May 2016
This Factsheet does not bind the Court and is not exhaustive

Health

See also the factsheets on "Detention and mental health", "Elderly people and the ECHR", "End of life and the ECHR", "Hunger strikes in detention", "Persons with disabilities and the ECHR", "Prisoners' health-related rights" and "Reproductive rights".

Access to experimental treatment or drug

Hristozov and Others v. Bulgaria

13 November 2012

The ten applicants were cancer sufferers who complained that they had been denied access to an unauthorised experimental anti-cancer drug. Bulgarian law stated that such permission could only be given where the drug in question had been authorised in another country. While the drug was permitted for "compassionate use" in a number of countries, nowhere had it been officially authorised. Accordingly, permission was refused by the Bulgarian authorities.

The European Court of Human Rights held that there had been **no violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights. Considering that the restriction in question concerned the patients' right to respect for private life, protected by Article 8 of the Convention, it observed a trend among European countries towards allowing, under exceptional conditions, the use of unauthorised medicine. However, the Court found that this emerging consensus was not based on settled principles in the law of those countries, nor did it extend to the precise manner in which the use of such products should be regulated. The Court further held that there had been **no violation of Article 2** (right to life) and **no violation of Article 3** (prohibition of torture and of inhuman or degrading treatment) of the Convention in this case.

Durisotto v. Italy

6 May 2014 (decision on the admissibility)

This case concerned the refusal by the Italian courts to authorise the applicant's daughter to undergo compassionate therapy (experimental treatment known as the "Stamina" method) to treat her degenerative cerebral illness. The therapy was undergoing clinical trials and, under a legislative decree, was subjected to restrictive access criteria. The applicant alleged in particular that the legislative decree in question had introduced discrimination in access to care between persons who had already begun treatment prior to the entry into force of the decree and those who – like his daughter – were not in that situation.

The Court declared the application **inadmissible** (manifestly ill-founded) under Article 8 (right to respect for private and family life) and under Article 14 (prohibition of discrimination) taken in conjunction with Article 8 of the Convention. On the one hand, noting in particular that a scientific committee set up by the Italian Ministry of Health had issued a negative opinion on the therapeutic method in issue and that the scientific value of the therapy had not therefore been established, it found that the interference in the right to respect for the applicant's daughter's private life, represented by the refusal to grant the request for medical therapy, could be considered as necessary in a democratic society On the other hand, even supposing that the applicant's daughter was in a comparable situation to that of the persons who had received exceptional judicial

permission to undergo treatment, the Court could not conclude that the justice system's refusal to grant her permission had been discriminatory. Thus, in particular, the prohibition on access to the therapy in question pursued the legitimate aim of protecting health and was proportionate to that aim. Moreover, sufficient reasons had been given for the Italian court's decision, and it had not been arbitrary. Lastly, the therapeutic value of the "Stamina" method had, to date, not yet been proven scientifically.

Access to personal medical records

K.H. and Others v. Slovakia (application no. 32881/04)

28 April 2009

The applicants, eight women of Roma origin, could not conceive any longer after being treated at gynaecological departments in two different hospitals, and suspected that it was because they had been sterilised during their stay in those hospitals. They complained that they could not obtain photocopies of their medical records.

The Court held that there had been a **violation of Article 8** (right to private and family life) of the Convention in that the applicants had not been allowed to photocopy their medical records. It found that, although subsequent legislative changes compatible with the Convention had been introduced, that had happened too late for the applicants.

Pending application

Sokolow v. Germany (no. 11642/11)

Application communicated to the German Government on 8 March 2016

The applicant complains that the German courts' refusal to provide him with a copy of his entire prison medical records violated his right to private life.

The Court gave notice of the application to the German Government and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

Alleged failure to provide adequate medical care

Center of Legal Resources on behalf of Valentin Câmpeanu v. Romania

17 July 2014 (Grand Chamber)

The application was lodged by a non-governmental organization (NGO), on behalf of Valentin Câmpeanu, who died in 2004 at the age of 18 in a psychiatric hospital. Abandoned at birth and placed in an orphanage, he had been diagnosed as a young child as being HIV-positive and as suffering from a severe mental disability.

