



Swiss law not clear enough as to when assisted suicide is permitted

In today's Chamber judgment in the case of [Gross v. Switzerland](#) (application no. 67810/10), which is not final¹, the European Court of Human Rights 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.

The case concerned the complaint of an elderly woman, who wishes to end her life but does not suffer from a clinical illness, that she was unable to obtain the Swiss authorities' permission to be provided with a lethal dose of a drug in order to commit suicide.

The Court held 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.

Principal facts

The applicant, Alda Gross, is a Swiss national who was born in 1931 and lives in Greifensee (Switzerland). For a number of years, she has wanted to end her life. Although not suffering from any clinical illness, she submitted that, being over 80, she was unwilling to continue suffering the decline of her physical and mental faculties. In particular, she explained that she was becoming increasingly frail, had difficulties concentrating and was unable to take long walks. 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

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

patients at the end of life adopted by the Swiss Academy of Medical Sciences, as she was not suffering from a terminal illness.

Complaints, procedure and composition of the Court

Ms Gross complained that by denying her the right to decide by what means and at what point her life would end the Swiss authorities breached Article 8 (right to respect for private and family life) of the Convention.

The application was lodged with the European Court of Human Rights on 10 November 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Danutė **Jočienė** (Lithuania),
Peer **Lorenzen** (Denmark),
András **Sajó** (Hungary),
Işıl **Karakaş** (Turkey),
Nebojša **Vučinić** (Montenegro),
Helen **Keller** (Switzerland),

and also Stanley **Naismith**, *Section Registrar*.

Decision of the Court

Article 8

The Court considered that Ms Gross' wish to be provided with a lethal dose of medication allowing her to end her life fell within the scope of her right to respect for her private life under Article 8. In the case *Haas v. Switzerland* it had already acknowledged that an individual's right to decide the way in which and at which point his or her life should end, provided that he or she was in a position to freely form his or her own judgment and to act accordingly, was one of the aspects of the right to respect for private life.²

The Court observed that under the Swiss Criminal Code inciting and assisting suicide were punishable only where the perpetrator of such acts was driven to commit them by "selfish motives". Under the case-law of the Swiss Federal Supreme Court, a doctor was entitled to prescribe a lethal drug in order to allow a patient to commit suicide if certain specific conditions, as indicated in the medical ethics guidelines adopted by the Swiss Academy of Medical Sciences, were fulfilled. In particular, alternative possibilities for providing assistance had to be discussed, a patient had to be capable of making the decision and his or her wish had to have been well considered without external pressure.

However, those guidelines, issued by a non-governmental organisation, did not have the formal quality of law. Furthermore, as they only applied to patients whose doctor had come to the conclusion that their illness would lead to death within a matter of days or weeks, Ms Gross fell outside the scope of application of the guidelines. The Swiss Government had not submitted any other material providing guidelines as to whether and under which circumstances a doctor was entitled to issue a prescription for a lethal drug to a patient who was not suffering from a terminal illness.

The Court considered that this lack of clear legal guidelines was likely to have a deterrent effect on doctors who would otherwise be inclined to provide a person in Ms

² *Haas v. Switzerland* (31322/07), Chamber judgment of 20 January 2011

Gross' situation with the requested prescription. This was confirmed by the fact that the doctors consulted by her had declined her request on the grounds that they feared lengthy judicial proceedings and, possibly, negative professional consequences.

The uncertainty as to the outcome of her request in a situation concerning a particularly important aspect of her life was likely to have caused Ms Gross a considerable degree of anguish. That situation would not have occurred had there been clear, State-approved guidelines defining the circumstances under which medical practitioners were authorised to issue the requested prescription in cases where an individual had come to a serious decision, in the exercise of his or her free will, to end his or her life, but where death was not imminent as a result of a specific illness.

Those considerations were sufficient for the Court to conclude 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. There had accordingly been a violation of Article 8 of the Convention in that respect.

At the same time, the Court did not take a stance on the question of whether Ms Gross should have been granted the possibility to acquire a lethal dose of medication allowing her to end her life. It considered that it was primarily up to the national authorities to issue comprehensive and clear guidelines to decide that question.

Just satisfaction (Article 41)

Ms Gross did not submit a claim for damages. The Court further dismissed her claim in respect of costs and expenses, as she had not lodged it within the relevant time-limit.

Separate opinion

Judge Jočienė, joined by judges G. Raimondi and I. Karakaş, expressed a dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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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.