EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

APPLICATION NO. 67810/10

Alda GROSS

Applicant

v.

SWITZERLAND

Respondent

WRITTEN OBSERVATIONS
OF THIRD PARTY INTERVENER:

Alliance Defending Freedom

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Introduction

1. Alliance Defending Freedom ("ADF") is an international legal organization dedicated to protecting and defending the sanctity of life. As a legal alliance of more than 2,200 lawyers dedicated to the protection of fundamental human rights, it has been involved in over 500 cases before national and international forums, including the Supreme Courts of the United States of America, Argentina, Honduras, India, Mexico and Peru, as well as the European Court of Human Rights and Inter American Court of Human Rights. ADF has also provided expert testimony before several European parliaments, as well as the European Parliament and the United States Congress. ADF has accreditation with the Economic and Social Council of the United Nations, as well as the Organization for Security and Cooperation in Europe and the European Union (the European Union Agency for Fundamental Rights and the European Parliament). This submission is supplementary to the written submissions presented to the Second Section of the Court on 20 March 2012. By direction of the Court this submission does not address the specific facts of the case or the applicant.

2. The European Court of Human Rights ("the Court) has considered the issue of assisted suicide and euthanasia on five occasions: *Sanles Sanles v. Spain* (2000),[1] *Pretty v. United Kingdom* (2002),[2] of *Haas v. Switzerland* (2011)[3] *Koch v. Germany* (2012)[4] and *Gross v. Switzerland* (2013).[5] Up until 2012, the Court's jurisprudence on assisted suicide and euthanasia had been clear: *Sanles Sanles* was rejected on admissibility grounds and unanimous decisions in the cases of *Pretty* and *Haas* left little doubt that there was no right to assisted suicide or euthanasia in the European Convention on Human Rights ("the Convention"). This clarity has now been removed, as the Court has pointed to procedural deficiencies in Germany and Switzerland as sufficient reasons for finding violations of Article 8 of the Convention. The decisions in *Koch* and *Gross* now stand in stark contrast to the Court's decisions in *Pretty* and *Haas*. It is therefore incumbent upon the Grand Chamber of this esteemed Court to clarify what for many years seemed abundantly clear: that the European Convention on Human Rights protects the fundamental right to life of all the citizens that live within its jurisdiction; it does not include a "right" to lethal poison, nor any other "procedural rights" that may attach to this.

I. Practice of euthanasia and assisted suicide almost universally rejected

3. Although its decisions are not binding on the Court, it must be noted at the outset that the Parliamentary Assembly of the Council of Europe is not silent on the intentional taking of life. In Recommendation 1418 (1999) on the "Protection of the human rights and dignity of the terminally ill and the dying," the Parliamentary Assembly of the Council of Europe stated that:

> 9. The Committee of Ministers encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects […] by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while:
>
> i. recognising that the right to life, especially with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with Article 2 of the European Convention on Human Rights which states that "no one shall be deprived of his life intentionally";

[1] Application no. 48335/99, ECHR 2000-XI, decision of 26 October 2000.
[2] *Pretty v. United Kingdom* (2002) 35 E.H.R.R. 1.
[3] *Haas v. Switzerland* (2011) 53 E.H.R.R. 33.
[4] Application no. 67810/10, ECHR, judgment of 14 May 2013. Decision not final.
[5] Application no. 497/09, ECHR, judgment of 19 July 2012.

ii. recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person;
iii. recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death.[6]

4. On 25 January 2012, the Parliamentary Assembly went even further. In Resolution 1859 (2012), the Assembly stated unequivocally that: "Euthanasia, in the sense of the intentional killing by act or omission of a dependent human being for his or her alleged benefit, must always be prohibited."[7] In keeping with previous practices, the clear pronouncements of the Parliamentary Assembly ought to be a consideration for this Court.[8]

