

**EUROPEAN COURT OF HUMAN RIGHTS**  
**SECOND SECTION**

**APPLICATION NO. 67810/10**

**Alda GROSS**

**Applicant**

**v.**

**Switzerland**

**Respondent**

**WRITTEN OBSERVATIONS  
OF THIRD PARTY INTERVENER:**

**The Alliance Defense Fund**

**Filed on  
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Paul Coleman  
Legal Counsel  
Alliance Defense Fund  
Landesgerichtsstraße 18/10  
1010, Wien  
Austria  
Tel: +43 1 904 95 54  
Email: pcoleman@telladf.org

## Introduction

1. This submission is respectfully made on behalf of the Alliance Defense Fund (“ADF”) pursuant to leave granted by the President of the Second Section on 1 March 2012 and in accordance with Rule 44 § 2 of the Rules of Court. This submission addresses the Court’s governing jurisprudence as it should apply to the issues of euthanasia and assisted suicide and by direction of the Court it does not address the specific facts of the case or the applicant.

## Assisted Suicide and the Council of Europe

2. The institutions of the Council of Europe have shown consistent opposition to the legalization of assisted suicide and euthanasia. While the Court has explained that there is no “right” to assisted suicide under the Convention, the Parliamentary Assembly has recommended that States prohibit the intentional taking of life. In Recommendation 1418 (1999), the Parliamentary Assembly of the Council of Europe recommended that:

...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”;
  - 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.<sup>1</sup>
3. 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.”<sup>2</sup>

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<sup>1</sup> Paragraph 9(c). Assembly debate on 25 June 1999. Text adopted by the Assembly on 25 June 1999 (24<sup>th</sup> Sitting). Emphasis added.

<sup>2</sup> Paragraph 5. Assembly debate on 25 January 2012. Text adopted by the Assembly on 25 January 2012 (6<sup>th</sup> Sitting). Emphasis added.

4. In addition to the resolutions and recommendations of the Parliamentary Assembly that address the issues of assisted suicide and euthanasia, the European Court has directly faced these issues on three occasions.<sup>3</sup> 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.
5. In the first case of *Sanles Sanles v. Spain*,<sup>4</sup> the Court dismissed the application of the representative on 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. As his legal representative no longer carried “victim status”, the case was dismissed. Two years later, the Court ruled on the seminal case of *Pretty v. United Kingdom*.<sup>5</sup> 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.<sup>6</sup>
6. Thirdly, notwithstanding the clear ruling in *Pretty*, the Court recently heard the case of *Haas v. Switzerland*.<sup>7</sup> In contrast to *Pretty*, the applicant’s case concerned whether or not Article 8 provided a *positive obligation* on the State to ensure that the applicant could have a so-called “dignified suicide”.<sup>8</sup> The applicant submitted that this could be achieved by being prescribed sodium pentobarbital by the State. The Court unanimously held that even if it were to be accepted that such a duty exists—which was by no means conceded—the domestic authorities were not in breach of any supposed obligation in the applicant’s case.
7. The present case before this Court involves the same legal issues as *Haas*, namely: is there a positive obligation on the State, primarily under Article 8 of the Convention, to facilitate assisted suicide? As the Court reiterated in *Pretty* and *Haas*, in addressing the issue of assisted suicide, it is vital that the Convention be read as a whole in order that the Articles are construed in harmony with one another.<sup>9</sup> Therefore, before addressing this question under Article 8 ECHR, it is first worth examining the jurisprudence of this Court in regard to Articles 2 and 3.

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<sup>3</sup> In addition, the case of *Koch v. Germany*, application no. 497/09, communicated to the parties on 11 September 2009, is pending before the Court.

<sup>4</sup> Application no. 48335/99, ECHR 2000-XI, [4th Section], decision of 26 October 2000.

<sup>5</sup> *Pretty v. United Kingdom* (2002) 35 E.H.R.R. 1.

<sup>6</sup> *Pretty* at § 38.

<sup>7</sup> *Haas v. Switzerland* (2011) 53 E.H.R.R. 33.

<sup>8</sup> *Haas* at §§ 52-53.

<sup>9</sup> *Haas* at § 54; *Pretty* at § 54.

