they have neither the right to attend the General Assembly, nor have they another right to make corporative decisions within the association. This very exclusive construction prevents power struggle.

DIGNITAS was founded on May 17th, 1998, and the best collaborators who formerly worked for EXIT came with me to form the new team of DIGNITAS.

DIGNITAS' first assisted suicide took place on October 27th, 1998 – a Swiss physician at the age of 71. Until today, we have accompanied more than 800 persons to an assisted suicide, and not a single one of these accompaniments has ever led to a courts case. About 85 – or little more than ten percent – were members residing in the United Kingdom.

In September 1999, we had the first assisted suicide for a person who was not a Swiss resident, the German Mrs. Maria Ohmberger. Some time earlier, we had to decide whether or not we would also accept members from outside of Switzerland. The two EXIT organisations in Geneva and Zurich did not accept persons beyond Swiss borders. Should we do the same, or would we have to take a different point of view?

The decision was quite simple for me: As I always have been convinced that the Right do Die is in fact the very last Human Right, there could not be any discrimination just because of the place of the residence of a person. Why should I have the right to tell a Swiss lady suffering froma breast cancer with metastases in Basle that DIGNITAS would help her, but tell a French lady just on the other side of the border between France and Switzerland, in Saint-Louis, with the same condition, that we would not help her? And thus, we also accepted foreigners.

All the difficulties that DIGNITAS has to deal with now have their origin in this fact. «Why do you import such foreigners?» was the main question which the General Prosecutor of the Canton of Zurich, Dr. Andreas Brunner, asked me already in the year 2000. He only wanted to keep his workload as little as before, and since then, he is on the war path against DIGNITAS, and we have not been able to smoke the peace pipe with him until today. He is still thinking about how he could get rid of this awful organism causing him so much work, and several years ago, he even told friends of mine that the DIGNITAS-problem will be solved, sooner or later, biologically – because I am slightly older than he is. But as he is a chain-smoker, I think, chances or risks are at least equal . . .

What is the legal situation in Switzerland? Switzerland has no law saying that accompaniment to suicide is legal, and there is no law saying how assisted suicides should be done. Switzerland is a very liberal country. After Switzerland became a Federal State in 1848, for more than fifty years the entire Federal Government of always seven ministers had been formed either only by Liberals, or – after 1892 – by a majority of Liberals. At that time, each of the 24 Swiss Cantons had a Criminal Law of its own. The need was been felt to unify Criminal

Law, and in 1918, the Federal Government made a respective proposal to the Parliament. The relevant article 115 of the Swiss Criminal Code has been a part of this proposal, and the wording was – in its sense unchanged today:

> ***"Whoever, from selfish motives, induces another person to commit suicide or aids him in it, shall be confined in the penitentiary for not over five years, or in the prison, provided that the suicide has either been completed or attempted."***

Therefore, by argueing e contrario, in Switzerland, abetting and helping to suicide is no crime as long as the helper is not acting in a selfish manner. But what would be «selfish» in this respect? In 1918, the Government gave the Parliament two examples: if somebody has the intention to get, as a heir, the estate of the deceased person prematurely, or, if somebody intends to get rid of a relative for which he has to pay financial support. The German word for «selfish» is «selbstsüchtig»; the particle «süchtig» means «addicted» or «manic» and tells us that the meaning of the laws expression «selfish» is not just «to the advantage» of the helper; there needs to be an element in his behaviour which has to be considered clearly as contrary to good manners. As, especially in Switzerland, just earning money in a normal dimension through any activity is never contrary to good manners, earning money alone can never be «selfish» in the meaning of the law; an additional pejorative element is required therefore.

However, – and this is quite interesting – neither the commission of experts in the last two decades of the 19th century nor the Government in the first two decades of the 20th century who prepared the draft of the Swiss Criminal Code, in connection with this section of the Code, thought of a person with a terminal illness or similar problems. The question of ill persons was discussed in connection with the wording of article 114 – killing on demand. As a reason for assisted suicide, the experts discussed the situation of someone who has gone into bankruptcy and, therefore, has to save his honour by shooting himself. Such a person, not knowing how to do this, not having a gun and ammunition, should have the possibility to ask a close friend, who is an officer in the Swiss army, to lend him a gun and ammunition and to show him how to shoot himself in order to be really dead.