The Court found that, in the exceptional circumstances of the case, and bearing in mind the serious nature of the allegations, it was open to the NGO to act as a representative of Valentin Câmpeanu, even though the organisation was not itself a victim of the alleged violations of the Convention.

In this case the Court held that there had been a **violation of Article 2** (right to life) of the Convention, in both its substantive and its procedural aspects. It found in particular: that Valentin Câmpeanu had been placed in medical institutions which were not equipped to provide adequate care for his condition; that he had been transferred from one unit to another without proper diagnosis; and, that the authorities had failed to ensure his appropriate treatment with antiretroviral medication. The authorities, aware of the difficult situation – lack of personnel, insufficient food and lack of heating – in the psychiatric hospital where he had been placed, had unreasonably put his life in danger. Furthermore, there had been no effective investigation into the circumstances of his death. The Court also found a **breach of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 2**, considering that the Romanian State had failed to provide an appropriate mechanism for redress to people with mental disabilities claiming to be victims under Article 2.

Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, finding that the violations of the Convention in Valentin Câmpeanu's case reflected a

wider problem, the Court recommended Romania to take the necessary general measures to ensure that mentally disabled persons in a comparable situation were provided with independent representation enabling them to have complaints relating to their health and treatment examined before an independent body.

Similar application pending

Centre for Legal Resources on behalf of Miorița Malacu and others v. Romania (no. 55093/09)

Application communicated to the Romanian Government on 9 March 2015

This case concerns the death of five individuals in a psychiatric hospital. The application was lodged by an NGO on their behalf. The applicant NGO alleges in particular that the inadequate care and treatment, as well as the inappropriate, poor living conditions at the hospital directly contributed to the five individuals' untimely deaths.

The Court gave notice of the application to the Romanian Government and put questions to the parties under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatments), 13 (right to an effective remedy), 14 (prohibition of discrimination) and 34 (right of individual petition) of the Convention.

Confidentiality of personal information concerning health

Panteleyenko v. Ukraine

29 June 2006

The applicant complained in particular about the disclosure at a court hearing of confidential information regarding his mental state and psychiatric treatment.

The Court found that obtaining from a psychiatric hospital confidential information regarding the applicant's mental state and relevant medical treatment and disclosing it at a public hearing had constituted an interference with the applicant's right to respect for his private life. It held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, noting in particular that the details in issue were incapable of affecting the outcome of the litigation, that the first-instance court's request for information was redundant, as the information was not "important for an inquiry, pre-trial investigation or trial", and was thus unlawful for the purposes of the Psychiatric Medical Assistance Act 2000.

L.L. v. France (no. 7508/02)

10 October 2006

The applicant complained in particular about the submission to and use by the courts of documents from his medical records, in the context of divorce proceedings, without his consent and without a medical expert having been appointed in that connection.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the interference in the applicant's private life had not been justified in view of the fundamental importance of protecting personal data. It observed in particular that it was only on a subsidiary basis that the French courts had referred to the impugned medical report in support of their decisions, and it therefore appeared that they could have reached the same conclusion without it. The Court further noted that domestic law did not provide sufficient safeguards as regards the use in this type of proceedings of data concerning the parties' private lives, thus justifying a fortiori the need for a strict review as to the necessity of such measures.

Armonas v. Lithuania and Biriuk v. Lithuania

25 November 2008

In January 2001, Lithuania's biggest daily newspaper published an article on its front page concerning an AIDS threat in a remote part of Lithuania. In particular, medical staff from an AIDS centre and an hospital were cited as having confirmed that the applicants were HIV positive. The second applicant, described as "notoriously promiscuous", was also said to have had two illegitimate children with the first applicant. The applicants

complained in particular that, even though the domestic courts had held that their right to privacy had been seriously violated, they had been awarded derisory damages.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention on account of the low ceiling imposed on damages awarded to the applicants. Particularly concerned about the fact that, according to the newspaper, the information about the applicants' illness had been confirmed by medical staff, it observed that it was crucial that domestic law safeguarded patient confidentiality and discouraged any disclosures on personal data, especially bearing in mind the negative impact of such disclosures on the willingness of others to take voluntary tests for HIV and seek appropriate treatment.