5. Similarly, the international fora surrounding the issue of euthanasia and assisted suicide must also be considered.[9] It is particularly striking that no other international human rights treaty even references euthanasia and assisted suicide, and the interpretation of such treaties over the course of several decades, for example by the UN treaty monitoring bodies, has not resulted in a single piece of support for either practice. On the contrary, the UN treaty monitoring bodies have questioned the practice of euthanasia and assisted suicide in the small minority of countries where it is legal. For example, the most recent Concluding observations of the Human Rights Committee on the Netherlands states: "The Committee remains concerned at the extent of euthanasia and assisted suicides in the State party … The Committee reiterates its previous recommendations in this regard and urges that this legislation be reviewed in light of the Covenant's recognition of the right to life."[10] Many similar statements of concern can be seen by other UN treaty monitoring bodies.[11]

6. Equally pertinent, the World Medical Association (WMA) has consistently and categorically rejected the practice of euthanasia and assisted suicide as being unethical. Following the Second World War, the World Medical Association adopted two modernized forms of the Hippocratic Oath,[12] known as the Declaration of Geneva (1948) and the International Code of Medical Ethics (1949). While the Hippocratic Oath stated that "I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect," the WMA documents were similarly clear on the need for doctors to protect life, not facilitate death. The Declaration of Geneva stated that "I will maintain the utmost respect for human life from the time of conception" and the International Code of Medical Ethics stated that "a doctor must always bear in mind the obligation of preserving human life from the time of conception until death."

7. Most recently, the WMA reaffirmed an earlier resolution against euthanasia in Bali, Indonesia, April 2013. The resolution includes the following statements:

> Euthanasia, that is the act of deliberately ending the life of a patient, even at the patient's own request or at the request of close relatives, is unethical. This does not prevent the

[6] Paragraph 9(c). Assembly debate on 25 June 1999. Text adopted by the Assembly on 25 June 1999 (24th Sitting). Emphasis added.
[7] Paragraph 5. Text adopted by the Assembly on 25 January 2012 (6th Sitting).
[8] *See*, for example, *Bayatyan v. Armenia*, Application no. 23459/03, judgment of 7 July 2011 [G.C.] at § 107.
[9] *Bayatyan* at § 105.
[10] Ninety-sixth session, (CCPR/C/NLD/CO/42), 5 August 2009, at § 7.
[11] For example, *see* Committee on the Rights of the Child, Fiftieth session, (CRC/C/NLD/CO/3), 27 March 2009, Concluding Observations: Netherlands, at §§ 30-31; Human Rights Committee, Ninety-seventh session, (CCPR/C/CHE/CO/3), 3 November 2009, Concluding Observations: Switzerland, at § 13.
[12] The Hippocratic Oath was written in approximately 600BC and is seen as the foundational medical oath. Historically, qualifying medical students had to swear by the oath before the could begin their medical practice.

> physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness.[13]
>
> Physicians-assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession. Where the assistance of the physician is intentionally and deliberately directed at enabling an individual to end his or her own life, the physician acts unethically. However the right to decline medical treatment is a basic right of the patient and the physician does not act unethically even if respecting such a wish results in the death of the patient.[14]
>
> BE IT RESOLVED that:
>
> The World Medical Association reaffirms its strong belief that euthanasia is in conflict with basic ethical principles of medical practice, and
>
> The World Medical Association strongly encourages all National Medical Associations and physicians to refrain from participating in euthanasia, even if national law allows it or decriminalizes it under certain conditions.[15]

8. Thus, the Parliamentary Assembly as well as influential international bodies clearly reject the practice of euthanasia and assisted suicide. Although they do not bind this Court, such views must be considered persuasive, and are considered inspirational in numerous cases before this Court as an indication of the global legal and moral consensus.

II. Euthanasia and assisted suicide not found in Articles 2 and 3 ECHR

9. Regarding Articles 2 and 3 of the Convention, the clear jurisprudence of the Court is that there is no right to assisted suicide or euthanasia under the Convention, nor are there any positive obligations on the State in regard to these issues, save the positive duty on the States to protect life under Article 2.

10. In the case of *Sanles Sanles v. Spain*, the Court dismissed the application of the representative of the estate of Mr. Sampredo for lack of standing. Mr. Sampredo had petitioned the Spanish courts for a right to assisted suicide but died before the completion of the proceedings. The applicant argued before this Court that Articles 2 and 3 of the Convention had been violated because Mr Sampedro had "the right to a dignified life, or to non-interference with his wish to put an end to his undignified life." The Court unanimously declared the application inadmissible.

