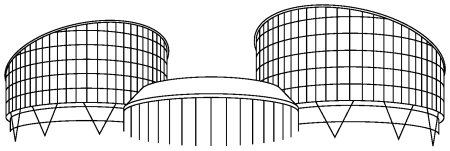

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF GROSS v. SWITZERLAND

(Application no. 67810/10)

JUDGMENT

STRASBOURG

30 September 2014

This judgment is final but may be subject to editorial revision.

In the case of Gross v. Switzerland,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Josep Casadevall,
Ineta Ziemele,
Mark Villiger,
Isabelle Berro-Lefèvre,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Khanlar Hajiyev,
Dragoljub Popović,
Ledi Bianku,
Nona Tsotsoria,
Ann Power-Forde,
Vincent A. De Gaetano,
Linos-Alexandre Sicilianos,
Helen Keller,
Helena Jäderblom,
Johannes Silvis, *judges,*

and Erik Fribergh, *Registrar,*

Having deliberated in private on 5 March 2014 and on 27 August 2014,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 67810/10) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swiss national, Ms Alda Gross ("the applicant"), on 10 November 2010.

2. The applicant was represented by Mr F.T. Petermann, a lawyer practising in St Gallen, Switzerland. The Swiss Government ("the Government") were represented by their Agent, Mr F. Schürmann, Head of the Human Rights and Council of Europe Section of the Federal Ministry of Justice.

3. Relying on Article 8 of the Convention, the applicant alleged, in particular, that her right to decide how and when to end her life had been breached.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). On 5 January 2012 the application was

communicated to the Government. It was also decided to grant the case priority (Rule 41). On 14 May 2013 a Chamber composed of the following judges: Guido Raimondi, President, Danutė Jočienė, Peer Lorenzen, András Sajó, Işıl Karakaş, Nebojša Vučinić, Helen Keller, judges, and also of Stanley Naismith, Section Registrar, having deliberated in private, delivered a judgment in which it held by a majority that there had been a violation of Article 8 of the Convention. The joint dissenting opinion of Judges Raimondi, Jočienė and Karakaş was annexed to the judgment.

5. In a letter of 12 August 2013 the Government requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention and Rule 73. The panel of the Grand Chamber granted the request on 7 October 2013.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. The applicant and the Government each filed further written observations (Rule 59 § 1). In their memorial dated 7 January 2014 the Government informed the Court that the applicant had died on 10 November 2011. The applicant's counsel submitted comments in reply.

8. In addition, third-party comments on the merits of the application were received from: the Alliance Defending Freedom (formerly known as the Alliance Defense Fund), an association based in the United States of America ("USA") dedicated to protecting the right to life on a worldwide basis, represented by Mr P. Coleman; the European Centre for Law and Justice, an association based in France specialising in questions of bioethics and the defence of religious freedom, represented by Mr G. Puppinck; Americans United for Life, an association based in the USA dedicated to protecting the right to life from conception until natural death, represented by Mr W. L. Saunders, and Dignitas, an association based in Switzerland whose objective is to ensure that its members receive end-of-life care and die with human dignity, represented by Mr L. A. Minelli. All of the third party interveners had been given leave by the President to intervene in the written procedure before the Chamber (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1931 and died on 10 November 2011.

10. For many years the applicant had expressed the wish to end her life. She explained that she was becoming increasingly frail as time passed and was unwilling to continue suffering the decline of her physical and mental

faculties. She decided that she wished to end her life by taking a lethal dose of sodium pentobarbital. She contacted an assisted-suicide association – EXIT – for support, which replied that it would be difficult to find a medical practitioner who would be ready to provide her with a medical prescription for the lethal drug.

11. On 20 October 2008 a psychiatrist, Dr T., submitted an expert opinion in which he observed that there was no doubt that the applicant was able to form her own judgment. From a psychiatric medical point of view, Dr T. did not have any objection to the applicant being prescribed a lethal dose of sodium pentobarbital. However, he refrained from issuing the prescription himself on the grounds that he did not want to confuse the roles of medical expert and treating physician.

12. By letters of 5 November 2008, 1 December 2008 and 4 May 2009 the applicant's representative submitted on her behalf a request to be given a prescription for sodium pentobarbital to three further medical practitioners, who all declined to issue the requested prescription.

