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EXISTENTIAL SUFFERING AND THE EXTENT OF THE RIGHT TO PHYSICIAN ASSISTED SUICIDE IN SWITZERLAND

Gross v Switzerland [2013] ECHR 67810/10

ABSTRACT

In *Gross v Switzerland*, the European Court of Human Rights held by 4-3 majority that Switzerland had violated the right to decide when and how to die included in the right to respect for private and family life under article 8 of the European Convention on Human Rights. To comply with the ruling, Switzerland must issue guidance detailing the circumstances (if any) under which physicians may lawfully prescribe lethal medication to competent individuals who have a voluntary and settled wish to die, yet whose suffering is not the product of a medical condition likely to result in death in the near future.

KEYWORDS

Accessibility and Foreseeability; Assisted Dying; ECHR; Physician Assisted Suicide; Respect for Private Life; Switzerland.

INTRODUCTION

Switzerland adopts a permissive stance toward assisted suicide, in that the assistor's conduct will be lawful unless it is selfishly motivated,[1] and/or the individual who dies lacks capacity.[2] Physician assisted suicide (PAS), however, is subject to additional regulation. The prescription of sodium pentobarbital, the preferred lethal medication for PAS in Switzerland,[3] is subject to federal narcotics (LStup) and therapeutic products law (LPTh).[4] The LStup, article 11(1) permits physicians to dispense or prescribe narcotics, provided that such practice accords with medical science. Physicians who fail to comply with article 11(1) may be liable to a penalty of three years imprisonment, or a monetary fine.[5] The LPTh, article 26 requires that therapeutic products be prescribed in accordance with accepted rules of pharmaceutical and medical science. Article 86(1), LPTh prohibits the intentional endangerment of human health by, in particular, failing to exercise due diligence while handling therapeutic products.[6] This offence is chargeable unless the

[1] Code pénal suisse du 21 décembre 1937 (CP), art 115. The maximum penalty for unlawful suicide assistance is five years imprisonment or a monetary fine.

[2] Georg Bosshard, 'Switzerland' in John Griffiths, Heleen Weyers and Maurice Adams (eds), *Euthanasia and law in Europe* (Hart 2008) 471; If the individual whose self-killing is facilitated lacks capacity, the offence is negligent homicide under CP, article 117, for which the maximum penalty is three years imprisonment or a monetary fine.

[3] ibid 472.

[4] Loi fédérale sur les stupéfiants et les substances psychotropes du 3 octobre 1951 (LStup); Loi fédérale sur les médicaments et les dispositifs médicaux du 15 décembre 2000 (LPTh).

[5] LStup, arts 20(d) and (e).

[6] LPTh, art 86(1)(a).

defendant is liable for a more serious offence set out in the Penal Code, or the LStup.[7] For physicians acting in a professional capacity, the maximum penalty under article 86(1) is five years imprisonment or a fine of 500,000 francs. The same offence committed by negligence may incur up to six months imprisonment and a fine of up to 100,000 francs.[8] Cantonal health law also requires that physicians comply with established rules of medical practice.[9]

What constitutes responsible medical practice for the purposes of PAS has evolved over time. In the 1999 *Zurich Case*, it was held that PAS would only be lawful for individuals whose capacity had been established, and whose conditions were 'indisputably leading to death'.[10] This ruling and subsequent cases appeared to exclude, inter alia, the possibility of lawful PAS for individuals with mental disorders.[11] However, empirical evidence from the Swiss right-to-die organisations before and after the *Zurich Case* has revealed a relatively low yet significant prevalence of PAS among individuals with non-fatal conditions,[12] without corresponding criminal and/or professional proceedings. In 2006, the Federal

[7] ibid art 86(1).
[8] ibid art 86(3).
[9] Bosshard (n 2) 473.
[10] ibid; *Zurich Case* Entscheid der 3 Kammer VB Nr 9900145 (1999) (Verwaltungsgericht des Kantons Zürich).
[11] *Aargau Case* Entscheid BE 200300354-K3 (2005) (Verwaltungsgericht des Kantons Aargau); *Basel Case* Entscheid 6B_48/2009 (11 Juni 2009) (BGer). It is worth noting that all these cases involved improper or negligent medical conduct.
[12] Georg Bosshard et al, '748 cases of suicide assisted by a Swiss right-to-die organisation' (2003) 133(21-22) Swiss Med Wkly 310, table 4; S Fischer et al, 'Suicide assisted by two Swiss right-to-die organisations' (2008) 34(11) J Med Ethics 810, table 1.