11. Two years later, the Court ruled on the seminal case of *Pretty v. United Kingdom*. The applicant in *Pretty* had sought recognition in the United Kingdom of a "right to die". However, the Court unanimously held that there is no right to assisted suicide under the Convention and furthermore, in certain situations the State may even have a positive obligation to ensure the protection of an individual whose life is at risk. Regarding Article 2 of the Convention (right to life), the Court held in *Pretty*:

> 39. The consistent emphasis in all the cases before the Court has been the obligation of the State to protect life … Article 2 cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the

[13] WMA Declaration on Euthanasia, adopted by the 38th World Medical Assembly, Madrid, Spain, October 1987 and reaffirmed by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005.
[14] WMA Statement on Physician-Assisted Suicide, adopted by the 44th World Medical Assembly, Marbella, Spain, September 1992 and editorially revised by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005
[15] See <http://www.wma.net/en/30publications/10policies/e13b/>.

entitlement to choose death rather than life.

40. The Court accordingly finds that no right to die, whether at the hands of a third person or with the assistance of a public authority, can be derived from Article 2 of the Convention…[16]

12. Regarding Article 3 of the Convention (prohibition of torture), the applicant in *Pretty* argued that her illness amounted to "inhuman or degrading treatment" and the State therefore had a positive obligation to take steps to prevent this suffering, by allowing her to be assisted in her suicide. The Court rejected this proposition, holding that: "No positive obligation arises under Article 3 of the Convention to require the respondent Government either to give an undertaking not to prosecute the applicant's husband if he assists her to commit suicide or to provide a lawful opportunity for any other form of assisted suicide."[17] Thus, it is clear that there is no "right" to assisted suicide under Article 2 or 3 of the Convention.

III. Attempts to create a "right" to euthanasia and assisted suicide under Article 8 ECHR

13. Following the clear ruling in *Pretty* and the admissibility decision *Sanles Sanles v. Spain*, none of the more recent cases have even attempted to argue violations of Article 2 or 3 of the Convention. Instead, the focus has been on Article 8 of the Convention (right to respect for private and family life).

Pretty v. United Kingdom

14. Arguments under Article 8 were first developed in *Pretty*. The Court noted that "the very essence of the Convention is respect for human dignity and human freedom."[18] In being prevented by domestic law from ending her life in a manner of her choosing, the Court, albeit hesitantly, was "not prepared to exclude" that this limitation may constitute an interference with her right to respect for private life as provided for by Article 8 § 1.[19] It therefore went on to consider whether this possible interference was justifiable under Article 8 § 2.

15. In agreement with the House of Lords decision[20] and the factually similar Canadian Supreme Court case of *Rodriguez v. Attorney General of Canada*,[21] the European Court held that States "are entitled to regulate through the operation of the general criminal law activities which are detrimental to the life and safety of other individuals."[22] Hence, because laws preventing assisted suicide are designed to safeguard life by protecting the weak and vulnerable, especially those who are not in a condition to take informed decisions against acts intended to end life or to assist in ending life, the Court did not consider that a blanket ban on assisted suicide was disproportionate to the aim of safeguarding life.[23]

Haas v. Switzerland

16. The applicant in *Haas* had suffered from serious bipolar affective disorder for around 20 years and considered that as a result, he could no longer live in a dignified manner. Although serious, the condition was not fatal and unlike the applicant in *Pretty*, did not physically prevent him from committing suicide. Relying on Article 8 of the Convention, the applicant submitted that the

[16] *Pretty* at §§ 39-40. Emphasis added.
[17] *Pretty* at §§ 55-56. Emphasis added.
[18] *Pretty* at § 65.
[19] *Pretty* at § 67.
[20] *R (Pretty) v. Director of Public Prosecutions* [2001] 3 WLR 1598.
[21] [1994] 2 L.R.C. 136.
[22] *Pretty* at § 74.
[23] *Pretty* at §§ 76-78.

safeguards that the Government had placed on the dispensing of a lethal drug—namely a medical prescription issued on the basis of a thorough psychiatric report—were too restrictive. The applicant argued that access to the medicines required for suicide should be ensured by the State, and because they were not available to him, his right to decide how and when to end his life had been violated.