13. On 16 December 2008 the applicant submitted a request to the Health Board of the Canton of Zurich to be provided with 15 grams of sodium pentobarbital in order for her to commit suicide. On 29 April 2009 the Health Board rejected the applicant's request.

14. On 29 May 2009 the applicant lodged an appeal with the Administrative Court of the Canton of Zurich. On 22 October 2009 the Administrative Court dismissed the appeal. The Administrative Court considered, in particular, that the prerequisite of a medical prescription for obtaining a lethal dose of sodium pentobarbital was in accordance with Article 8 of the Convention. The requirement to obtain a medical prescription served the aim of preventing premature decisions and guaranteed that the intended action was medically justified. It further ensured that the decision was based on a deliberate exercise of the free will of the person concerned. The Administrative Court observed that Dr T., in his expert opinion, had not considered whether the applicant was suffering from any illness which would justify the assumption that the end of her life was near. The wish to die taken on its own, even if it was well considered, was not sufficient to justify the issuing of a medical prescription. Accordingly, the content of the case file did not demonstrate that the necessary prerequisites for issuing a medical prescription had been fulfilled in the instant case. There was therefore a need for further medical examination. Under these circumstances, the Administrative Court considered that there was no sufficient reason to dispense the applicant from the necessity of a thorough medical examination and of a medical prescription.

15. On 12 April 2010 the Federal Supreme Court dismissed an appeal lodged by the applicant. It observed, *inter alia*, that the applicant undisputedly 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, but had expressed her wish to die because of her advanced age and increasing frailty. Even though the Federal Supreme Court had previously considered that the issuing of a medical prescription for sodium pentobarbital to a person suffering from an incurable, persistent and serious psychological illness did not necessarily amount to a violation of a doctor's professional duties, this exception had to be handled with "utmost restraint" and did not enjoin the medical profession or the State to provide the applicant with the requested dose of sodium pentobarbital to put an end to her life. The Federal Supreme Court further noted that the issuing of the requested substance required a thorough medical examination and, with respect to the persistence of the wish to die, long-term medical supervision by a specialist practitioner who was ready to issue the necessary prescription. This requirement could not be circumvented by the applicant's request for an exemption from the necessity of obtaining a medical prescription.

16. On 10 November 2010 counsel for the applicant lodged an application with the Court.

17. On 24 October 2011 the applicant obtained a medical prescription for 15 grams of sodium pentobarbital signed by a medical practitioner, Dr U. On 10 November 2011 she ended her life by imbibing the prescribed substance. According to a police report dated 14 November 2011, no relatives of the deceased could be identified. The report concluded that the applicant had committed suicide with the assistance of EXIT and that no third person was found to be criminally liable in this context.

18. The Court was not made aware of the applicant's death until 7 January 2014 (see paragraph 19 below).

THE LAW

THE GOVERNMENT'S PRELIMINARY OBJECTION

A. The Government's submissions to the Grand Chamber

19. In their memorial to the Court of 7 January 2014, the Government stated that when preparing their memorial they had taken the precaution of enquiring about the applicant's situation at the municipality where she lived and had found out that she had died on 10 November 2011. Thus, by the time the Chamber had adopted its judgment in this case, she had been dead for approximately one and a half years. Relying on the Court's decision in the case of *Predescu v. Romania*, (no. 21447/03, § 25, 2 December 2008),

they requested the Court to declare the application inadmissible on the ground of abuse of the right of petition, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

20. The Government submitted that counsel had not only failed to inform the Court of the applicant's death – which he should have done at the latest when the Court's Registry provided him with the statement of facts, assuming her to be alive – but had also misled the Court in his submissions by giving the impression that the applicant was still alive.

21. In the Government's view, the conduct of the deceased applicant's counsel had been such as to mislead the Court as regards an essential aspect for its examination of the application.

B. Counsel for the applicant's submissions to the Grand Chamber

22. Counsel responded that he had not had any personal contact with his client since January 2010 and had only become aware of her death on 9 January 2014, when he had received a copy of the Government's memorial of 7 January 2014.