Supreme Court (FSC) held in the *Haas* case that it was not in principle unlawful to prescribe lethal medication to mentally disordered individuals, provided certain conditions were met: a thorough examination, a medical indication, and supervision by a specialist over time in order to establish capacity and the 'authenticity' of the wish to die.[13] Empirical evidence on PAS practice post *Haas* is unavailable. However, it is plausible that a discrepancy between case law and PAS practice in respect of non-fatal conditions endures. Adding further uncertainty, the ethical guidance from the Swiss Academy of Medical Sciences (SAMS), which has been said to enjoy 'almost the respect due legislation',[14] has retained as a precondition that '[t]he patient's disease justifies the assumption that he is approaching the end of life'.[15]

It was ambiguity over the scope of acceptable medical practice in respect of PAS, specifically, whether and just when the provision of PAS to individuals with 'existential' suffering caused by multiple morbidities and/or advanced age is lawful, that led to the *Gross* litigation.[16]

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[13] *Haas* Entscheid 2A48/2006 (3 November 2006) (BGer) [6.3.2], [6.3.6]; *Haas v Switzerland* (2011) 53 EHRR 33 (ECtHR). For commentary: Isra Black, 'Suicide Assistance for Mentally Disordered Individuals in Switzerland and the State's Positive Obligation to Facilitate Dignified Suicide: *Haas c. Suisse*' (2012) 20(1) Med Law Rev 157.

[14] Bosshard (n 2) 465.

[15] Swiss Academy of Medical Sciences, *Care of patients in the end of life* (2004, revised 2013) 9 http://www.samw.ch/dms/en/Ethics/Guidelines/Currently-valid-guidelines/e_RL_Lebensende.pdf accessed 30 August 2013.

[16] For the purposes of this note, it is stipulated that Ms Gross' circumstances fit within the existential suffering paradigm, insofar as she was not severely ill, but 'tired of life'. See John Griffiths et al, *Euthanasia and law in Europe* (Hart 2008) §3.3 for discussion in the context of *Brongersma* Nederlandse Jurisprudentie 2003, #167 (NL Supreme Court).

FACTS AND SWISS LEGAL PROCESS

Ms Gross, an octogenarian at the time of the European Court of Human Rights (ECtHR) decision, had wished to die for many years, as a result of suffering caused by physical and mental decline. Following a failed suicide attempt in 2005, she received inpatient psychiatric treatment, which failed to alter her wish to die. Fearing the consequences of another failed attempt, Ms Gross sought PAS mediated by EXIT, a right-to-die organisation. The latter informed her that it would be difficult to secure a prescription for lethal medication.[17]

In 2008, Ms Gross underwent an expert assessment conducted by a psychiatrist, T, who concluded that the former indisputably had capacity.[18] T also noted that Ms Gross held a well-considered and persistent wish to die that did not emanate from psychiatric illness. T stated that he had no objection to providing PAS to Ms Gross, yet refrained himself so as not to 'confuse the roles of medical expert and treating physician'.[19] Ms Gross subsequently contacted three physicians with requests for suicide assistance, all of which were rejected. One physician, B, cited the code of professional medical conduct as disallowing PAS, since Ms Gross was not suffering

[17] *Gross v Switzerland* [2013] ECHR 67810/10 [8].
[18] ibid [9].
[19] ibid [10].

from any illness. Another, S, was prepared to examine Ms Gross and consider the request for PAS, provided that Ms Gross' counsel guaranteed she would not risk professional sanction. When assurances were not forthcoming, S refused the request for fear of extended judicial proceedings.[20]

Prior to contacting S, Ms Gross asked the Zurich Canton Health Board to dispense her fifteen grams of lethal medication, claiming that it was unreasonable to expect her to continue soliciting physicians for suicide assistance.[21] The Health Board rejected the request on the grounds that the State had no obligation 'to provide a person … with the means of suicide of their choice'.[22] Ms Gross appealed unsuccessfully to the Zurich Canton Administrative Court, and subsequently to the FSC.[23] Before the latter, Ms Gross sought a declaration that:

> the provision of a lethal dose of [sodium pentobarbital] to a person who was able to form her own judgment and was not suffering from a mental or physical illness did not constitute a violation of a [physician's] professional duties.[24]

[20] ibid [11].
[21] ibid [12]; the applicant in *Haas* pursued a similar strategy: Black (n 13) 159.
[22] *Gross* (n 17) [13].
[23] ibid [14]-[17]; the applicant also requested the Health Board to authorise a pharmacist to prescribe the required medication.
[24] ibid.