17. The Court considered that "the right of an individual to decide how and when to end his life, provided that said individual is in a position to make up his own mind in that respect and to take the appropriate action, is one aspect of the right to respect for private life within the meaning of art.8 of the Convention."[24] However, in contrast to ***Pretty***, the applicant's case did not concern the freedom to end his own life—something that he was fully capable of doing—but whether or not Article 8 imposed a positive obligation on the State to assist the applicant in committing suicide in the manner of his choosing, by ensuring that he had access to sodium pentobarbital.[25]

18. As the Court had already held in ***Pretty*** that a complete ban on assisted suicide was in line with the Convention and thus proportionate, it clearly followed that any restrictions on assisted suicide in Member States that have legalized it must also be considered proportionate. Accordingly, the Court held that even if a positive obligation on the State did exist under Article 8 (an obligation that the Court did not concede), the domestic authorities were not in breach of such an obligation in the applicant's case because, quite unsurprisingly, the need to restrict access to lethal drugs was necessary and proportionate.

Koch v. Germany

19. In the case of ***Koch v. Germany*** the Fifth Section of the Court held that there had been a violation of Article 8 of the Convention. The applicant in ***Koch*** and his late wife were married for 25 years. Although applicant's wife was suffering from an illness that required and constant care and assistance, she still had a life expectancy of at least 15 more years. However, she requested that the Federal Institute for Drugs and Medical Devices to grant her a lethal dose of drugs that would enable her to commit suicide at her home. The Federal Institute refused to grant authorization, because the relevant law enabled citizens to obtain the drug for life-supporting purposes only and not for the purpose of committing a suicide.

20. The decision was appealed, but pending appeal, the applicant and his wife traveled to Zurich, Switzerland, where the applicant's wife committed suicide assisted at the Dignitas facility. The applicant then launched a serious of judicial proceedings against the State, alleging a breach of his wife's right to respect for private and family life under Article 8 of the Convention. The German Constitutional Court ultimately declared the complaint inadmissible.

21. The Fifth Section held that the Federal Institute's decision to reject the request for lethal drugs and the administrative courts' refusal to examine the merits of the applicant's motion interfered with the applicant's right to respect for his private life under Article 8 of the Convention.[26] Remarkably, it asserted that, "that Article 8 of the Convention may encompass a right to judicial review even in a case in which the substantive right in question had yet to be established."[27] This novel assertion is dangerous in two ways: (1) it invites judicial activism ("the substantive right in question had yet to be established"), and (2) can create very uneven application of the newly invented procedural guarantees ("Article 8 may encompass a right to judicial review").

[24] *Haas* at § 51.
[25] *Haas* at §§ 52-53.
[26] *Koch* at § 54.
[27] *Koch* at § 53.

22. After establishing an interference with the applicant's right, the Court then held that the domestic courts' refusal to examine the merits of the applicant's motion was a violation of Article 8 of the Convention.[28] However, the Court only ruled on the procedural aspect of Article 8 of the Convention. Thus, in the opinion of the Court, there was an obligation to examine the merits of the applicant's claim in the domestic system but that does not mean domestic courts should have ultimately found in the applicant's favour.

Gross v. Switzerland

23. In the case of *Gross v. Switzerland*, which is not yet final, the Second Section held that, "the applicant's wish to be provided with a dose of sodium pentobarbital allowing her to end her life falls within the scope of her right to respect for her private life under Article 8 of the Convention."[29]

24. Having found that the right to a lethal poison comes within the scope of the Convention, the Court then assessed whether there had been a breach of this "right". Rather than tackling the issues head on – having done this in *Haas* and with a unanimous decision against the applicant – the Court instead focused on the guidelines issued by the Swiss authorities. It concluded that, "Swiss law, while providing the possibility of obtaining a lethal dose of sodium pentobarbital on medical prescription, does not provide sufficient guidelines ensuring clarity as to the extent of this right. There has accordingly been a violation of Article 8 of the Convention in this respect."[30]