23. Counsel explained that the applicant had expressed her wish that counsel should send any further correspondence to Mr F., a retired pastor who also voluntarily worked for the assisted-suicide association EXIT. The reason for this arrangement was, *inter alia*, that receiving letters from her counsel directly had caused her stress and that she therefore needed assistance from a person of trust. Thus, after her appeal to the Federal Supreme Court in January 2010, it had been agreed that Mr F. would bring any communications to her personally and explain them to her. Counsel submitted that he had complied with those instructions.

24. Upon receipt of the Government's submissions on 9 January 2014, counsel had immediately contacted Mr F., who had explained to him that he had refrained from notifying him of the applicant's death at the applicant's express request because she feared that the ongoing proceedings would otherwise be discontinued. In the summer of 2011, when it had become clear that the applicant would end her life, she had informed Mr F. that counsel had told her that if she died during the proceedings the case would be at an end, and that she did not want this to happen as she wanted "to open the way for other people in her situation". Mr F. had taken the view that a spiritual adviser's professional duty did not permit disclosure against the applicant's express wishes. Counsel for the applicant further stated that he found it extremely regrettable that Mr F. had not informed him immediately of the applicant's death, as counsel would have duly informed the Court and would have made an application for the proceedings to be continued nevertheless.

25. Relying on the Court's case-law in previous cases where an applicant had died or had expressed the wish to withdraw his or her

complaint during the proceedings before the Commission or the Court (counsel referred to the Court's judgments in the cases of *Scherer v. Switzerland*, 25 March 1994, Series A no. 287 and *Tyrer v. the United Kingdom*, 25 April 1978, § 21, Series A no. 26), he argued that upon lodging an application with the Convention institutions the latter became master of the proceedings. It was thus for the Court to decide whether the proceedings in a given case should be continued. The decisive factor in that regard was whether, in the Court's view, the case raised general questions of public interest necessitating further examination.

26. In the instant case counsel for the applicant invited the Court to continue the proceedings on the grounds that the case raised substantive questions regarding compliance with the Convention which necessitated further examination in the public interest. "Euthanasia" was a contentious and much-debated issue in many European countries. Cases of this nature were generally brought by persons who were elderly and/or ill. If proceedings were to be systematically abandoned when such a person died, the questions raised by such cases could never be decided by the Court.

C. The Court's assessment

27. Article 35 § 3(a) of the Convention provides:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
>
> (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application;..."

28. The Court reiterates that under this provision an application may be rejected as an abuse of the right of individual application if, among other reasons, it was knowingly based on untrue facts (see *Akdivar and Others v. Turkey* [GC], 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Rehak v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Popov v. Moldova* (no. 1), no. 74153/01, § 48, 18 January 2005; *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006; *Miroļubovs and Others v. Latvia*, no. 798/05, § 63, 15 September 2009; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 97, ECHR 2012). The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information (see *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; *Predescu v. Romania*, no. 21447/03, §§ 25-26, 2 December 2008; and *Kowal v. Poland* (dec.), no. 2912/11, 18 September 2012). The same applies if new, important developments have occurred

during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 (former Rule 47 § 6) of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts (see *Centro Europa 7 S.r.l. and Di Stefano*, ibid., and *Miroļubovs and Others*, ibid.). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Al-Nashif v. Bulgaria*, no. 50963/99, § 9, 20 June 2002; *Melnik v. Ukraine*, no. 72286/01, §§ 58-60, 28 March 2006; *Nold v. Germany*, no. 27250/02, § 87, 29 June 2006; and *Centro Europa 7 S.r.l. and Di Stefano*, ibid.).

29. Turning to the circumstances of the instant case, the Court notes at the outset that in her application lodged with the Court on 10 November 2010 the applicant complained, relying on Article 8 of the Convention, that the Swiss authorities, by depriving her of the possibility of obtaining a lethal dose of sodium pentobarbital, had violated her right to decide by what means and at what point her life would end. It further observes that on 5 January 2012 her application was communicated to the respondent Government and that on 14 May 2013 the Chamber delivered a judgment in which it held (by four votes to three) that there had been a violation of Article 8 of the Convention, a finding which was based on the assumption that the applicant was still alive (see paragraphs 65-67 of the Chamber judgment).