Relying on articles 2, 3 and 8 of the European Convention on Human Rights (ECHR), Ms Gross argued that the 'impugned decisions had rendered her right to decide by which means and at what point her life would end illusory', and that the State had a positive obligation 'to provide the necessary means allowing her to exercise this right in a concrete and effective way'.[25]

The FSC dismissed Ms Gross' appeal. Citing its own jurisprudence,[26] and *Pretty v United Kingdom*,[27] the FSC held that 'there was no (positive) obligation enjoining the State to guarantee an individual's access to a particularly dangerous substance in order to allow him or her to die in a painless way and without the risk of failure.[28] It stated that the prescription requirement for lethal medication served the 'legitimate aims of protecting the individual concerned from making a hasty decision and of preventing abuse'.[29] In addition, the FSC held that Ms Gross did not meet the terminal illness criterion in the SAMS guidance. While it had departed from that guidance in the *Haas* decision, insofar as PAS for serious, incurable and persistent mental disorder was not necessarily inconsistent with responsible medical practice,

[25] ibid [18].
[26] In particular *Haas* (n 13); the ECtHR had yet to decide *Haas v Switzerland*.
[27] *Pretty v United Kingdom* (2002) 35 EHRR 1.
[28] *Gross* (n 17) [18].
[29] ibid [20].

this exception 'had to be handled with "utmost restraint"', and did not 'enjoin the medical profession or the State to provide the applicant [lethal medication]'.[30]

EUROPEAN COURT OF HUMAN RIGHTS

Ms Gross complained that the Swiss authorities had violated her right to decide when and how to die included in the right to respect for private and family life under article 8 ECHR 'by depriving her of the possibility of obtaining [lethal medication]'.[31] As such, her right 'to decide by what means and at what point her life would end' had been rendered 'theoretical and illusory'.[32] The Swiss Government, on the contrary, argued that any interference with Ms Gross' rights under article 8(1) ECHR was justified under article 8(2), since it was in accordance with the law.[33] Moreover, the Government had remained within its margin of appreciation, in striking a balance between respect for the article 8 rights of individuals such as Ms Gross, and its obligation under article 2 ECHR to safeguard vulnerable individuals.[34]

[30] ibid [21].
[31] The article 2 and 3 complaints were held inadmissible: ibid [70].
[32] ibid [40].
[33] ibid [47]-[48].
[34] ibid [50].

The ECtHR first examined whether 'the applicant's wish to be provided with [lethal medication]' fell within the scope of article 8.[35] In *Pretty* the Court had not been:

> prepared to exclude that … [preventing the applicant] by law from exercising her choice to avoid what she considers will be an undignified and distressing end to her life … [constituted] an interference with her right to respect for private life as guaranteed under Article 8(1) …[36]

This tentative right was affirmed in *Haas v Switzerland*:

> [T]he right of an individual to decide how and when to end his life, provided that said individual is in a position to make up his own mind in that respect and to take the appropriate action, is one aspect of the right to respect for private life…[37]

Having established that Ms Gross' article 8 ECHR rights were engaged,[38] the Court reiterated that interference with article 8(1) rights must be 'in accordance with the law' and 'necessary in a democratic society' pursuant to article 8(2).[39] The Court also noted that 'there may also be positive obligations inherent in an effective "respect"

[35] ibid [60].
[36] ibid [58]; *Pretty* (n 27) [67].
[37] *Gross* (n 17) [59]; *Haas v Switzerland* (n 13) [51].
[38] *Gross* ibid [60].
[39] ibid [61].

for private life', which could require the state to adopt measures 'designed to secure respect for private life in the sphere of relations between individuals'.[40]

The Court noted that in *Haas v Switzerland* it had examined the applicant's request for lethal medication without prescription 'from the perspective of a positive obligation on the State to take the necessary measures to permit a dignified suicide'.[41] However, the Court considered that *Gross*:

> primarily [raised] the question whether the State had failed to provide sufficient guidelines defining [whether and] under which circumstances medical practitioners were authorised to issue a medical prescription to a person in the applicant's condition.[42]

The majority observed that suicide assistance in Switzerland fell beyond the purview of the Criminal Law when the assistor's conduct was not 'selfishly motivated', and that subject to the conditions outlined the FSC in *Haas*, physicians were permitted to prescribe lethal medication to individuals wishing to end their lives.[43] However, the majority took issue with the FSC's reference to the SAMS guidance in its jurisprudence, 'which were issued by a non-governmental organisation and do not

[40] ibid [62].
[41] ibid [63].
[42] ibid [64].
[43] ibid.

have the formal quality of law', and applied only to terminally ill individuals. Ms Gross' circumstances were beyond its scope, and the Swiss authorities had failed to provide further 'principles or standards which could serve as guidelines' for physicians in such cases. The majority considered that the 'lack of clear legal guidelines [was] likely to have a chilling effect on doctors who would otherwise be inclined to provide someone such as the applicant suicide assistance'. This was evidenced by the refusals of B and S.[44]

The Court held that Ms Gross 'must have found herself in a state of anguish and uncertainty regarding the extent of her right to end her life'. Had there been 'clear, State-approved guidelines' outlining whether and just when physicians were authorised to provide PAS to individuals who had made considered and voluntary decisions to end their lives, but whose 'death[s were] not imminent as a result of a specific medical condition', the interference with Ms Gross' right to private life might not have occurred.[45] Based on these considerations, the majority considered that while Swiss law admitted the possibility of PAS, it did 'not provide sufficient guidelines ensuring clarity as to the extent of [the] right'. Switzerland had thus violated Ms Gross' article 8 rights.[46]

[44] ibid [65].
[45] ibid [66].
[46] ibid [67].

The majority, however, declined to take a position on the substance of any 'comprehensive and clear guidelines' on PAS for non-terminal illness that the Swiss State might produce, or whether it should grant Ms Gross' request for direct dispensing.[47] Article 1 ECHR required States to 'secure to everyone within their jurisdiction the [Convention] rights and freedoms'. Thus it was up to the Contracting States 'to provide redress for breaches of its provisions, with the Court exercising a supervisory role subject to the principle of subsidiarity'.[48]

The dissenting opinion held that the FSC's interpretation of the LStup and LPTh '*sufficiently and clearly define[d] the circumstances* under which a medical practitioner [was] allowed to issue a prescription for sodium pentobarbital'.[49] Similarly, the SAMS guidance was held to have been 'correctly applied and clearly interpreted' in the FSC jurisprudence.[50] The minority noted the absence of consensus between Contracting States in respect of the permissibility of PAS, indicating that Switzerland should enjoy a wide margin of appreciation in this area.[51] Insofar as Ms Gross had alleged that the Swiss legal regime for PAS rendered her right to decide when and how to die theoretical and illusory, the minority noted that this right was susceptible to restriction in the public interest. Since the jurisprudence of the FSC had clearly

[47] ibid [68]-[69].
[48] ibid [68].
[49] ibid dissenting [1] (original emphasis).
[50] ibid dissenting [2].
[51] ibid dissenting [6]-[8].

eliminated Ms Gross from the domestic legal regime for PAS in virtue of the absence of terminal illness, she could not benefit from the right claimed, and thus it could not be regarded as illusory.[52] Moreover, the minority considered that Switzerland 'remained well within its margin of appreciation' when refusing the request for lethal medication without prescription. Thus there had been no violation of article 8 ECHR.[53]

WAS THE SWISS LEGAL REGIME FOR PAS IN ACCORDANCE WITH THE LAW?

Interference with the right to private life under article 8(1) ECHR, in this instance the right to decide when and how to die, must be in accordance with the law, that is, compliant with the Convention principle of legality. As Lord Hope explained in the English case of *R (Purdy) v DPP*, the Convention requires that restrictive measures meet certain standards:

> a legal basis in domestic law[;] sufficiently accessible to the individual … affected … and sufficiently precise to enable the individual to understand its scope and foresee the consequences of his actions[,] so that he can regulate his conduct

[52] ibid dissenting [9].
[53] ibid dissenting [11].