25. The ruling was a four votes to three decision and in the dissenting opinion, three judges stated that the Swiss guideline, "sufficiently and clearly defines the circumstances under which a medical practitioner is allowed to issue a prescription for sodium pentobarbital."[31] Furthermore, the dissenting judges noted that, "The applicant was not able to obtain such a prescription at domestic level as she had not been suffering from a terminal illness, which is a clearly defined precondition for obtaining the lethal substance. She had just expressed her wish to die because of her advanced age and increasing frailty. Therefore, in our opinion, the applicant in the instant case did not fulfill the conditions laid down in the medical ethics guidelines on the care of patients at the end of life adopted by the Swiss Academy of Medical Sciences."[32]

26. Therefore, four judges found that the right to poison *is* protected under the Convention and unclear guidelines surrounding this "right" are in violation of the Convention. In contrast, three judges found that the guidelines were clear, that the applicant did not qualify and that the position of the Swiss authorities was plainly justifiable under the Convention.

27. The drastic expansion of the scope of Article 8 rights can therefore be summarized as follows:

    a. In *Sanles Sanles v. Spain* the applicant submitted that a decision to request to be killed by a doctor fell within the scope of Article 8. The Court declared the application inadmissible.
    b. In *Pretty* the Court was "not prepared to exclude" that a limitation on ending one's life in a manner of one's choosing may constitute an interference with the right to

[28] In fact, the Cologne Administrative Court specifically dealt with the Court's jurisprudence on Article 8 related to assisted suicide. It referred to the case of *Pretty* and held that the domestic authorities had a wide margin of appreciation to assess the danger and risks of abuse as far as authorization to obtain lethal drugs are concerned. The appellate administrative court (North-Rhine Westphalia Administrative Court of Appeal) also devoted part of its reasoning to the Court's relevant cases pertaining to assisted suicide. *Id.* at §§ 18, 19.
[29] *Gross* at § 60.
[30] *Gross* at § 67.
[31] Joint Dissenting Opinion of Judges Raimondi, Jočienė And Karakaş, at § 1.
[32] Dissenting Opinion at § 2.

respect for private life as provided for by Article 8 § 1. The Court unanimously held that any interference was justified.

c. In ***Haas*** the Court held that "the right of an individual to decide how and when to end his life, provided that said individual is in a position to make up his own mind in that respect and to take the appropriate action, is one aspect of the right to respect for private life within the meaning of art.8 of the Convention." The Court unanimously held that any interference was justified.
d. In ***Koch*** the Court held that the decision to reject a request for lethal drugs interfered with Article 8 of the Convention. The Court unanimously held that a "procedural" aspect of Article 8 had been violated.
e. Lastly, in ***Gross***, the Court held that the "the applicant's wish to be provided with a dose of sodium pentobarbital allowing her to end her life falls within the scope of her right to respect for her private life under Article 8 of the Convention." The Court decided 4:3 that "the absence of clear and comprehensive legal guidelines violated the applicant's right to respect for her private life under Article 8 of the Convention."

28. Such a rapid expansion of the scope of Article 8 has no basis in the Convention. Even taking account of the Court's evolutive interpretation of the Convention, the Court has long recognized that such interpretative methods must have their limits.[33] As the Court has held on numerous occasions, while the Convention must be interpreted in the light of present-day conditions, the Court cannot, by means of an evolutive interpretation, "derive from [it] a right that was not included therein at the outset."[34]

29. Moreover, as stated in ***Pretty***, "While the Court must take a dynamic and flexible approach to the interpretation of the Convention, which is a living instrument, any interpretation must also accord with the fundamental objectives of the Convention and its coherence as a system of human rights protection."[35] No reasonable argument can be made that the right to State-assisted suicide – nor procedural guarantees attached to it – are lying down low in the penumbral fringes of the Convention. Such rights were not granted by the Convention when it was signed by the member states in 1950. Moreover, any creation of such a right serves to undermine other Convention rights and calls into question the coherence of the Convention itself.