30. However, it was later revealed that in the meantime, on 24 October 2011, the applicant had obtained a medical prescription for a lethal dose of sodium pentobarbital and that on 10 November 2011 she had ended her life by imbibing the prescribed substance.

31. This development was not brought to the Court's attention by the applicant or her counsel but by the Government, in their memorial of 7 January 2014, after the case had been referred to the Grand Chamber in accordance with Article 43 of the Convention. When preparing their memorial, the Government had enquired about the applicant's situation and had found out about the fact and the circumstances of her death.

32. The Court has taken note of the explanation submitted in reply by counsel for the applicant that he had been unaware of his client's death because he had only had contact with her via an intermediary, Mr. F., who – at her request – had purposely refrained from notifying counsel of her death. According to Mr F., this was because of her fear that the disclosure of such a fact might prompt the Court to discontinue the proceedings in her case. As her spiritual adviser he had considered himself bound by a professional duty of confidentiality preventing him from disclosing that information against her wishes.

33. However, in the Court's view, and bearing in mind the particular nature of the present case, the fact that counsel for the applicant had no direct contact with his client but agreed to communicate with her indirectly

through an intermediary gives rise to a number of concerns regarding his role as a legal representative in the proceedings before it. In addition to the duties of an applicant to cooperate with the Court (see Rule 44A of the Rules of Court; see also Rule 44C on "Failure to participate effectively", including the possibility of drawing inferences from the failure of a party "to divulge relevant information of its own motion") and to keep it informed of all circumstances relevant to his or her application (see Rule 47 § 7, former Rule 47 § 6), a representative bears a particular responsibility not to make misleading submissions (see Rule 44D).

34. It transpires from her counsel's explanation that the applicant had not only failed to inform him, and by implication the Court, of the fact that she had obtained the required medical prescription, but had also taken special precautions to prevent information about her death from being disclosed to counsel and eventually to the Court in order to stop the latter discontinuing the proceedings in her case.

35. Against this background, the Grand Chamber considers that the fact and the circumstances of the applicant's death did indeed concern the very core of the matter underlying her complaint under the Convention. It is also conceivable that had these facts been known to the Chamber they might have had a decisive influence on its judgment of 14 May 2013 concluding that there had been a violation of Article 8 of the Convention (see, *mutatis mutandis*, Rule 80 of the Rules of Court; *Pardo v. France* (revision – admissibility), 10 July 1996, §§ 21-22, *Reports* 1996-III; *Pardo v. France* (revision – merits), 29 April 1997, § 23, *Reports* 1997-III; and *Gustafsson v. Sweden* (revision – merits), 30 July 1998, § 27, *Reports* 1998-V). However, there is no need for the Grand Chamber to speculate on this since in any event, in accordance with Article 44 § 2 of the Convention, the Chamber's judgment of 14 May 2013 has not become final.

36. According to Mr. F., the applicant's motive for withholding the relevant information had been that, regardless of the fact that the ongoing grievance arising from her own personal situation had ceased, the proceedings in her case should continue for the benefit of other people who were in a similar situation. Whilst such a motive may be understandable from the applicant's perspective in the exceptional situation in which she found herself, the Court finds it sufficiently established that by deliberately omitting to disclose that information to her counsel the applicant intended to mislead the Court on a matter concerning the very core of her complaint under the Convention.

37. Accordingly, the Court upholds the Government's preliminary objection that the applicant's conduct constituted an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention.

FOR THESE REASONS, THE COURT

Holds, by nine votes to eight, that by reason of the applicant's abuse of the right of application within the meaning of Article 35 § 3(a) of the Convention, the application is inadmissible.

Done in English and in French, and notified in writing on 30 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik Fribergh	Dean Spielmann
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Silvis;

(b) joint dissenting opinion of Judges Spielmann, Ziemele, Berro-Lefèvre, Zupančič, Hajiyev, Tsotsoria, Sicilianos and Keller.

D.S.
E.F.