## Assisted Suicide under Articles 2 and 3 ECHR

8. 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.<sup>10</sup> In addition to safeguarding the right to life, without which enjoyment of any of the other rights and freedoms in the Convention are rendered nugatory,<sup>11</sup> Article 2 sets out only very limited circumstances when deprivation of life may be justified, and the Court has applied a strict scrutiny when those exceptions have been invoked by respondent Governments.<sup>12</sup>
9. However, the Court has further held that the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.<sup>13</sup> Therefore, if there are positive obligations on the State, it is not to facilitate suicide, but to protect life. Accordingly, the Court held in *Pretty*:

The consistent emphasis in all the cases before the Court has been the obligation of the State to protect life. The Court is not persuaded that “the right to life” guaranteed in Article 2 can be interpreted as involving a negative aspect. While, for example, in the context of Article 11 of the Convention, the freedom of association was found to involve not only a right to join an association but a corresponding right not to be forced to join an association, the Court observes that the notion of a freedom implies some measure of choice as to its exercise. Article 2 of the Convention is phrased in different terms. It is unconcerned with issues to do with the quality of living or what a person chooses to do with his or her life. To the extent that these aspects are recognised as so fundamental to the human condition that they require protection from State interference, they may be reflected in the rights guaranteed by other Articles of the Convention, or in other international human rights instruments. 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 entitlement to choose death rather than life.

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. It is confirmed in this view by the recent Recommendation 1418 (1999) of the Parliamentary Assembly of the Council of Europe.<sup>14</sup>

10. The Court has also considered assisted suicide under Article 3 of the Convention. In *Pretty*, the applicant argued that the suffering which her illness was causing amounted to

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<sup>10</sup> *McCann and Others v. The United Kingdom*, (1996) 21 E.H.R.R. 97 at § 147.

<sup>11</sup> *Pretty* at § 37.

<sup>12</sup> *McCann* at §§ 149-150.

<sup>13</sup> *Pretty* at § 38.

<sup>14</sup> *Pretty* at §§ 39-40. Emphasis added.

“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.<sup>15</sup> The Court acknowledged that in certain circumstances Article 3 can create positive obligations on the Contracting States.<sup>16</sup> However, the Court held that “Article 3 must be construed in harmony with Article 2”, which, as it had previously found, “does not confer any claim on an individual to require a State to permit or facilitate his or her death.”<sup>17</sup> Thus, despite expressing sympathy with the position that the applicant found herself in, the Court nevertheless rejected the proposition that the State had a positive obligation to assist in her suicide. It held that:

...the positive obligation on the part of the State which is invoked in the present case would not involve the removal or mitigation of harm by, for instance, preventing any ill-treatment by public bodies or private individuals or providing improved conditions or care. It would require that the State sanction actions intended to terminate life, an obligation that cannot be derived from Article 3 of the Convention.

The Court therefore concludes 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.<sup>18</sup>

11. Thus, it is clear under the case-law of this Court that there is no “right” to assisted suicide under Article 2 of the Convention, and in some circumstances there is a positive obligation on the State to protect an individual whose life is at risk.<sup>19</sup> Furthermore, Article 3 does not create a positive obligation on the State to facilitate assisted suicide.

### **Assisted Suicide under Article 8 ECHR**

12. The applicant in *Pretty* further identified Article 8 as a possible avenue to pursue a “right” to assisted suicide under the Convention and in *Haas* the case was solely considered under Article 8. However, as the Court recognized in *Haas*, the two cases raised slightly different issues. Nevertheless, both attempts were also unanimously rejected by the European Court.

#### **i. *Pretty v. United Kingdom*: a justified interference with any right to “private life”**

13. The Court noted in *Pretty* that “the very essence of the Convention is respect for human

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<sup>15</sup> *Pretty* at §§ 44-45.

<sup>16</sup> For example, *Z and Others v. United Kingdom* (2001) 34 E.H.R.R. 3.

<sup>17</sup> *Pretty* at § 54.

<sup>18</sup> *Pretty* at §§ 55-56. Emphasis added.

<sup>19</sup> For example, see *Keenan v. United Kingdom* (2001) 33 E.H.R.R. 38.

dignity and human freedom.”<sup>20</sup> 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.<sup>21</sup> It therefore went on to consider whether this possible interference was justifiable under Article 8 § 2.