30. Thus, while the Court stated in ***Pretty*** that, "The concept of "private life" is a broad term not susceptible to exhaustive definition,"[36] the scope of Article 8 of the Convention cannot be considered limitless, nor can Article 8 be interpreted as "a right to do whatever I want." This is particularly so, given that the Convention must be read as a whole in order that the Articles are construed in harmony with one another.[37] In view of the strong protections given to the right to life under Article 2, any interpretation of Article 8 that effectively negates the sanctity of life protected by Article 2 must be rejected. According to the case law of the Court, "Article 2 ranks as one of the most fundamental provisions in the Convention," enshrining one of the basic values of the democratic societies that make up the Council of Europe.[38] Without safeguarding the right to life, the enjoyment of any of the other rights and freedoms in the Convention are rendered nugatory.[39]

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[33] See, for example, "What are the limits of the evolutive interpretation of the Convention?", *Dialogues between Judges* (European Court of Human Rights, Strasbourg. 2011).
[34] *Johnston and Others v. Ireland*, Application no. 9697/82, 18 December 1986 § 53 and *Emonet and Others v. Switzerland*, Application no. 39051/03, 13 December 2007, § 66.
[35] *Pretty* at § 54.
[36] *Pretty* at § 61.
[37] *Haas* at § 54; *Pretty* at § 54.
[38] *McCann and Others v. The United Kingdom*, (1996) 21 E.H.R.R. 97 at § 147.
[39] *Pretty* at § 37.

IV. Restrictions on Article 8 § 1 justified under Article 8 § 2

31. Even if the Court maintains that (i) the notion of "private life" encompasses the right to personal autonomy and personal development and (ii) personal autonomy includes the "right" to request lethal poison from the State and have the merits of that request fully considered by the State, any restriction on this "right" will always be justified, given the other overriding interests at stake.

32. According to the well established case-law of the Court, an interference with Article 8 § 1 is justified under Article 8 § 2 if it is: (i) "in accordance with the law", (ii) in pursuit of a legitimate aim, and (iii) "necessary in a democratic society." In the abovementioned cases, the Court has quickly decided that restrictions on assisted suicide or euthanasia are both prescribed by law and pursue a legitimate aim.[40] The question, therefore, is whether or not such restrictions are "necessary in a democratic society"?

33. In determining whether an interference is "necessary in a democratic society", the Court must take into account the margin of appreciation that is left to the national authorities. While there is a minimal degree of variation between the Contracting States, the Court has rightly pointed out that: "The vast majority of Member States … appear to place more weight on the protection of an individual's life than on the right to end one's life."[41] Indeed, of the 47 Member States of the Council of Europe, only four allow medical practitioners to prescribe lethal drugs, subject to specific safeguards: the Netherlands, Belgium, Luxembourg and Switzerland. Outside of Europe, the legalization of assisted suicide or euthanasia is even rarer.[42] Thus, given the lack of European consensus, Contracting States clearly enjoy a wide margin of appreciation to legislate against assisted suicide or euthanasia as they see fit.[43]

34. The limiting language in Article 8 § 2 – for example, public safety, the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others – clearly outweighs the claim to autonomy that is found at the heart of recent Article 8 claims. As the Court correctly noted in ***Pretty***, "The more serious the harm involved, the more heavily will weigh in the balance considerations of public health and safety against the countervailing principle of personal autonomy."[44] And similarly in ***Haas***: "the risk of abuse inherent in a system which facilitates assisted suicide cannot be underestimated."[45] Such risks can clearly be seen when the four Council of Europe countries that have legalized euthanasia are analyzed in more detail.

The Netherlands

35. In 1984 the Netherlands became the first nation to lift criminal penalties for assisted suicide and in 2002 assisted suicide and euthanasia were explicitly legalized. The Dutch model allowed for assisted suicide only at the explicit request of the patient and to put an end to "unbearable suffering".[46] There are a number of factors that demonstrate the practice of euthanasia in the Netherland is out of control. Firstly, the number of deaths attributed to euthanasia increases rapidly each year. In fact, from 2006 to 2012 the overall increase in euthanasia deaths rose a remarkable 118% and euthanasia now

