



## Switzerland cannot be criticised for not having assisted a suicide

In today's Chamber judgment in the case of [Haas v. Switzerland](#) (application no. 31322/07), which is not final,<sup>1</sup> the European Court of Human Rights held, unanimously, that there had been:

**No violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.**

This case raised the issue of whether, by virtue of the right to respect for private life, the State should have ensured that a sick man wishing to commit suicide could obtain a lethal substance (sodium pentobarbital) without a prescription, by way of derogation from the law, so as to be able to end his life without pain and with no risk of failure.

### Principal facts

The applicant, Ernst G. Haas, is a Swiss national who was born in 1953 and lives in Meltingen (Switzerland). He has been suffering from a serious bipolar affective disorder for around twenty years and considered that as a result, he could no longer live in a dignified manner.

After having attempted suicide on two occasions, he undertook to obtain a substance (sodium pentobarbital), the administration of which in a sufficient quantity would have enabled him to end his life in a safe and dignified manner. Since that substance was only available on prescription, he approached several psychiatrists to obtain it, but was unsuccessful.

In June 2005 he approached various federal and cantonal authorities (Federal Departments of Justice and Public Health and the Department of Health of the Canton of Zurich), seeking permission to obtain sodium pentobarbital from a pharmacy without a prescription. He argued that Article 8 imposed on the State a "positive obligation" to create the conditions for suicide to be committed without the risk of failure and without pain. The authorities rejected his application, as did the Federal Department of the Interior and the Zurich Administrative Court, with which he had lodged an appeal. Mr Haas then appealed to the Federal Court.

By a judgment of 3 November 2006 the Federal Court also rejected his appeals. It found, among other things, that a distinction had to be made between the right to decide on one's own death – which was not at issue – and the right to commit suicide assisted by the State or a third party. The Federal Court was of the view that the second case could

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<sup>1</sup> 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](http://www.coe.int/t/dghl/monitoring/execution)

not be derived from the Convention, which did not guarantee the right to assisted suicide.

Following that judgment, in May 2007 Mr Haas wrote to 170 psychiatrists setting out his case and asking each of them if they would agree to produce a psychiatric report on him with a view to issuing a prescription for sodium pentobarbital. None of the doctors responded positively to his request.

## Complaints, procedure and composition of the Court

Relying on Article 8, Mr Haas argued that his right to end his life in a safe and dignified manner had been violated in Switzerland as a result of the conditions that had to be met – and which he had not met – in order to be able to obtain sodium pentobarbital.

The application was lodged with the European Court of Human Rights on 18 July 2007 and [declared admissible](#) on 20 May 2010.

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

Christos **Rozakis** (Greece), *President*,  
Nina **Vajić** (Croatia),  
Anatoly **Kovler** (Russia),  
Khanlar **Hajiyev** (Azerbaijan),  
Sverre Erik **Jebens** (Norway),  
Giorgio **Malinverni** (Switzerland),  
George **Nicolaou** (Cyprus), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

## Decision of the Court

The Court acknowledged that the right of an individual to decide how and when to end his life, provided that said individual was in a position to make up his own mind in that respect and to take the appropriate action, was one aspect of the right to respect for private life. However, the dispute in Mr Haas' case concerned another matter: whether or not under Article 8 the State had the "positive obligation" to enable him to obtain, without a prescription, a substance enabling him to end his life without pain and without risk of failure.

Council of Europe member States were far from having reached a consensus as regards the right of an individual to choose how and when to end his life<sup>2</sup>. In Switzerland, according to the Criminal Code, incitement to commit or assistance with suicide were only punishable where the perpetrator of such acts committed them for selfish motives. The vast majority of member States, however, appeared to place more weight on the protection of an individual's life (Article 2) than on the right to end one's life (Article 8). The Court concluded that the States had a wide margin of discretion in that respect.

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<sup>2</sup> In Belgium and Luxembourg, specific rules exist on access to substances which can be used to facilitate suicide. In Belgium, pharmacists who issue euthanasia agents are not liable to prosecution where they do so on the basis of a prescription in which the doctor expressly states that he or she is acting in accordance with the Law of 28 May 2002. The rules lay down precautionary criteria and the conditions governing the prescription and issuing of the medicines in question; they must also contain provisions to ensure the availability of euthanasia agents. In Luxembourg, the Law of 16 March 2009 decriminalised euthanasia and assisted suicide. Under the Law, doctors may lawfully have access to medicines for use in committing suicide only where this forms an integral part of the process of euthanasia or assisted suicide.

Although the Court recognised that Mr Haas might have wished to commit suicide safely, with dignity and without excessive pain, it was nevertheless of the opinion that the requirement under Swiss law for a medical prescription in order to obtain sodium pentobarbital had a legitimate aim, namely to protect people from taking hasty decisions and to prevent abuse. That was all the more true in a country such as Switzerland, which readily allowed assisted suicide (see above).

The Court considered that the risk of abuse inherent in a system which facilitated assisted suicide could not be underestimated. The Court agreed with the Swiss Government's argument that the restriction on access to sodium pentobarbital was intended to protect health and public safety and to prevent crime. It also shared the view of the Federal Court that the right to life obliged States to put in place a procedure apt to ensure that a decision to end one's life did in fact reflect the free will of the party concerned. The Court considered that the need for a prescription, issued on the basis of a full psychiatric report, constituted a means of fulfilling that requirement.

It remained to be settled whether Mr Haas had had effective access to a medical report that would have allowed him to obtain the sodium pentobarbital (if not, his right to choose when and how he died would have been theoretical and illusory). However, the Court was not persuaded that he had been unable to find a specialist willing to assist him as he had claimed.

Given the above considerations and having regard to the margin of appreciation enjoyed by the national authorities on this issue, the Court concluded, unanimously, that there had been no violation of Article 8.

*The judgment is available only in 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.