14. According to the well established case-law of the Court, an interference with Article 8 § 1 will not be justifiable under Article 8 § 2 unless it is: (i) “in accordance with the law”, (ii) in pursuit of a legitimate aim, and (iii) “necessary in a democratic society.”<sup>22</sup> It was common ground between the parties that the restriction on assisted suicide was both prescribed by law and that it pursued a legitimate aim, namely, “safeguarding life” itself.<sup>23</sup> The question, therefore, was whether or not the restriction was “necessary in a democratic society”, that is, in pursuit of a “pressing social need” and proportionate to the aim pursued.<sup>24</sup>
15. 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, whose decision remains subject to review by the Court for conformity with the requirements of the Convention.<sup>25</sup> The margin of appreciation to be accorded to the competent national authorities will vary depending on the circumstances, the subject-matter and the background of the case in question.<sup>26</sup>
16. In *Pretty*, the applicant contended that the Contracting States should have a narrow margin of appreciation in regard to the issue of assisted suicide, as was the case on other matters involving “private life”, such as “the intimate area of an individual’s sexual life”.<sup>27</sup> However, the Court did not agree with this contention and held that the matter under consideration in the case should not be regarded as of the same nature, or as attracting the same reasoning, as other “private life” cases.<sup>28</sup> It is clear, therefore, that Contracting States have a wide margin of appreciation when considering how to legislate on the issue of assisted suicide and euthanasia.

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<sup>20</sup> *Pretty* at § 65.

<sup>21</sup> *Pretty* at § 67.

<sup>22</sup> *Dudgeon v. United Kingdom* (1982) 4 E.H.R.R. 149.

<sup>23</sup> *Pretty* at § 69. While “safeguarding life” is not a listed aim within Article 8 § 2, the Court held that it comes within the listed aim of “the protection of the rights and freedoms of others.”

<sup>24</sup> For example, see *Vögt v. Germany* (1996) 21 E.H.R.R. 205, §§ 52, 57; *Dudgeon v. United Kingdom* (1982) 4 E.H.R.R. at §§ 51-53.

<sup>25</sup> *Pretty* at § 70.

<sup>26</sup> *Rasmussen v. Denmark* (1985) 7 E.H.R.R. 371 at § 40.

<sup>27</sup> For example, see *Dudgeon v. United Kingdom* (1982) 4 E.H.R.R. 149; *Modinos v. Cyprus* (1993) 16 E.H.R.R. 485.

<sup>28</sup> *Pretty* at § 71.

17. In agreement with the House of Lords decision<sup>29</sup> and the factually similar Canadian Supreme Court case of *Rodriguez v. Attorney General of Canada*,<sup>30</sup> 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.”<sup>31</sup> Furthermore, “[t]he 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.”<sup>32</sup> 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.<sup>33</sup>
18. Therefore, it is clear from the Court’s decision in *Pretty* that Contracting States are not in violation of Article 8 of the Convention by upholding a complete “blanket ban” on assisted suicide or euthanasia. Precisely stated: public health and safety outweighs the countervailing principle of personal autonomy. However, notwithstanding the Court’s holding that a blanket ban on assisted suicide through the operation of criminal law does not violate either Article 2, 3, 8, 9 or 14 of the Convention, the case of *Haas* attempted to develop the Convention beyond what had already been denied in previous cases.

**ii. *Haas v. Switzerland*: no positive obligation on the State under Article 8**

19. 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. However, the applicant believed that the absorption of sodium pentobarbital was the only dignified, safe, quick and painless method of suicide. Relying on Article 8 of the Convention, the applicant submitted that the safeguards that the Government had placed on the dispensing of sodium pentobarbital, namely a medical prescription issued on the basis of a thorough psychiatric report, were too restrictive. The applicant therefore 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.
20. The Court first noted that the notion of “private life” within the meaning of Article 8 § 1 of the Convention is “a broad concept which cannot be defined exhaustively.”<sup>34</sup> In view

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<sup>29</sup> *R (Pretty) v. Director of Public Prosecutions* [2001] 3 WLR 1598.

<sup>30</sup> [1994] 2 L.R.C. 136.

<sup>31</sup> *Pretty* at § 74.

<sup>32</sup> *Pretty* at § 74.

<sup>33</sup> *Pretty* at §§ 76-78.