[40] For example, see *Haas* at §§ 56-57.
[41] *Haas* at § 55 and *Koch* at § 26.
[42] Of the 193 nations currently recognized by the U.N., approximately 3% have openly legalized currently euthanasia and/or assisted suicide.
[43] See, for example, *Rasmussen v. Denmark* (1985) 7 E.H.R.R. 371 at § 40.
[44] *Pretty* at § 74.
[45] *Haas* at § 58.
[46] See Schoonan, Sup. Ct., Alkmaar, 27 November 1984, NJ 106:451; Central Committee of the Royal Dutch Medical Association, *Vision on Euthanasia* (Utrecht: KNMG, 1986).

accounts for over 3% of all Dutch deaths.[47] Secondly, despite guidelines laid down in the law and by the Royal Dutch Medical Association, abuse has been rampant. A 1990 government-sponsored survey showed that over 80 percent of cases went unreported and were certified as deaths stemming from natural causes.[48] A further survey from 2005 showed that the illegal certification of assisted suicides as natural deaths is still a rampant problem in the Netherlands.[49] More recently, a 2012 study revealed that that in 2010, 23% of all euthanasia deaths went unreported.[50]

36. Thirdly, verifiable statistics also demonstrate that shortly after the decriminalization of assisted suicide in the Netherlands, the practice of *non-voluntary* euthanasia commenced. In 1990 at least 1000 patients were given lethal injections without express consent amounting to nearly 1% of all deaths caused that year in the Netherlands.[51] Despite government threats that all instances of euthanasia without the express consent of the patient would be prosecuted as murder, a remarkable 0.4% of the deaths in the Netherlands as recently as 2005 were attributed to non-voluntary euthanasia.[52] This figure means that for every five people killed by voluntary euthanasia in the Netherlands, one person is killed without having given express consent.[53]

37. Fourthly, subsequent attempts to bring legal cases against this flagrant abuse have failed and the courts have instead shown an increasingly liberal approach to the law.[54] For example, the Dutch courts have allowed the practice of infanticide, that is, the giving of lethal injections to disabled babies,[55] and it is estimated that 15 to 20 newborns are killed in this way per year.[56] The Dutch Supreme Court has also gone so far as to declare that a woman's emotional distress from the loss of her two children qualified her for assisted suicide.[57] Thus, as has been pointed out: "Dutch doctors have gone from euthanizing the terminally ill to the chronically ill, to people with serious disabilities, to the emotionally and mentally ill."[58]

Belgium

38. Like the Netherlands, Belgium also legalized euthanasia in 2002. The risk of abuse has now become epidemic,[59] with statistics suggesting that the rate of involuntary euthanasia deaths in Belgium is

[47] Dr. Peter Saunders, 'Euthanasia: the horrifying slippery slope' *available at* <http://www.lifesitenews.com/news/euthanasia-the-horrifying-slippery-slope>.
[48] P.J. van der Maas, J.M.M. van Delden, L. Pijnenborg, *Medische beslissingen rond het levenseinde. Het onderzoek voor de Commissie onderzoek medische praktijk inzake euthanasia* (The Hague, SDU Uitgeverij Plantijnstraat 1991) ("1990 Survey").
[49] See A. van der Heide, et al, "End-of-Life Practices in the Netherlands under the Euthanasia Act," 356 NEW ENGLAND JOURNAL OF MEDICINE 1957 (2007) ("2005 Survey").
[50] Dr. Peter Saunders, 'Euthanasia deaths continue their relentless rise in the Netherlands,' 24 September 2013, citing a report produced by Bregje D Onwuteaka-Philipsen, Arianne Brinkman-Stoppelenburg, Corine Penning, Gwen J F de Jong-Krul, Johannes J M van Delden and Agnes van der Heide, 'Trends in end-of-life practices before and after the enactment of the euthanasia law in the Netherlands from 1990 to 2010: a repeated cross-sectional survey,' *available at* <http://press.thelancet.com/netherlands_euthanasia.pdf>.
[51] *Op cit*, n. 49 at Table 1.
[52] *Id.*
[53] In 2005, a total of 2410 deaths by euthanasia or physician assisted suicide were reported, representing 1.7% of all deaths in the Netherlands. 560 of these deaths were without consent, thus approximate.
[54] See T Smets, et al, "The medical practice of euthanasia in Belgium and the Netherlands: legal notification, control and evaluation procedures." HEALTH POLICY (2009), May;90(2-3), p.181-7.
[55] E Verhagen and P Sauer, "The Groningen Protocol—Euthanasia in Severely Ill Newborns," 352 NEW ENGLAND JOURNAL OF MEDICINE 959 (2005).
[56] *Op cit*, n. 50.
[57] See John Keown, *Euthanasia, Ethics and Public Policy: An Argument Against Legislation* (Cambridge University Press, 2002) at 87, 109, 131.
[58] Wesley J. Smith, "Euthanasia Spreads in Europe: Several nations find themselves far down the slippery slope," *National Review*, October 26, 2011.
[59] See J Pereira, "Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls",

