

A POSTSCRIPT TO *GROSS V SWITZERLAND*
***Gross v Switzerland* [2014] ECHR 1008 (Grand Chamber)**

By a majority of 9-8, the Grand Chamber of the ECtHR has declared the application of Ms Gross inadmissible for abuse of the right of individual application.¹ The Second Section judgment of 2013, in which the Court found Switzerland to have violated Ms Gross' right to decide when and how to die included in the right to private life protected by Article 8 ECHR, will now not become final.²

As it happens, Ms Gross died in 2011, some 18 months prior to the Section judgment.³ A Swiss physician prescribed Ms Gross lethal medication, which, with the assistance of the right-to-die organisation EXIT, she used to perform suicide.⁴ However, working through an intermediary associated with EXIT, Ms Gross managed to conceal her passing from counsel, and ultimately the ECtHR. The withholding of this information from the Court, which went to the 'very core of her complaint', founded the majority's declaration of inadmissibility on abuse grounds.⁵

If Ms Gross indeed received suicide assistance on the basis of 'existential suffering' (this is unclear), it would appear that her physician acted outside of the situations identified by the Swiss Federal Supreme Court as permissible to prescribe lethal medication.⁶ Yet no criminal proceedings have ensued.⁷ If this is the case, the circumstances of Ms Gross' death may amply illustrate the accessibility and foreseeability problem that motivated the Section decision; the extent of the right to physician assisted suicide in Switzerland remains in need of formal clarification.⁸ Thus while the Grand Chamber decision may permit the Swiss Government to persist in uncertainty for now, a future successful Article 8 ECHR application on facts similar to *Gross v Switzerland* cannot be ruled out.

¹ *Gross v Switzerland* [2014] ECHR 1008 (Grand Chamber) [37]; Inadmissibility is governed by Art 35§3 ECHR.

² *Gross v Switzerland* [2013] ECHR 429 (2nd Sect); See Isra Black, 'Existential suffering and the extent of the right to physician-assisted suicide in Switzerland: *Gross v Switzerland* [2013] ECHR 67810/10' (2014) 22(1) Med Law Rev 109.

³ *Gross* (n 1) [19].

⁴ *ibid* [17].

⁵ *ibid* [36].

⁶ Black (n 2) 112.

⁷ *Gross* (n 1) [17].

⁸ Black (n 2) 115-117.