<sup>34</sup> *Haas* at § 50.

of the previous case law of the Court, where “private life” was held to include numerous different aspects of existence,<sup>35</sup> 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.”<sup>36</sup>

21. 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 duty 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.<sup>37</sup> The Court thus considered that “the applicant’s request to have access to sodium pentobarbital without a medical prescription must be examined from the angle of a positive obligation on the state to take the necessary steps to allow for a dignified suicide.”<sup>38</sup>
22. In assessing whether the Contracting States have a positive obligation under Article 8 to take the necessary steps to allow for a so-called “dignified suicide”, the Court first noted that the Council of Europe Member States are far from having reached a consensus as regards the right of an individual to choose how and when to end his life. While it is true that there is a certain degree of variation between the Contracting States, the Court rightly pointed out that: “The vast majority of Member States, however, appear to place more weight on the protection of an individual’s life than on the right to end one’s life.”<sup>39</sup> Indeed, of the 47 Member States of the Council of Europe, only four have openly legalized assisted suicide: the Netherlands, Belgium, Luxembourg and Switzerland. Around the globe, instances of legalized assisted suicide or euthanasia or even rarer.<sup>40</sup> 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.<sup>41</sup>
23. As with *Pretty*, the Court quickly accepted that the restriction was prescribed by law and pursued a legitimate aim, namely: “to protect people from taking hasty decisions and to prevent abuse, in particular, to prevent a patient incapable of making up his own mind from obtaining a fatal dose of sodium pentobarbital.”<sup>42</sup> It further noted that “when a

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<sup>35</sup> For example, the Court made reference to: *X and Y v. Netherlands* (1986) 8 E.H.R.R. 235 at § 22; *Mikulic v. Croatia* (53176/99) ECHR 2002-I at § 53; *B v. France* (1993) 16 E.H.R.R. 1 at § 63; *Burghartz v. Switzerland* (1994) 18 E.H.R.R. 101 at § 24; *Dudgeon v. United Kingdom* (1982) 4 E.H.R.R. 149 at § 41; *Laskey v. United Kingdom* (1997) 24 E.H.R.R. 39.

<sup>36</sup> *Haas* at § 51.

<sup>37</sup> *Haas* at §§ 52-53.

<sup>38</sup> *Haas* at § 53.

<sup>39</sup> *Haas* at § 55. See also *Rasmussen v. Denmark* (1985) 7 E.H.R.R. 371 at § 40.

<sup>40</sup> Of the 193 nations currently recognized by the U.N., approximately 3% have openly legalized currently euthanasia and/or assisted suicide.

<sup>41</sup> See *Rasmussen v. Denmark* (1985) 7 E.H.R.R. 371 at § 40.

<sup>42</sup> *Haas* at § 56.



country adopts a liberal approach, appropriate measures to implement such liberal legislation and measures to prevent abuse are required.”<sup>43</sup>

24. Although it was not within the Court’s remit in *Haas* to assess whether or not the liberal legislation of Switzerland was in violation of the Convention’s life-affirming articles,<sup>44</sup> the Court did correctly point out that “the risk of abuse inherent in a system which facilitates assisted suicide cannot be underestimated.”<sup>45</sup> Indeed, such risks of abuse can be seen when analyzing the failure of the Dutch and Belgian legislation on assisted suicide and euthanasia.
25. In 1984 the Netherlands became the first nation to lift criminal penalties for assisted suicide. The Dutch model allowed for assisted suicide only at the explicit request of the patient and to put an end to “unbearable suffering”.<sup>46</sup> Despite guidelines laid down in the law and by the Royal Dutch Medical Association, abuse has been rampant. Perhaps most alarming are the statistics that reveal a complete failure to follow the assisted suicide guidelines, which require consultation with another physician and the filing of a report with the medical examiner. A 1990 government-sponsored survey showed that over 80 percent of cases went unreported and were certified as deaths stemming from natural causes.<sup>47</sup> A further survey from 2005 showed that the illegal certification of assisted suicides as natural deaths is still a rampant problem in the Netherlands.<sup>48</sup>
26. Verifiable statistics also demonstrate that shortly after the decriminalization of assisted suicide in the Netherlands, the practice of *non-voluntary* euthanasia commenced; that is, euthanasia without the requisite “express consent” called for in the medical guidelines. 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.<sup>49</sup> 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.<sup>50</sup> This

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<sup>43</sup> *Haas* at § 57.

<sup>44</sup> As was pointed out in *Pretty* at § 75, it is not the role under Article 34 of the Convention to issue opinions in the abstract but to apply the Convention to the concrete facts of the individual case.

