



## Difficulties in obtaining drug to commit assisted suicide: complaint declared inadmissible after Court was informed of claimant's death earlier in its proceedings

In today's Grand Chamber judgment in the case of [Gross v. Switzerland](#) (application no. 67810/10) the European Court of Human Rights has, by a majority, declared the application inadmissible. The judgment is final.

The case concerned the complaint of an elderly woman – who had wished to end her life but had not been suffering from a clinical illness – that she had been unable to obtain the Swiss authorities' permission to be provided with a lethal dose of a drug in order to commit suicide.

In its Chamber judgment in the case on 14 May 2013, the Court held, by a majority, that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights. It found in particular that Swiss law was not clear enough as to when assisted suicide was permitted. The case was subsequently referred to the Grand Chamber at the request of the Swiss Government.

In January 2014 the Swiss Government informed the Court that it had learned that the applicant had died in November 2011.

In today's Grand Chamber judgment the Court came to the conclusion that the applicant had intended to mislead the Court on a matter concerning the very core of her complaint. In particular, she had taken special precautions to prevent information about her death from being disclosed to her counsel, and thus to the Court, in order to prevent the latter from discontinuing the proceedings in her case. The Court therefore found that her conduct had constituted an abuse of the right of individual application (Article 35 §§ 3 (a) and 4 of the Convention). As a result of today's judgment, the findings of the Chamber judgment of 14 May 2013, which had not become final, are no longer legally valid.

### Principal facts, complaints and procedure

The applicant, Alda Gross, is a Swiss national who was born in 1931 and died on 10 November 2011. For many years she had expressed the wish to end her life. Although not suffering from any clinical illness, she submitted that she was becoming increasingly frail and was unwilling to continue suffering the decline of her physical and mental faculties.

Having unsuccessfully attempted to find a doctor willing to issue the prescription required to obtain a lethal dose of sodium pentobarbital, she applied to the Health Board of the Canton of Zurich, which rejected her request to be provided with the drug in April 2009. The decision was eventually upheld by the courts in April 2010.

The doctors consulted by Ms Gross or her representative declined to issue the requested prescription in particular because Ms Gross was not suffering from a clinical illness. They pointed out that they were prevented by the code of professional conduct from issuing the prescription and/or feared to be drawn into lengthy judicial proceedings. The Swiss Federal Supreme Court, in its decision of 12 April 2010 rejecting Ms Gross' appeal against the Health Board's decision, considered that there was no obligation on the State to guarantee an individual access to a lethal drug. It further held, in particular, that she did not fulfil the prerequisites 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, as she was not suffering from a terminal illness.

Ms Gross' application was lodged with the European Court of Human Rights on 10 November 2010. She complained that by denying her the right to decide by what means and at what point her life would end the Swiss authorities had breached Article 8 (right to respect for private and family life) of the Convention. A number of organisations submitted their comments on the merits, having been given leave to intervene in the written procedure as third parties (Article 36 of the Convention).

In its Chamber judgment of 14 May 2013, the European Court of Human Rights held, by a majority, that there had been a violation of Article 8 of the Convention. It found in particular that Swiss law, while providing the possibility of obtaining a lethal dose of a drug on medical prescription, did not provide sufficient guidelines ensuring clarity as to the extent of this right. This uncertain situation was likely to have caused Ms Gross a considerable degree of anguish. At the same time, the Court did not take a stance on the question of whether she should have been granted the possibility to acquire a lethal dose of medication allowing her to end her life.

The case was subsequently referred to the Grand Chamber on request of the Swiss Government.

In parallel with the proceedings before the European Court of Human Rights, Ms Gross continued her efforts to obtain a prescription for a lethal dose of a drug. In October 2011 a medical practitioner prescribed her a lethal dose of sodium pentobarbital. On 10 November 2011, she ended her life with the assistance of the assisted-suicide association EXIT, by drinking the substance. A subsequent police report concluded that no third person was found to be criminally liable.