> without breaking the law[;] [not] applied in a way that is arbitrary [eg] resorted to in bad faith or in a way that is not proportionate.[54]

In *Purdy*, the House of Lords Held that the Code for Crown Prosecutors provided insufficient guidance as to whether the Director of Public Prosecutions would consent to prosecution under the Suicide Act 1961, section 2 in cases where A facilitated B's travel to another jurisdiction for lawful suicide assistance, and B's decision to die was competent, voluntary, and fully informed.[55] In order to satisfy the accessibility and foreseeability criteria, the Director was required to promulgate 'an offence specific policy identifying the facts and circumstances [he would] take into account in deciding … whether or not to consent to a prosecution' for assisting suicide.[56]

In *Gross*, the majority reproached Switzerland for failing to meet both the legal basis and accessibility and foreseeability benchmarks. In respect of the legal basis, the majority criticised the FSC's reliance on the SAMS guidance, which lacks 'the formal quality of law'. Of course, the Court's own jurisprudence holds that law is

[54] *R (on the application of Purdy) v DPP* [2009] UKHL 45 [40].
[55] ibid [53]-[54] (Lord Hope).
[56] ibid [56]; This resulted in the *Policy for Prosecutors in Respect of Cases of Encouraging or Assisting Suicide* (CPS, 2010) http://www.cps.gov.uk/publications/prosecution/assisted_suicide_policy.pdf accessed 19 September 2013; See Penney Lewis, 'Informal legal change on assisted suicide: the policy for prosecutors' (2011) 31(1) Legal Studies 119; The Policy has recently been subject to successful challenge on the basis of the Convention principle of legality: *R (on the application of Nicklinson) v Ministry of Justice* [2013] EWCA Civ 961.

understood in a substantive and not purely formal sense.[57] However, it is unlikely that the SAMS guidance has the quality of substantive law either, given that it emanates from an organisation without regulatory powers. Moreover, the guidance no longer reflects the substantive legal position after the *Haas* decision.[58] Nevertheless, *Haas*, which examined the rationale for the prescription requirements under the LStup and LPTh,[59] probably provides sufficient substantive foundation for the interference with Ms Gross' article 8 rights.

However, the majority's principal criticism was that Swiss law failed to meet the accessibility and foreseeability criteria, since no additional legal guidance sufficiently delimited the right to PAS. When unpacked, this position may appear unconvincing. For the purposes of the Convention, accessibility 'means that an individual must know from the wording of the relevant provision and, if need be, with the assistance of the court's interpretation of it[,] what acts and omissions will make him criminally liable', and foreseeability requires 'the person concerned [to be] able to foresee … the consequences which a given action may entail'.[60] The Swiss Government might be forgiven for thinking that Federal Law made it sufficiently clear that, in the absence of selfish motives, the provision of PAS would not make physicians liable for the article 115 offence, but violations of responsible medical practice might trigger

[57] *Kafkaris v Cyprus* [2008] ECHR 21906/04 [139].
[58] Black (n 13) 163.
[59] *Haas* (n 13) [6.3.2].
[60] *Purdy* (n 54) [41] (Lord Hope).

liability under the LStup, LPTh and negligent homicide offences. The Swiss case law had interpreted responsible medical practice to permit PAS for individuals with terminal illness and, subsequently, with mental disorders.[61] Moreover, in *Haas*, the FSC had held a *medical indication* to be condition for lawful prescription,[62] which arguably disallows PAS for existential suffering, since the individual concerned is not *ill* in some relevant sense.[63] Thus, on the basis of the law and FSC jurisprudence, prosecution was a foreseeable consequence of providing PAS to an individual who was neither terminally ill, nor mentally disordered.

However, the majority may correctly have held that the extent of the right to PAS in Switzerland is indeterminate. The mere fact that some practice *A*, and another, *B*, are permitted under law, does not entail the impermissibility of a further practice, *C*. In concrete terms, the established permissibility of PAS for terminal illness and mental disorder does not automatically render impermissible PAS for other forms of suffering. It is unlikely that the FSC intended to exhaust the categories of permissible PAS in *Haas*; this was not the issue before it. Moreover, the concept of 'medical indication' may be too ambiguous to exclude existential suffering. It is not beyond plausibility to think PAS might be an appropriate response to unrelievable suffering