Avilkina and Others v. Russia

6 June 2013
The applicants were a religious organisation, the Administrative Centre of Jehovah's Witnesses in Russia, and three Jehovah's Witnesses. They complained in particular about the disclosure of their medical files to the Russian prosecution authorities following their refusal to have blood transfusions during their stay in public hospitals. In connection with an inquiry into the lawfulness of the applicant organisation's activities, the prosecuting authorities had instructed all St. Petersburg hospitals to report refusals of blood transfusions by Jehovah's Witnesses.
The Court declared the application **inadmissible** (incompatible *ratione personae*) as regards the applicant religious organisation, and as regards one of the three other applicants, as no disclosure of her medical files had actually taken place, and this was not in dispute by the parties. The Court further held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention as concerned the two other applicants. It notably found that there had been no pressing social need to disclose confidential medical information on them. Furthermore, the means employed by the prosecutor in conducting the inquiry, involving disclosure of confidential information without any prior warning or opportunity to object, need not have been so oppressive for the applicants. Therefore the authorities had made no effort to strike a fair balance between, on the one hand, the applicants' right to respect for their private life and, on the other, the prosecutor's aim of protecting public health.

L.H. v. Latvia (no. 52019/07)

29 April 2014
The applicant alleged that the collection of her personal medical data by a State agency without her consent had violated her right to respect for her private life.
The Court recalled the importance of the protection of medical data to a person's enjoyment of the right to respect for private life. It held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in the applicant's case, finding that the applicable law had failed to indicate with sufficient clarity the scope of discretion conferred on competent authorities and the manner of its exercise.

Konovalova v. Russia

9 October 2014
The applicant complained about the unauthorised presence of medical students during the birth of her child, alleging that she had not given written consent to being observed and had been barely conscious when told of such arrangements.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the relevant national legislation at the time of the birth of the applicant's baby – 1999 – did not contain any safeguards to protect patients' privacy rights. This serious shortcoming had been exacerbated by the hospital's procedure for obtaining consent from patients to take part in the clinical teaching programme during their treatment. In particular, the hospital's booklet notifying the applicant of her possible involvement in the teaching programme

had been vague and the matter had in general been presented to her in such a way as to suggest that she had no other choice.

Disciplinary proceedings against health professionals

Diennet v. France

26 September 1995

The applicant, a French doctor, was struck off the regional doctors' register for reasons of professional misconduct after he admitted that he had been advising his patients, who wished to lose weight, from a distance. He never met his patients, did not monitor or adjust the treatment prescribed, and during his frequent absences they were advised by his secretarial staff. He complained that the professional disciplinary bodies deciding on his case had not been impartial and that the hearings before them had not been held in public.

The Court found a **violation of Article 6 § 1** (right to a fair trial) of the Convention, because the hearings had not been held in public, and **no violation** of Article 6 § 1 in respect of the complaint that the disciplinary bodies had not been impartial.

Defalque v. Belgium

20 April 2006

A doctor by profession, the applicant was accused by a fellow doctor of having performed unnecessary procedures. In 1996 he was ordered to repay certain sums paid by the National Institute for Health and Invalidity Insurance and was prohibited from applying the direct payment system for five years. The applicant complained in particular of the length and unfairness of the proceedings against him.

The Court declared **inadmissible** the applicant's complaints concerning the alleged unfairness of the proceedings at issue. It further held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention on account of the length of the proceedings.

Gubler v. France

27 July 2006

This case concerned disciplinary proceedings conducted by the National Council of the *Ordre des médecins* (Medical Council) against the applicant, who was the private physician to President François Mitterrand, for having disclosed information covered by professional confidentiality, issued spurious medical certificates and damaged the reputation of the profession. The applicant was subsequently struck off the register. He alleged in particular that the National Council of the Ordre had not been independent and impartial. He claimed that it had been both judge and party in his case, since it had been the complainant at first instance and it had then acted as an appeal body, meaning that it had been required, as a disciplinary body, to rule on its own complaint.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention. The Court noted in particular that the ordinary members of the disciplinary section had withdrawn from the sitting at which the National Council of the Ordre had decided to bring a complaint against the applicant before the Council had even considered the appropriateness of beginning such proceedings. This showed that the members of the disciplinary section, especially those who had been members of the composition that ruled on the complaint brought against the applicant, had not been involved in the National Council's decision to lodge that complaint.