As laws have to be interpreted first based on their wording and not following the intention of the historic legislator, article 115 has been a very good basis for Right-to-die societies in order to help ill people to end their lives. This option was realised in about 1985 by «Exit (German speaking part of Switzerland)». Before, these organisations just have distributed booklets to their members in order to give them written instructions about more or less safe suicide procedures.

At the beginning, for assistance to suicide, they used a combination of two medicaments; the first was a barbiturate named «Vesparax»; the second a muscle relaxant called «Norflex» or the psychopharmacon «Noveril». Later, the then new president of EXIT, Meinrad Schär, who was professor of Social and Preventive Medicine at Zurich University, replaced this combination of medicaments by a single one, Pentobarbital of Sodium. This medicament is very potent for effecting short-time narcosis, and, in a higher dosage of about four or more grams, it leads absolutely securely to a deep coma and a respiratory arrest thereafter.

What is the procedure, if somebody asks DIGNITAS to prepare an assisted suicide? Usually, people call on the phone, or they send a letter or an e-mail, telling us that they would like to end their life. They tell us about their illnesses or mental problems, and they ask for help. They ask for information, and we send them our brochure by postal mail or e-mail.

But in many cases, especially if people inquire by phone, we are able to give them advice in order to improve their health conditions. Very often, we hear that especially the analgesic therapy is not appropriate, and we are able to propose to visit special palliative clinics or specialists. If those problems can be solved, the initial intention to put an end to one's life normally diminishes rapidly. In every single case, we first look whether there is a solvable problem and whether there would be a possibility to help the person to go on with his or her life, yet under improved conditions.

There are several steps to take in order to have an assisted suicide with DIGNITAS:

– first, you have to join DIGNITAS as a member; the respective costs are a single registration fee of 200 Swiss Francs (84 GBP) and an annual membership fee of 80 Swiss Francs (34 GBP);
– second, you have to send a personal letter of request, telling DIGNITAS the reasons why you want to end your days; and you add a medical file which gives information about diagnoses, therapies and, if possible, prognosis, as well as a curriculum vitae, so that DIGNITAS knows a bit more about who you are and your familiar circumstances; the most recent medical report should not be older than two months;
– if DIGNITAS tells you that a Swiss physician has been found, willing to write the prescription for the lethal medicament (which we call «the provisional green light»), you will have to obtain a set of recently issued documents of the Registrar's Office such as birth certificate, marriage certificate, death certificate of the partner, decree of divorce of a civil court and so on. By Swiss law, these documents shall not be older than six months;
– as soon as these documents are with DIGNITAS, an appointment for an assisted suicide can be arranged for. The member will meet the physician. He

or she will discuss, if possible, medical alternatives, and he will check on the members constant wish to die. After this appointment, the physician will make the final decision whether or not he will write the prescription. This decision depends first on the question whether or not the patient has full capacity of discernment. This capacity is indispensable and means that the person must be able to understand what shall be done and must also have the capacity to express himself, at least to answer questions by signs indicating «yes» or «no». And, of course, this people must have the capacity to make the last act in their life themselves, which is either drinking a glass of water with the barbiturate dissolved in it, or to inject the liquid through a gastric tube, or to activate an infusion which has been prepared beforehand. The notion of «suicide» requires that the last act is made by the person who wants to die. Thus, control over the situation remains in the hands of the patient until the very end.

Although, for about nine years now, the General Prosecutor of the Canton of Zurich has told the media that members of DIGNITAS make a trip to Zurich on one day, and the same day or the next day, they will die, and that this does not appear to be an adequate period of time in order to find out whether or not someone really has a constant wish to die, the reality is a quite different one. In a study of a German student, Ms. Nancy Gädeke, of the Otto-von-Guericke-University in Magdeburg, who had a look into the DIGNITAS-files of all 136 cases of assisted suicide in 2005, you will see that the period of preparation – from the moment of request of the member until to the «provisional green light» varies between three and more than 800 days, with an average period of 77 days, which means about two and a half months. The additional period between the «provisional green light» and the assisted suicide varies between zero and 1'144 days, with an average period of 66 days – more than two months. Thus, there is no hurry at all – with the exception of a very few urgent cases usually due to an unbearable pain syndrome.

