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**SWITZERLAND**

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## Introduction

1. ADF International is a global alliance-building legal organization that advocates for religious freedom, life, and marriage and family before national and international institutions. As well as having ECOSOC consultative status with the United Nations (registered name “Alliance Defending Freedom”), ADF International has accreditation with the European Commission and Parliament, the Organization for Security and Cooperation in Europe, and the Organization of American States, and is a participant in the FRA Fundamental Rights Platform.
2. This report explains why Switzerland must change its laws and policies concerning the sanctity of life, especially with respect to physician-assisted suicide, as well as the protection of marriage and the family.

### (a) Sanctity of Life

3. Switzerland has one of the longest-standing legal regimes permitting assisted suicide, having allowed it since 1942. Unlike most other jurisdictions which permit euthanasia and/or assisted suicide, the individual undergoing the procedure does not have to be a Swiss national, which has caused Switzerland to become a home for so-called “suicide tourism.”
4. As the legislative basis for its permissibility, Article 115 of the Penal Code of Switzerland, criminalizes inciting or assisting suicide only when it is done for “selfish motives,” regulation of the practice is largely internal and based on ethical guidelines rather than strict legal protocol, which has led to debate on its being permitted in certain controversial contexts.
5. Due to the key words “selfish motives,” assisted suicide is not legal on the federal level *per se*, but rather it is unpunishable in the so-called absence of “selfish motives.” This also means that a person does not have to even be a qualified medical professional in order to be *de facto* permitted to participate in assisted suicide, with the only “safeguarding” requirement being that the physician issuing a death certificate must report the suicide to the cantonal authorities for nominal investigation.
6. In 2014, a doctor failed to report a case of assisted suicide facilitated by the Dignitas group to the cantonal police, having issued a death certificate but not including details of the “unusual” circumstances. The only sanction he faced was a fine of 500 Swiss francs (as well as 3000 francs in procedural and legal costs) imposed by the Pfäffikon district court in 2016.<sup>1</sup>
7. On 15<sup>th</sup> May 2011, voters in the Canton of Zurich rejected in a referendum calls to ban assisted suicide and/or suicide tourism, and on 17<sup>th</sup> June 2012, voters in the Canton

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<sup>1</sup> Swiss Info, Zurich doctor fined for not reporting assisted suicide, 2016, [http://www.swissinfo.ch/eng/legal-challenge\\_zurich-doctor-fined-for-not-reporting-assisted-suicide/42079276](http://www.swissinfo.ch/eng/legal-challenge_zurich-doctor-fined-for-not-reporting-assisted-suicide/42079276).

of Vaud approved by referendum a law requiring nursing homes and hospitals to permit assisted suicide in their facilities.

8. Controversial contexts in which assisted suicide may be permitted includes that referenced in a decision by the Swiss Federal Supreme Court in 2006, which apparently provided standards under which mentally ill individuals may be able to terminate their lives even if their condition is not somatic or terminal in nature.<sup>2</sup> Recent studies have also indicated that around 25% of deaths by assisted suicide in Switzerland involve no serious or terminal illness, but rather are procured by individuals who are just old or “tired of life.”<sup>3</sup>
9. For example, British conductor Sir Edward Downes opted to end his life at a Zurich suicide clinic even though he was not terminally ill, because his wife had been diagnosed with a rapidly developing cancer and he did not wish to go on living without her.<sup>4</sup>
10. So-called state-endorsed “euthanasia” and assisted suicide, a phenomenon which represents a fundamental violation of basic human dignity and the right to life enshrined in Article 6 of the ICCPR.
11. The right to life does not include a right to die, a principle set forth in the unanimous decision of the European Court of Human Rights in the 2002 case of *Pretty v. United Kingdom*<sup>5</sup> and the 2011 case of *Haas v. Switzerland*.<sup>6</sup> This particularly applies to the notion of state-endorsed doctor-assisted suicide.
12. These cases affirm that the right to privacy under Article 8 and the prohibition of torture, inhuman, or degrading treatment or punishment under Article 3 of the European Convention on Human Rights must be understood in conjunction with Articles 2, which not only prohibits the State from intentionally and unlawfully taking life, but also obliges States to take appropriate steps to safeguard the lives of those within its jurisdiction.
13. Countries which have introduced so-called “euthanasia” laws claim that adequate safeguards have been put in place to guarantee the autonomy of the patient. An increasing decline in societal regard for the inherent dignity of human life, especially people at their most vulnerable stage of life, carries an inherent danger of causing older persons in particular to assent to assisted suicide after reaching a point of feeling that they are burdens on their loved ones and those caring for them.