Discrimination on ground of health

Kiyutin v. Russia

10 March 2011

This case concerned the refusal of the Russian authorities to grant the applicant, an Ouzbek national, a residence permit because he tested positive for HIV. The applicant

complained that this decision had been disproportionate to the legitimate aim of the protection of public health and had disrupted his right to live with his family.
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 8** (right to respect for private and family life) of the Convention. While accepting that the impugned measure pursued the legitimate aim of protecting public health, it noted in particular that health experts and international bodies agreed that travel restrictions on people living with HIV could not be justified by reference to public-health concerns. In the present case, taking into account the applicant's membership of a particularly vulnerable group, the absence of a reasonable and objective justification, and lack of an individualised evaluation, the Court found that the Russian Government had overstepped their narrow margin of appreciation and the applicant had been a victim of discrimination on account of his health status.

Novruk and Others v. Russia

16 March 2016[1]

All five applicants wished to obtain residence permits in Russia. To complete their application, they were required to have a medical examination which included a mandatory test for HIV infection. After they tested positive for HIV, the migration authorities refused their applications by reference to the Foreign Nationals Act, which prevents HIV-positive foreign nationals from obtaining residence permits. The applicants alleged in particular that they had been discriminated against because they were HIV-positive.
The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **read together with Article 8** (right to private life and family) of the Convention. It notably noted that the legislation aimed at preventing HIV transmission, which was used in the present case to exclude the applicants from entry or residence, had been based on an unwarranted assumption that they would engage in unsafe behaviour, without carrying out a balancing exercise involving an individualised assessment in each case. Given the overwhelming European and international consensus geared towards abolishing any outstanding restrictions on entry, stay and residence of people living with HIV, who constitute a particularly vulnerable group, the Court found that Russia had not advanced compelling reasons or any objective justification for their differential treatment for health reasons. The applicants had therefore been victims of discrimination on account of their health status.

Expulsion of ill people

D. v. the United Kingdom (no. 30240/96)

2 May 1997

The applicant, originally from St Kitts (in the Caribbean), was arrested for cocaine possession upon his arrival in the United Kingdom and was sentenced to six years' imprisonment. It was discovered that he suffered from AIDS. Before his release, an order was made for his deportation to St Kitts. He claimed that his deportation would reduce his life expectancy as no treatment of the kind he had been receiving in the United Kingdom was available in St Kitts.
The Court emphasised that aliens who had served their prison sentences and were subject to expulsion could not, in principle, claim any entitlement to remain in the territory of a Convention State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison. However, the circumstances of the applicant's case were rather exceptional. As his illness had been very advanced and he was dependent on the treatment he had been receiving, there was a serious danger that the adverse living conditions in St Kitts would reduce his life expectancy and subject him to acute suffering. His **deportation would**

[1]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.

therefore **be in breach of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

N. v. the United Kingdom (no. 26565/05)

27 May 2008 (Grand Chamber)

The applicant, a Ugandan national, was admitted to hospital days after she arrived in the UK as she was seriously ill and suffering from AIDS-related illnesses. Her application for asylum was unsuccessful. She claimed that she would be subjected to inhuman or degrading treatment if made to return to Uganda because she would not be able to get the necessary medical treatment there.

The Court noted that the United Kingdom authorities had provided the applicant with medical treatment during the nine years it had taken for her asylum application and claims to be determined by the domestic courts and the Court. The Convention did not place an obligation on States parties to account for disparities in medical treatment in States not parties to the Convention by providing free and unlimited medical treatment to all aliens without a right to stay within their jurisdiction. Therefore, the United Kingdom did not have the duty to continue to provide for the applicant. **If** she were **removed** to Uganda, **there would not be a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

See also: **Yoh-Ekale Mwanje v. Belgium**, judgment of 20 December 2011.