Additionally, there is a scientific study made by another German student of a catholic high school for social work, showing that approximately 70 percent of those members who have requested the preparation of an assisted suicide and who do not wish to have the accompaniment immediately, do never call DIGNITAS again after having received the «provisional green light». Sometimes, we compare our members to people living in a narrow tunnel with two awful exits: the so-called «natural» end of life with possible unbearable pains and difficulties, or the «home made» suicide attempt which is known to be very risky: up to 49 attempts of 50 do fail, according to an American scientific research at the National Institute for Mental Health in Washington in the 1970ies. The «provisional green light» of DIGNITAS seems to be a sort of «emergency exit» out of this tunnel which immediately causes relieve for the patient.

DIGNITAS also asks members who intend an assisted suicide to discuss this plans with relatives as early as possible, in order to give them enough time, first to make opposition, later – if possible – to agree, and finally to be at the member's side until the very last moment. In this way, death occurs once again in midst of the family, and no longer anonymously in a clinic or another institution, and the family has again the chance to say good-bye. This creates an entirely peaceful farewell which is an important condition for a better handling of the mourning period afterwards: To know that a family member has left in an atmosphere of internal and external peace is very comforting.

Prior to taking the lethal medicament, an anti-vomiting medicament is necessary; half an hour later, the stomach is prepared to receive the barbiturate. But first, the escorts of DIGNITAS will once again discuss with the member whether he or she really wants to die. If this is still the case, there is a document to be signed: the Declaration of suicide.

Within two to five minutes, Pentobarbital of sodium will cause a deep coma. Only after the person has lost conscience, the medicament will stop the breathing centre, inducing death without risks und without pains. The obvious duty of DIGNITAS is to avoid risks and pains.

When death has occurred, one of the escorts will call the police in order to announce an assisted suicide. Shortly afterwards, officers of several authorities will arrive; in the Canton of Zurich usually a Public Prosecutor, a police officer, a police detective, and a medical officer. They have to make an investigation in order to find out whether or not there has been an action by third persons, possibly a crime. This investigation always ends with a report confirming that there has been a suicide.

At the end of this procedure, the body is transferred to the Institute of Legal Medicine and released, as soon as that the Public Prosecutor has no objection to a burial.

Mostly, our members wish for a cremation in Zurich and for the ashes to be sent to their homes for burial; it is also possible to scatter the ashes anywhere in Switzerland, in a lake or in the mountains.

Preparing an assisted suicide, accompaniment to assisted suicide and handling everythin necessary with the relevant authorities are services which do cause a lot of work and costs which need to be covered for. DIGNITAS, as a non-profit organisation, will not write invoices indicating every single Swiss Franc, but rather asks for special membership fees for these services. These fees are:

– for preparing until to the «provisional green light» 3'000 Swiss Francs (1'255 GBP);

– the same sum for accompanying to assisted suicide;
– and 1’500 Swiss Francs (628 GBP) for the handling with the relevant authorities.

Further fees are::

– 500 Swiss Francs (210 GBP) for the service of the physician;
– as well as approximately 2’000 Swiss Francs for the fees of the Registry and the Burial Offices including cremation.

Where does an assisted suicide take place? For Swiss members, of course, we will usually go to their home in order to offer the accompaniment in their very own rooms. For members coming from abroad, we had, until the end of September of this year, rented rooms in a residential building with 16 small flats in the City of Zurich. However, because a local politician has set up a conflict between DIGNITAS and a resident in this building, and local media started to agitate against DIGNITAS, the owner of the building, a cousine of mine, felt attacked, and so told us to leave the building by the end of September this year.

Despite the fact that we started a very intensive search in order to find a new place, we were not successful for quite some time. Nobody was willing to accept us. Shortly before the end of September, we were offered a nice flat for rent about 15 miles from Zurich. But shortly after accompaniments took place in this flat, all the neighbours went into opposition and asked the local City council to interfere. As two former and one present member of the City council are among these neighbours, the City council acted immediately and locked the flat stating that we would first have to apply for an official permission to change the use of the flat for our purposes.

