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Chair, Health and Social Care Committee
House of Commons
London
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3rd July 2023

A number of witnesses to your Committee's inquiry have commended efforts at even-handedness, and I note that in the first three evidence sessions, near balance was achieved between perspectives embracing and opposing assisted suicide. Our analysis suggests that during the first three evidence sessions 10 advocates for assisted suicide, 8 critics of assisted suicide and 2 other neutral/unclear witnesses gave evidence.

I was, however, troubled by last week's, fourth, evidence session, when five witnesses were called, *all* speaking essentially in defence of assisted suicide in Switzerland. That the second half of the session was devoted solely to representatives of two major assisted suicide providers, Dignitas and EXIT Swiss Deutsche, who were free to reinforce each other's contributions in isolation and without serious challenge, was especially troubling.

Given the Committee's limited time, and the comparatively small number of witnesses the Committee will be able to hear from, did they really offer unique perspectives? What assurances can you give that the Committee will not by the end of its run have given advocates greater attention than critics? On a related note, does the Committee have plans to reschedule Dr Mark Komrad to address the Committee since he was unable to connect on 16th May?

Among the witnesses speaking in defence of assisted suicide was Professor Rutger Jan van der Gaag, who on 6th June told you and your colleagues:

> "The Groningen protocol refers to children who are not viable and are in neonatal intensive care units, where the child is kept in life but there is no possibility to terminate the ventilation, although everyone knows that the child cannot live or survive without ventilation assistance and would not develop. That is an act that refers to very disabled children who would not have survived if, at the first moment after delivery, neonatal intensive care had not been put in place. It was to help parents and doctors take the decision to stop ventilation."

This is contradicted by the protocol's author, A. A. Eduard Verhagen, who has written:

> "The goal of the Protocol is to allow parents and doctors to end the life of infants in cases where the infant is suffering unbearably with no hope for improvement, but is neither actively dying nor dependent on medical technology (e.g., a ventilator) for life. Under the Protocol, physicians may administer substances to the infant to rapidly and painlessly end the infant's life when specific criteria are met."[1]

On 27th June, Silvan Luley offered that:

> 'The Commission on Assisted Dying made this point over 10 years ago when it said: "The current legal status of assisted suicide is inadequate and incoherent" in the UK.'

I feel it important to note that that the Commission was established and led by the passionately pro-assisted suicide Lord Falconer of Thoroton, without any outside authority (despite its name hinting at official recognition). As my predecessor, Dr Peter Saunders, wrote at the time,

> "The commission was originally 'suggested' by the pressure group Dignity in Dying (formerly the Voluntary Euthanasia Society) and has been part-funded by Terry Pratchett, one of their patrons. Nine of the twelve members, handpicked by Falconer, are already known to favour a change in the law, including all four parliamentarians and all four doctors."[2]

It is the failure to challenge and critique erroneous and misleading information being provided by advocates of assisted suicide and euthanasia which is of particular concern. This may lead to an unbalanced report, unless the inaccuracies are corrected or the full picture presented.

Additionally, I would draw your attention to the evidence received by the Committee from the Joint Committee on Human Rights. A fairly full and in-depth consideration was given to the human rights issues involved. However, there were a number of areas of disagreement between the expert witnesses and not least with regard to the compatibility of assisted suicide and euthanasia with Article 2 of the ECHR.

On a number of occasions the Chair of the JCHR appeared to have come to a conclusion based on one-side of the evidence presented before the other view had been fully articulated. Additionally, we would challenge the Chair's statement in her letter to you of 8th June in which she stated "a human rights analysis appears not to currently provide definitive answers as to whether current legislation on assisted dying requires changes". Rather, the case law shows that the UK's current law prohibiting assisted suicide and euthanasia is compatible with the ECHR.

Care Not Killing has intervened in a number of the prominent cases that have come before the courts and which were discussed at the JCHR session on 24th May. These include the cases of *Nicklinson, Lamb, Conway* and '*Y*' before the UK courts and of *Mortier* which was considered by the European Court of Human Rights (ECtHR).

[1] Kon, J. J., Verhagen, A. A. E., & Kon, A. A. (2022). Neonatal Euthanasia and the Groningen Protocol. In N. Nortjé, & J. C. Bester (Eds.), Pediatric Ethics: Theory and Practice (pp. 291-311). (The International Library of bioethics). SPRINGER. https://doi.org/10.1007/978-3-030-86182-7_18

[2] carenotkilling.org.uk/articles/falconers-conclusions/

In relation to the *Mortier* case, in particular, it should be noted that the view of the ECtHR was not unanimous on the point about whether a margin of appreciation should apply with two of the judges upholding CNK's argument that Article 2 is absolute. Moreover, the majority judgement was at points confusing and some key factors were not addressed. However, even based on the majority view in *Mortier* that a margin of appreciation may be applied, there remains considerable scope at the national level for courts to find that the implementation of any euthanasia or assisted suicide regime is incompatible with the level of safeguards considered by the ECtHR to be necessary in order to be compatible with Article 2 of the ECHR.

In addition, there are concerns over the potential for conscientious objection rights to be undermined. The law on conscientious objection is relatively undeveloped and arguably the UK case law (which relates to conscientious objection to participating in the management of midwives participating in abortions) may not apply to issues relating to euthanasia and assisted suicide. Indeed, the JCHR itself has previously noted that Article 9 of ECHR may be engaged in relation to legislation proposing the legalisation of assisted suicide, although this point was not covered during the session on 24th May.

CNK would be pleased to provide more information on these points to the Committee if so desired. Additionally, we would ask you to take steps to ensure that a balance of witnesses in support and opposing assisted dying/suicide is achieved.

Yours sincerely,

Dr Gordon Macdonald
CEO