<sup>45</sup> *Haas* at § 58.

<sup>46</sup> 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).

<sup>47</sup> 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”).

<sup>48</sup> 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”).

<sup>49</sup> *Id.* at Table 1.

<sup>50</sup> *Id.*

figure means that for every five people killed by voluntary euthanasia in the Netherlands, one person is killed without having given express consent.<sup>51</sup>

27. Moreover, 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.<sup>52</sup> For example, the Dutch courts have allowed the practice of infanticide, that is, the giving of lethal injections to disabled babies,<sup>53</sup> and the Dutch Supreme Court has gone so far as to declare that a woman's emotional distress from the loss of her two children qualified her for assisted suicide.<sup>54</sup> 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."<sup>55</sup>
28. In Belgium, the rate of abuse is even worse,<sup>56</sup> with statistics suggesting that the rate of involuntary euthanasia deaths in Belgium is three times higher than the Netherlands.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>
29. Therefore, given the obvious abuses that are inherent in a system which permits assisted suicide, and taking into account the margin of appreciation afforded to Member States in this area, it followed in *Haas* that Member States must be allowed to place restrictions on assisted suicide wherever they consider it appropriate to do so. Accordingly, it is not for the Court to overrule the restrictions put in place by the national authorities or the decisions of the domestic courts. Moreover, as the Court had already held in *Pretty* that a complete ban on

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<sup>51</sup> 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.

<sup>52</sup> 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.

<sup>53</sup> E Verhagen and P Sauer, "The Groningen Protocol—Euthanasia in Severely Ill Newborns," *352 NEW ENGLAND JOURNAL OF MEDICINE* 959 (2005).

<sup>54</sup> See John Keown, *Euthanasia, Ethics and Public Policy: An Argument Against Legislation* (Cambridge University Press, 2002) at 87, 109, 131.

<sup>55</sup> Wesley J. Smith, "Euthanasia Spreads in Europe: Several nations find themselves far down the slippery slope," *National Review*, October 26, 2011.

<sup>56</sup> See J Pereira, "Legalizing euthanasia or assisted suicide: the illusion of safeguards and controls", *CURRENT ONCOLOGY*, Vol 18, No 2 (2011).

<sup>57</sup> 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.

<sup>58</sup> K Chambaere et al, "Physician-assisted deaths under the euthanasia law in Belgium: a population-based survey." *CMAJ* (2010) 182:895–901.

<sup>59</sup> *Id.*

assisted suicide was in line with the Convention and is proportionate, any restrictions on assisted suicide in Member States that have legalized it must also be considered proportionate by the Court.

30. Therefore, the Court held in *Haas* that even if a positive obligation on the State does exist under Article 8 (an obligation that the Court did not indicate existed), 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.

### **Conclusion**

31. The Intervener hereby reiterates that the Court's governing jurisprudence dictates that a "right to die" does not exist under the Convention. The consistent emphasis in all the cases before the Court has been the obligation of the State to protect life, not facilitate death. Accordingly, there is no "right to die" at the hands of a third person or with the assistance of a public authority, nor is there an obligation for the State to sanction actions intended to terminate life.
32. While the Court has recognized that some individuals may wish to commit suicide in a manner of their choosing, this declaration of personal autonomy and self-determination can never outweigh the countervailing need to uphold public health and safety and to protect the rights and freedoms of others. This is particularly so given the seriousness of the harm involved and the high risk of abuse inherent in a system which facilitates assisted suicide.
33. In conclusion, the Intervener submits that the following legal submissions are supported by the previous binding case-law of this Court:
- i. Article 2 of the Convention does not create a right to assisted suicide, and in certain circumstances there is a positive obligation on the Contracting States to protect an individual whose life is at risk;
  - ii. Article 3 of the Convention does not create a positive obligation on the Contracting States to facilitate assisted suicide;
  - iii. Article 8 of the Convention does not create a right to assisted suicide. Any interference with the right to "private life" will be justifiable in order to uphold public health and safety and to protect the rights and freedoms of others;
  - iv. Article 8 does not create a positive obligation on the Contracting States to facilitate assisted suicide. Even if such an obligation existed, national authorities will not fail to comply with the supposed obligation by placing restrictions on access to lethal substances.

**Alliance Defense Fund  
20 March 2012**