CONCURRING OPINION OF JUDGE SILVIS

The applicant ended her life by imbibing a lethal dose of sodium pentobarbital on medical prescription while a complaint concerning the denial of her right to obtain such a prescription was pending before the Court. Without having been informed about the change of circumstances, including her death, the Chamber dealt with the case and found a violation of Article 8 of the Convention, on account of a lack of clarity in Swiss law, one and a half years after the applicant had died. However, the Chamber's judgment never became final since the case was referred to the Grand Chamber. It was only after that referral that the Court was notified that the applicant had already obtained the lethal drugs and had subsequently died. Counsel for the applicant had not informed the Court of this, explaining that he had not even been aware of the change in circumstances of his client. I voted in favour of declaring the application inadmissible on grounds of abuse of the right of petition. To my mind, the alternative of just striking the case out would not have sufficiently underlined the importance of keeping the Court fully informed of new circumstances concerning the core of a complaint.

I would have preferred the Grand Chamber not to establish that the applicant had herself deliberately misled the Court. To my mind, there was no need to establish with "sufficient certainty" the applicant's personal intentions, assuming – implicitly – that she herself was fully aware of the requirements of the Rules of Court. It is preferable for the Court not to enter into the particular way clients and their professional representatives before the Court communicate with each other, as it is clearly set out in Rule 44C of the Rules of Court that they must participate effectively. Knowledge of the client's circumstances could therefore legitimately be imputed to her counsel. As a professional, acting on behalf of his client, counsel bears the responsibility of disclosing relevant new information (Rule 47 § 6 until 6 May 2013, now 47 § 7). When this responsibility is not adequately assumed, without sufficient explanation, and the new information in question concerns the core of the complaint, then I would think that the conclusion that there has been an abuse of the right of petition should inevitably follow (see *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006; *Predescu v. Romania*, no. 21447/03, §§ 25-26, 2 December 2008; and *Kowal v. Poland* (dec.), no. 2912/11, 18 September 2012).

Why did the Court seek to establish whether the applicant herself had deliberately misled the Court? This appears to be a consequence of the Court's earlier case-law restricting findings of an abuse of the right of petition to cases where there has been an underlying intention on the part of an applicant to mislead. By thus setting the threshold for finding an abuse of the right of petition unnecessarily high in my view, even in an extraordinary case like this, the Grand Chamber has forced itself to undertake the rather

speculative exercise of establishing with "sufficient certainty" her state of mind and, implicitly, her procedural legal awareness.

In *Nold v. Germany* (no. 27250/02, § 87, 29 June 2006) the applicant's intention to knowingly mislead the Court was not yet a necessary condition for finding an abuse of the right of application, since that condition was still subject to exceptions in extraordinary case as in earlier jurisprudence. In the case of *Centro Europa 7 S.r.l. and Di Stefano v. Italy* ([GC], no. 38433/09, § 97, ECHR 2012) the Grand Chamber recently found that withholding information could amount to abuse of the right of petition, but that "even in such cases" the applicant's intention to mislead the Court must always be established with sufficient certainty. It seems, as has been confirmed in the present judgment, that the Grand Chamber has closed the door to the possibility of reaching a finding of abuse of the right of petition in extraordinary cases without explicitly establishing "with sufficient certainty" that the applicant intended to mislead the Court. I regret this restriction and would have favoured a change in the opposite direction since rules of procedural "hygiene" are weakened when made exclusively dependent on subjective motives as opposed to objectively verifiable reasons.

JOINT DISSENTING OPINION OF JUDGES SPIELMANN, ZIEMELE, BERRO-LEFÈVRE, ZUPANČIČ, HAJIYEV, TSOTSORIA, SICILIANOS, AND KELLER

1. While we agree that the Court cannot condone the behaviour of the applicant's representatives in this case, we are unable to share the view of the majority of the Grand Chamber that the present application is inadmissible under Article 35 § 3 (a) of the Convention on account of an abuse of the right of individual application. Unlike the majority, we consider that the threshold required for a finding of abuse of the right of individual petition has not been reached.

2. The Court's case-law on the abuse of rights is clear. Applications can only be regarded as an abuse of the right of individual application in exceptional circumstances. The Court has, for instance, held that "except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts" (see *Knyazev v. Russia*, no. 25948/05, § 79, 8 November 2007, and *Aleksanyan v. Russia*, no. 46468/06, § 117, 22 December 2008,).

3. In the present case, it is necessary to determine whether the behaviour of the applicant's lawyer, of Mr F., or of the applicant herself is decisive.