The Court was not made aware of her death until 7 January 2014. On that date, the Swiss Government informed the Court that, when preparing their submissions to the Grand Chamber they had enquired about Ms Gross' situation with the municipality where she lived, and had thus found out about her death.

## Composition of the Court

The decision was given by the Grand Chamber of 17, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,  
**Josep Casadevall** (Andorra),  
**Ineta Ziemele** (Latvia),  
**Mark Villiger** (Liechtenstein),  
**Isabelle Berro-Lefèvre** (Monaco),  
**Boštjan M. Zupančič** (Slovenia),  
**Alvina Gyulumyan** (Armenia),  
**Khanlar Hajiyev** (Azerbaijan),  
**Dragoljub Popović** (Serbia),  
**Ledi Bianku** (Albania),  
**Nona Tsotsoria** (Georgia),  
**Ann Power-Forde** (Ireland),  
**Vincent A. de Gaetano** (Malta),  
**Linos-Alexandre Sicilianos** (Greece),  
**Helen Keller** (Switzerland),  
**Helena Jäderblom** (Sweden),  
**Johannes Silvis** (the Netherlands), *Judges*,

and also **Erik Fribergh**, *Registrar*.

## Decision of the Court

The Court noted that it had been informed of Ms Gross' death not by her legal counsel, but by the Swiss Government, which, in a preliminary objection, had requested the Court to declare the application inadmissible on the ground of abuse of the right of individual application (Article 35 §§ 3 (a) and 4 of the Convention).

The Court also took note of the explanation submitted in reply by Ms Gross' counsel, namely that he had been unaware of her death because he had only had contact with her via an intermediary, a retired pastor who voluntarily worked for the association EXIT as a spiritual adviser. According to that adviser, he had followed Ms Gross' wishes and had intentionally refrained from notifying her legal counsel of her death, as she had feared that this information might lead the Court to discontinue the proceedings in her case.

In the Court's view, the fact that Ms Gross' counsel had not had any direct contact with her and had agreed to communicate with her only through an intermediary gave rise to some concerns regarding his role as a legal representative in the proceedings. In addition to the duties of an applicant to cooperate with the Court and to keep it informed of all circumstances relevant to his or her application, a representative bore a particular responsibility not to make misleading submissions. It had become clear from the explanations submitted by Ms Gross' counsel that she had not only failed to inform him of the fact that she had obtained the medical prescription for the lethal drug, but had also taken special precautions to prevent information about her death from being disclosed to her counsel, and thus to the Court, in order to prevent the latter from discontinuing the proceedings in her case.

Against that background, the Court considered that the fact and the circumstances of Ms Gross' death concerned the core of the matter underlying her complaint under the Convention. Given that the Chamber judgment of 14 May 2013 had not become final, there was no need for the Grand Chamber to speculate, however, whether this information, had it been known to the Chamber, might have had a decisive influence on its judgment.

According to the pastor working for EXIT, Ms Gross' motive for withholding the relevant information had been that, even after her personal grievance would have ceased to exist, the proceedings in her case should continue for the benefit of other people in a similar situation. Whilst such a motive might be understandable from her perspective, the Court found it sufficiently established that by deliberately omitting to disclose that information to her counsel, she had intended to mislead the Court on a matter concerning the very core of her complaint. The Court therefore accepted the Swiss Government's preliminary objection that her conduct had constituted an abuse of the right of individual application and, by a majority, declared the application inadmissible.

## Separate opinions

Judge Silvis expressed a concurring opinion; Judges Spielmann, Ziemele, Berro-Lefèvre, Zupančič, Hajiyev, Tsotsoria, Sicilianos and Keller jointly expressed a dissenting opinion, considering that the Court should have decided that it was no longer justified to continue the examination of the case, as the applicant had died without leaving any heirs or descendants, without qualifying Ms Gross's behaviour as an abuse of rights. These separate opinions are annexed to the judgment.

*The judgment is available in English and French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.