After this intervention, I offered the living room in my very own house in order to make accompaniments – eight miles from Zurich. Without any opposition from neighbours, the council of my village, Maur, acted identically: Immediate and absolute interdiction of assisted suicides in my ownhouse. Both official actions were extensively reported and commented in the media, accusing DIGNITAS of not being able to render dignified services to their members.

Shortly after this, someone offered rooms in an industrial building in the village of Schwerzenbach, 14 miles from Zurich. As the rooms were appropriate, we rented them and installed ourselves within two days. But a few days later, even the council of Schwerzenbach proclaimed an immediate and absolute interdiction to use those rooms for our purposes. The council argued that the change of use of the two rooms would have a negative influence on the road circulation in this zone – an argument which is interesting indeed, because in about 100 meters distance, next to this building, there is the biggest brothel in Switzerland, which daily attracts hundreds of men coming by car and causing heavy road circulation. We heard, the same council had been in a great hurry to provide the brothel

all the necessary permissions, and it is quite clear, that DIGNITAS will never be able to offer similar free natural services to the members of the council of Schwerzenbach.

Of course, we have attacked all these official interdictions at the Administrative courts of the Canton of Zurich, and we are awaiting their decisions. We cannot imagine that, through the building laws in Switzerland which are regulating to some extent also the use of buildings, it will be possible to prohibit completely our activity which is not only legal, but is also a service for people who make use of an officially acknowledged Human Right. And today, I may tell you that the Administrative Court of the Canton of Zurich has rendered a decision saying that we are entitled to work in Schwerzenbach at least until the final judgment will be rendered.

It has been the Swiss Federal Court – the supreme court of Switzerland – who has rendered a decision on November 3rd, 2006, saying that the decision, how and when to end one's own life, is part of the Right to Self-Determination and therefore covered by Article 8 paragraph 1 of the European Convention in Human Rights which protects private life. Nowadays, all European states belong to this Convention as contracting partners, with exception of the two last dictatorships in Europe – Belorussia and the Vatican. Therefore, we have to assume that this right has to be respected in all these European states.

But there is one difficulty: The Swiss Federal Court has also said that in order to obtain the Pentobarbital of Sodium, the prescription always has to be written by a Swiss physician, and, furthermore, if an assisted suicide is intended by a person who is mentally disturbed, there shall always be a in-depth report of a psychiatrist indicating that the person's wish to end life is not a symptom of an acute depression, and that the person has full capacity of discernment. This signifies that DIGNITAS is only able to get the medicament if at least one Swiss physician agrees. The Swiss law on narcotics states in article 11 that a physician is allowed to prescribe narcotics only following the rules of the medical profession. As there are no such rules for people without illnesses, there remains the difficulty to obtain the medicament in cases where a person is not ill. For someone with a mental disorder, we do not find a psychiatrist willing to write the necessary report: all of the Swiss organisations of psychiatrist have proclaimed they will not be ready to establish such reports. Therefore, the appellant who caused the decision of the Swiss Federal Court, has now made a request to the European Court on Human Rights in Strasbourg against Switzerland, claiming that the Swiss supreme court has set up an unrealizable condition.

He is arguing, that it is very difficult and risky to make an own suicide attempt, and that a risk of 49:1 (following the before quoted American scientific research data) signifies that the liberty is neither practicable nor effective. However, since

1980 the European Court on Human Rights ruled, that the rights and liberties granted by the Convention have to be «practical» and «effective». The decision of the Swiss supreme court does not respect this condition. Therefore, the appellant asks the Strasbourg Court to convict Switzerland for violating Article 8 paragraph 1 of the Convention, as long as it is not possible to have access to the medicament without prescription of a physician, but with control of a Right-to-die organisation.

We very well know the decision of the European Court on Human Rights in the case of Diane Pretty vs. the United Kingdom. In that case, the Court accepted that England has, in its Suicide Act of 1961, a law stating that a person abetting and helping to suicide is committing a crime, and that there could be a penalty of up to 14 years of prison. However, I think, because the British lawyers of Diane Pretty did not show the Court the general suicide situation in Britain and the need for a change in the respective prevention policy, the Court had no chance to find a better ruling. In the now pending case, this information is given of course.