4. In a previous case the Court found that counsel's negligent lack of awareness of the commutation of their client's life sentence and their failure to inform the Court once they learned of this fact constituted abuse of the right of individual petition (see *Bekauri v. Georgia* (preliminary objection), no. 14102/02, §§ 23-25, 10 April 2012). In another case, in which a supposed applicant had already died at the time of the submission of his application to the Court, and his signature on the application form had in fact been forged by his wife, the Court found that the forgery and the deliberate concealment of the applicant's death constituted an abuse of the right of individual petition and that the application should accordingly be rejected pursuant to Article 35 § 3. In that judgment, however, the Court held that "an application may only be rejected as abusive within the meaning of Article 35 § 3 of the Convention in extraordinary circumstances, such as if an application was deliberately grounded on a description of facts omitting or distorting events of central importance" (see *Andrianova and Others v. Ukraine*, no. 10319/04, § 9, 12 December 2013). However, the circumstances of the present case do not indicate any intent to mislead the Court on the part of the applicant's counsel, who – at the applicant's request – had no direct contact with his client.

5. Second, we note that, according to the Court's case-law, a finding of abuse of the right of individual petition is only possible if an applicant intentionally misled the Court, "especially if the information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information" (see *A.L. v. Poland*, no. 28609/08, § 47,

18 February 2014, with references). We consider that this intent must be established with a sufficient degree of certainty (see *Mirolubovs v. Latvia*, no. 798/05, § 63, 15 September 2009) and, at least to a certain degree, be attributable to the individual applicant in a given case (see, by contrast, *Bekauri v. Georgia*, cited above, §§ 21-25). In order to penalise an abuse of process by an applicant's representatives, the Court can use a tool more closely tailored to such situations by banning them from representing future applicants (Rule 36 § 4 (b) of the Rules of Court; see also *Petrović v. Serbia and 10 other applications*, no. 56551/11, decision of 18 October 2011).

6. The majority accepted that the necessary intent was present owing to the fact that the applicant's intermediary, Mr F., "purposely refrained" from informing the applicant's counsel of her death (see paragraph 32 of the judgment). The majority also expressed concern about the fact that the applicant's counsel had failed to maintain direct contact with her (see paragraph 33 of the judgment). However, the decisive factor here should not be the intent of the applicant's representatives. Whatever their role in concealing the applicant's death from the Court, this cannot be attributed to the applicant.

7. Furthermore, we draw attention to the pejorative nature of the majority's finding. The inadmissibility of an application due to the abuse of the right of individual petition carries a certain stigma. Ms Gross, deceased, was unable to submit her own views regarding the majority's assessment and her memory is now burdened with the stigmatizing effect of the present judgment.

8. Lastly, we are mindful of the fact that the qualification "abuse of rights" is reserved for cases which cause the Court to "waste its efforts on matters obviously outside the scope of its real mission, which is to ensure the observance of the solemn, Convention-related, engagements undertaken by the States Parties" (see *Petrović*, cited above). In the present context, we note that the number of assisted suicides is high and unlikely to abate in the near future. In the case of Switzerland, for example, the number of foreign residents who travel to the country to seek assistance in taking their own lives is not negligible. Accordingly, we do not consider the Court's efforts to have been wasted: the issue of assisted suicide is likely to engender future applications to the Court and thus certainly merits examination. We observe that there is undoubtedly a European dimension to this issue: travel to Switzerland by people wishing to end their lives, for the purpose of availing themselves of the services of assisted-suicide organisations, has triggered heated discussions in various Contracting States.[1]

9. In our view, the Court should have expressed serious doubts as to the question whether the applicant intended to mislead the Court, but should

[1] See, for example, the debate in the United Kingdom surrounding the draft Assisted Dying Bill [HL] 2014-15, which is currently before the House of Lords.

have ultimately left this issue open as the application could have been struck out under Article 37 § 1 (c) of the Convention. The applicant passed away without leaving any heirs or descendants. Under the specific circumstances of the case, the Court should have decided that it was no longer justified to continue its examination within the meaning of Article 37 § 1 (c), without qualifying Ms Gross's behaviour as an abuse of rights.