[61] *Zurich Case* (n 10); *Haas* (n 13) [6.3.5.1].
[62] *Haas* ibid [6.3.2].
[63] This reasoning is consistent with the Dutch Supreme Court decision in *Brongersma* (n 16): 'A doctor who assists in suicide in a case in which the patient's suffering is not predominantly due to a "medically classified disease or disorder", but stems from the fact that life has become meaningless for him, acts outside the scope of his professional competence' (Griffiths et al (n 16) 33 paraphrase).

caused by physical and mental decline.[64] In *Gross*, it is true that the FSC held *Haas* was to be treated with 'utmost restraint and did not enjoin' physicians or the State to provide lethal medication to individuals whose wish to die emanated from suffering caused by 'advanced age and increased frailty'.[65] However, this statement merely rejects Ms Gross' claim that the State had a positive obligation to facilitate suicide in a manner she found acceptable; the FSC did not settle whether PAS for existential suffering violates responsible medical practice in principle. If this analysis stands, in the absence of a legal norm disclosing the extent of the right to PAS, Swiss Law may be insufficiently accessible and foreseeable, and thus not in accordance with the Convention principle of legality.

A PYRRHIC VICTORY?

Switzerland is now required to issue guidance outlining whether and just when physicians may lawfully provide PAS to competent individuals who have a voluntary and settled wish to die, yet whose suffering is not the product of a medical condition likely to result in death in the near future. It should be clear that the

[64] Indeed, the Royal Dutch Medical Association (KNMG) position paper on *The role of the physician in the voluntary termination of life* (2011) argues that the suffering present in such cases is 'sufficiently linked to the medical domain to permit a physician to act within the confines of the Euthanasia Law' (23). Moreover, the KNMG observe that the Dutch Regional Review Committees, which oversee the operation of the Euthanasia Law, have found that '"due care" was taken in cases where the unbearable suffering was caused by an accumulation of various old-age afflictions or a combination of factors, and in which the individual ailments were neither life threatening nor fatal' (ibid).

[65] *Gross* (n 17) [21].

ECtHR ruling does not guarantee Ms Gross access to lethal medication. Indeed, insofar as the Government might respond with clear guidance that PAS for non-fatal conditions (with the exception of mental disorders meeting the *Haas* conditions) or, more narrowly, for existential suffering, is not responsible medical practice, Ms Gross' victory may prove costly.

If Switzerland excludes PAS in non-fatal cases, the restrictive measures will almost certainly fall within the wide margin of appreciation accorded to States to determine the permissibility of assisted dying within their jurisdictions.[66] However, Swiss physicians have provided PAS to elderly individuals with apparent existential suffering, ostensibly without censure.[67] This arrangement is now in jeopardy. Thus, in gaining clarity, Ms Gross may have given up a somewhat nebulous, yet exercisable, right to PAS. This is somewhat unfortunate considering that she, like Mr Haas before her,[68] did not make particularly strenuous efforts to canvass physicians before attempting to strong-arm the State into dispensing lethal medication without prescription.

It is possible, albeit unlikely, that Switzerland may grant the right to assisted suicide by lethal medication for existential suffering. However, it is highly unrealistic to

[66] *Gross* ibid dissenting [6]-[10]; *Haas v Switzerland* [55]; Black (n 13) 166.
[67] Bosshard (n 12) 315; Fischer (n 12) 814.
[68] *Haas v Switzerland* (n 13) [170].

think that the Swiss Government would ever permit direct dispensing of *tired of life* medication on request, considering its article 2 ECHR obligation 'to safeguard the lives of those within its jurisdiction'.[69] Instead, suicide by lethal medication for existential suffering would almost certainly be mediated by the medical profession and subject to similar conditions as those laid down in *Haas*. However, enshrining PAS for existential suffering also entails dangers for the Swiss Government. As the unfortunate saga on access to abortion in Poland demonstrates, the State has a positive obligation to ensure the practical and effective exercise of rights once granted.[70] If Switzerland takes the position that PAS for existential suffering is compatible with responsible medical practice, it may find itself back in Strasbourg if physicians refuse to practise it in legitimate cases. Then, the ECtHR may have to adjudge the very issue it managed to avoid in *Gross*: whether and just when the State has a positive obligation to facilitate 'dignified' suicide.

[69] *Osman v United Kingdom* 23452/94 (2000) 29 EHRR 245 (ECtHR) [115].
[70] *Tysiąc v Poland* (2007) 45 EHRR 42; *P and another v Poland* [2013] 1 FCR 476 (ECtHR).