We should be aware that, in the United Kingdom, there are approximately 4'200 cases of suicide each year. If we take into consideration the American scientific data that for each suicide there may be up to 50 suicide attempts, we would, in the United Kingdom, come to a figure of up to 210'000 suicide attempts each year. As we all know, a lot of these attempts are just calls for help, but some of these help calls do end deadly. And we also know, that a lot of these attempts end with heavy consequences for the suicidal person as well as for third persons. An estimation of the costs of the suicide situation tells us that about five percent of the annual health budget of a country is used for costs connected with the consequences of suicide and suicide attempts.

As normally those who intend to commit suicide do not speak about their plans to third persons – neither family nor friends – , there is quite a small chance to offer help in an early stage. Yet, if we would everyone offer the possibility of an assisted suicide, without pain, and without risks, there would be a chance for them to speak to third persons about their problems and intentions, as long as we guarantee that they do not risk their freedom (by being put in a psychiatric institution). Through this, we would be able to help and find the real problem, to look for a possibility to solve their problem, and to prevent a very high number of suicide attempts. I am convinced that acting in this way, we would be able to significantly reduce the number of suicides and suicide attempts. Alas, politicians do not see suicidal persons as voters, they are not interested in this matter, even if they pretend to be «on the side of life» in a discussion about assisted suicide – just like the many bishops in the House of Lords during the dispute over the proposals of Lord Joël Joffe.

In order to conclude this speech, I would like to say just a few words regarding the possibililtes and risks for British people helping someone to an assisted suicide with DIGNITAS in Switzerland.

As I have mentioned, until today, more than 80 Britons have ended their lives in Switzerland with the help of our organisation, and not in one single case, has the Crown Prosecution Service (CPS) given the permission to a criminal investigation against relatives who have accompanied their beloved family members and friends to Switzerland.

Only once, in the case of Harold Cross, who had to fight against a British authority at British courts, who tried to prevent him from accompanying his wife Grace Cross to Zurich, the Crown Prosecution Service has asked the Zurich Prosecutor for assistance in criminal matters in order to obtain the required evidence. However, because Switzerland has ruled out all measures of coercion in assistance in criminal matters for cases where a fact is not punishable in both countries, Swiss Police had no possibility to provide answers and evidence to the many questions of CPS, which would be necessary to start a process at British criminal courts. Being director of DIGNITAS, I am also a lawyer, who generally asks for a Power of attorney from the member of DIGNITAS as well as of relatives, there is no chance to hear me as a witness at British courts without the consent of those relatives. Thus, relatives of British members are well protected against criminal processes. In addition, we have point out that the very last decision, whether or not a member of DIGNITAS will have an assisted suicide in Switzerland, is made only in Zurich, and just a few minutes before the ultimate medicament is taken. Thus, all the acts which have taken place earlier on British soil - such as helping to organize the journey, helping to prepare the procedure and so on, - should, in my opinion, be considered as not punishable preparatory acts. The journey to Switzerland always takes a considerable time to arrange. Within this time, a person might change their mind and so there is no firm connection between helping to make the journey and the last acts which lead to the suicide. All these acts which are accomplished by members of the staff of Dignitas are all lawful because there can never be a «selfish motive» as required by Article 115 of the Swiss Criminal Code which I quoted earlier.

I would be very happy if a British citizen would once again commence legal proceedings at British courts, similar to the case of Diane Pretty, claiming that Article 8 paragraph 1 of the European Convention on Human Rights not only gives the right to suicide, but also the right to an assisted suicide, and that, as a result, such a decision would have the effect of protecting many more lives than every other preventive measure. I think that politicians are not able to change the law, because all of them are more or less afraid of the Churches and their un-

enlightened behaviour. Therefore, I am convinced that the way through the courts will be a shorter and quicker one than the way through Parliament. Being convince of this, I would like to end my speech with the words: Let arise this last Human Right in all countries of Europe and all around the world!

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