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<sup>2</sup> First Things, Swiss Allow Assisted Suicide Virtually on Demand, 2017, <https://www.firstthings.com/blogs/firstthoughts/2007/02/swiss-allow-assisted-suicide-virtually-on-demand>.

<sup>3</sup> Roberto Andorno, "Nonphysician-Assisted Suicide in Switzerland," 2013, *Cambridge Quarterly of Healthcare Ethics*, 22 (3): 246–253, 246.

<sup>4</sup> The Guardian, British conductor dies with wife at assisted suicide clinic, 2009, <https://www.theguardian.com/society/2009/jul/14/assisted-suicide-conductor-edward-downes>.

<sup>5</sup> [2002] 35 E.H.R.R. 1.

<sup>6</sup> (2011) 53 E.H.R.R. 33.

14. In 2015, a healthy British former nurse specializing in palliative care ended her life at the age of 75 at a suicide clinic in Basel, stating that she did not want to become “a hobbling old lady,” and that “the thought that I may need help from my children appals me. I know many old people expect, and even demand, help from their children but I think this is a most selfish and unreasonable view.”<sup>7</sup>
15. The inadequacy of the ‘protections’ offered by the domestic law are further amplified by the rising number of euthanasia ‘deaths’ and concomitant abuse of the system. In *Haas v. Switzerland*, the Court stated that “when a country adopts a liberal approach, appropriate measure to implement such liberal legislation and measures to prevent abuse are required,” going on to say that “the risk of abuse inherent in a system which facilitates assisted suicide cannot be underestimated.”
16. It is the duty of the State to protect human life to any extent within its power, and it is the duty of a medical practitioner under the Hippocratic Oath to treat and to heal, and not to kill or do harm. When a State takes it upon itself to be the arbiter of when innocent life can be legally taken, it sets society down a path to a place in which the right to life will cease to have any real meaning.
17. In the context of the Council of Europe, of which Switzerland is a member, while the European Court of Human Rights has explained that there is no “right” to assisted suicide under the Convention, the Parliamentary Assembly of the Council of Europe has gone further, stating in Recommendation 1418 (1999) that “the Committee of Minister [should] 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; [and] (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.”
18. In Resolution 1859 (2012), the Assembly went even further by stating 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.”

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<sup>7</sup> The Telegraph, Healthy retired nurse ends her life because old age ‘is awful,’ 2015, <http://www.telegraph.co.uk/news/health/11778859/Healthy-retired-nurse-ends-her-life-because-old-age-is-awful.html>.

## **(b) Marriage and the Family**

19. Marriage is legislatively defined in Switzerland as the union of a man and a woman. In 2005, however, the Swiss people approved a registered partnership law with 58% of the vote, which granted same-sex couples most of the same rights as married couples, with the notable exceptions being full joint adoption of children, access to fertility treatments, and facilitated Swiss naturalization of a foreign partner.
20. A national referendum held in February 2016 would, if successful, have constitutionally defined marriage as the union of a man and a woman as a secondary effect of the initiative, but was narrowly defeated, garnering 49.2% of the vote.
21. Full joint adoption of children by same-sex couples is still not legally possible, but stepchild adoption by same-sex partners was approved by the legislature and the Council of States in 2016, with an attempted ballot initiative failing to put it to referendum for lack of signatures. A number of political parties and figures are also beginning to advocate for the legalization of same-sex marriage.
22. Despite the reservations on the part of Swiss lawmakers with respect to redefining marriage and parenthood, the reforms already enacted themselves do injury to the obligation of the State under Article 23 of the ICCPR to protect and support the family as the natural and fundamental group unit of society.
23. The public policy purpose of State recognition and involvement in romantic relationships and marriage at all is to safeguard the right of children to both a mother and a father, and to incentivize the stability and permanence of biological families whenever possible.
24. Legal recognition of same-sex partnerships, a precursor to same-sex marriage, damages this ideal by placing potentially procreative relationships on the same conceptual level as relationships which are infertile in principle, and the potential future legalization of full adoption rights ignores the reality that children do best, all other things being equal, with both a mother and a father, biological or otherwise.
25. Concerns also exist with respect to the erosion of other fundamental freedoms and rights as a result of redefining marriage and the family. For example, in other jurisdictions where same-sex marriage has either already been legalized or in which its future legalization seems all but inevitable, so-called "hate speech" laws have been utilized against the clergy and faithful of religious denominations for speaking on the issues of homosexuality and the definition of marriage according to traditional Christian teaching.<sup>8</sup>