three times higher than the Netherlands.[60] In the decade since Belgium legalized euthanasia, there has been a 500% increase in euthanasia deaths.[61]

39. A recent study found that in one region of Belgium, 66 out of 208 "euthanasia" deaths occurred in the absence of a request or consent.[62] The reasons for the lack of consent included the fact that the patient was unconscious or had dementia, or because the physicians felt that euthanasia was "clearly in the patient's best interest" and discussing it with the patient would have been harmful for the patient.[63] The Belgian parliament is currently in the process of extending its 2002 law to include children and dementia sufferers.

Switzerland and Luxembourg

40. In Switzerland, Article 115 of the Penal Code of Switzerland (1942) states that assisted suicide is not punishable unless a selfish motive is proven. Switzerland released statistics on assisted suicide deaths for the first time in 2009 and they revealed a 700% rise in cases from 1998 to 2009. Moreover, these statistics only relate to Swiss residents. There are also five facilities in Switzerland that allow approximately 550 to 600 people to kill themselves every year.[64] Luxembourg only legalized euthanasia and assisted suicide in certain limited circumstances in 2009. Therefore, while the statistics reveal a relatively small amount of deaths initially, there have been 1249 advanced declarations signed by citizen – a particularly large figure given the size of the population.[65]

41. Therefore, given the obvious abuses inherent in a system which permits euthanasia and assisted suicide, and taking into account the margin of appreciation afforded to Member States in this area, it follows that Member States must be allowed to place restrictions on such practices wherever they consider it appropriate to do so. Accordingly, it is not for this Court to undermine the restrictions put in place by the national authorities or the decisions of the national courts.

Conclusion

42. The Intervener hereby reiterates that a "right to die," either at the hands of a third person or with the assistance of a public authority, does not exist under the Convention. Even with an "evolutive" interpretive method, Article 8 cannot be interpreted so broadly as to include a right to lethal poison, nor does it convey a positive obligation on Member States to consider the merits of such a request. Moreover, even if the Court was to state that such a right exists within the penumbral fringes of the Convention, any interference with this "right" will always be justifiable in order to uphold public safety, prevent disorder or crime, protect the health or morals of the nation and protect the rights and freedoms of others. Following the recent decisions in ***Koch*** and ***Gross*** that go against this Court's previous case-law and the clear meaning of the Convention, it is incumbent upon the Grand Chamber to clarify its jurisprudence and uphold that personal autonomy cannot outweigh the fundamental right to life, on which all other freedoms rest.

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[69] See L Van den Block et al, "Euthanasia and other end of life decisions and care provided in final three months of life: nationwide retrospective study in Belgium" *BMJ* (2009) 339:b2772; L Van den Block, "Euthanasia and other end-of-life decisions: a mortality follow-back study in Belgium." BMC PUBLIC HEALTH (2009) 9:79.

[61] Dr. Peter Saunders, 'Stunning 5,000% increase in Belgian euthanasia cases in eleven years since legalisation,' 6 April 2013. *Available at* <http://pjsaunders.blogspot.co.uk/2013/04/stunning-4620-increase-in-belgian.html.>

[62] K Chambaere et al, "Physician-assisted deaths under the euthanasia law in Belgium: a population-based survey." *CMAJ* (2010) 182:895–901.

[63] *Id.*

[64] See <http://www.epce.eu/en/countries/switzerland/>.

[65] See < http://www.epce.eu/en/countries/luxembourg/>.