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<sup>8</sup> ADF Legal, Approval of Same-Sex "Marriage" Leads to Censorship of Speech, 2013, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2013/01/15/approval-of-same-sex-marriage-leads-to-censorship-of-speech>; ABC News Australia, Anti-discrimination complaint 'an attempt to silence' the Church over same-sex marriage, Hobart Archbishop says, 2015, <http://www.abc.net.au/news/2015-09-28/anti-discrimination-complaint-an-attempt-to-silence-the->

26. Even if one disagrees with these sentiments, the rights to freedom of opinion and expression under Article 19 of the ICCPR should not be unnecessarily infringed for the sake of sparing hurt feelings where actual incitement to violence or gross mistreatment does not occur.
27. Similarly, people of faith who personally run businesses catering to the public, and who have no objection to serving individuals who identify as LGBT, have been fined, subjected to re-education orders, and in some cases forced to shut down as a result of not being able to creatively participate in same-sex marriage advocacy or a same-sex wedding in good conscience due to their sincere and deeply-held religious or moral beliefs regarding the nature of marriage.<sup>9</sup>
28. These are violations of the right to freedom of thought, conscience, and religion under Article 18 of the ICCPR, and all countries that have redefined marriage or are seeking to do so must take this into account when it comes to fulfilling their obligations to protect these rights.

### **(c) Recommendations**

29. In light of the aforementioned, ADF International suggests the following recommendations be made to Switzerland:
- a. Recognize the right to life from conception until natural death and the State's duty and obligation to protect and defend this right;
  - b. Repeal all laws, cantonal and federal, which allow for or require assisted suicide on either a *de facto* or a *de jure* basis, acknowledging that there is no right to death under international law and that such practices violate the right to life;
  - c. Protect and support the family as the natural and fundamental group unit of society, in keeping with Article 23 of the ICCPR, and in doing so maintain the definition of marriage as the union of one man and one woman;

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church/6810276; Catholic Herald, Spanish cardinal reported over 'hate crime,' 2016, <http://www.catholicherald.co.uk/news/2016/06/07/spanish-cardinal-reported-over-hate-crime/>.

<sup>9</sup> ADF Legal, Jack Phillips, <http://www.adflegal.org/detailspages/client-stories-details/jack-phillips>; ADF Legal, Jon and Elaine Huguenin, <http://www.adflegal.org/detailspages/case-details/elaine-photography-v.-willock>; ADF Legal, Baronelle Stutzman, <http://www.adflegal.org/detailspages/case-details/state-of-washington-v.-arlene-s-flowers-inc.-and-baronelle-stutzman>; ADF Legal, 3 Common Myths Used Against Christian Bakers like Aaron and Melissa Klein and Jack Phillips, 2016, <http://www.adflegal.org/detailspages/blog-details/allianceedge/2016/04/07/3-common-myths-used-against-christian-bakers-like-aaron-and-melissa-klein-and-jack-phillips>; ADF Legal, Brush & Nib Studio, <http://www.adflegal.org/detailspages/case-details/brush-nib-studio-v.-city-of-phoenix>; Belfast Telegraph, Forcing Ashers bakery to make pro-gay marriage cake could amount to cruelty, appeal hears, 2016, <http://www.belfasttelegraph.co.uk/news/northern-ireland/forcing-ashers-bakery-to-make-progay-marriage-cake-could-amount-to-cruelty-appeal-hears-34709014.html>.

- d. Recognize and protect the basic and natural right of all children to both a mother and father, whether biological or adoptive; and
- e. Ensure that the rights to freedom of opinion, expression, thought, conscience, and religion under Articles 18 and 19 of the ICCPR are guaranteed and protected with respect to all citizens, and that these rights not be infringed upon, including by so-called “hate speech” laws.



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