S.J. v. Belgium (no. 70055/10)

19 March 2015 (Grand Chamber)

The applicant, an HIV-positive Nigerian national, alleged in particular that there were serious and established grounds to believe that if she were returned to Nigeria, she would face a real risk of being subjected to inhuman and degrading treatment, on account of the fact that the complex antiretroviral therapy which guaranteed her survival is neither available nor accessible in Nigeria. She also submits that the absence of treatment would result in her premature death in particularly inhuman conditions, given the presence of her three young children.

The Court **struck** the application **out of its list of cases** (pursuant to Article 37 of the Convention), taking note of the terms of the friendly settlement that had been reached between the Belgian Government and the applicant and the arrangements for ensuring compliance with the undertakings given, namely the fact that the applicant and her children had been issued with residence permits granting them indefinite leave to remain. In the proposal for a friendly settlement received by the Court from the Belgian Government in August 2014 the latter stressed in particular the strong humanitarian considerations weighing in favour of regularising the applicant's residence status and that of her children.

Application pending before the Grand Chamber

Paposhvili v. Belgium (no. 41738/10)

17 April 2014 (Chamber judgment) – case referred to the Grand Chamber on 20 April 2015

This case concerns the decision to return a Georgian national from Belgium to Georgia and ban him from re-entering Belgian territory. The applicant, who suffers from a number of serious medical conditions, including chronic lymphocytic leukaemia and tuberculosis, alleges in particular that, if deported to Georgia, he would face a risk of premature death as well as a real risk of being subjected to inhuman or degrading treatment or punishment on the ground that the medical treatment he needs does not exist or is unavailable in the country.

In its Chamber judgment of 17 April 2014, the Court found that there would be no violation of Articles 2 (right to life) or 3 (prohibition of inhuman or degrading treatment) of the Convention in the event of the applicant's deportation to Georgia. The Court also held that there had been no violation of Article 8 (right to respect for private and family life) of the Convention. The Court further decided to maintain the interim measure indicated to the Belgium Government on 23 July 2010 – under Rule 39 (interim

measures[2]) of the Rules of Court – to the effect that the applicant should not be deported until the judgment became final or a new decision was given.
On 20 April 2015 the case was referred to the Grand Chamber at the request of the applicant.
On 16 September 2015 the Court held a Grand Chamber hearing in the case.

Exposure to environmental hazards

See also the factsheet on "Environment and the ECHR".

Roche v. the United Kingdom

19 October 2005 (Grand Chamber)

The applicant, who was born in 1938 and has been registered as a person with disabilities since 1992, was suffering from health problems as a result of his exposure to toxic chemicals during tests carried out on him in the early 1960s while he was serving in the British army. He complained that he had not had access to all relevant and appropriate information that would have allowed him to assess any risk to which he had been exposed during his participation in those tests.
The Court found a **violation of Article 8** (right to private and family life) of the Convention, because a procedure had not been available to the applicant making it possible to obtain information about the risks related to his participation in the tests organised by the army.

Vilnes and Others v. Norway

5 December 2013

This case concerned former complaints by divers that they are disabled as a result of diving in the North Sea for oil companies during the pioneer period of oil exploration (from 1965 to 1990). All the applicants complained that Norway had failed to take appropriate steps to protect deep sea divers' health and lives when working in the North Sea and, as concerned three of the applicants, at testing facilities. They all also alleged that the State had failed to provide them with adequate information about the risks involved in both deep sea diving and test diving.
The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, on account of the failure of the Norwegian authorities to ensure that the applicants received essential information enabling them to assess the risks to their health and lives resulting from the use of rapid decompression tables. It further held that there had been **no violation of Article 2** (right to life) or **Article 8** of the Convention as regards the remainder of the applicants' complaints about the authorities' failure to prevent their health and lives from being put in jeopardy, and that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.
This case complements the Court's case-law on access to information under Articles 2 and 8 of the Convention, notably in so far as it establishes an obligation on the authorities to ensure that employees receive essential information enabling them to assess occupational risks to their health and safety.

Brincat and Others v. Malta

24 July 2014

This case concerned ship-yard repair workers who were exposed to asbestos for a number of decades beginning in the 1950s to the early 2000s which led to them suffering from asbestos related conditions. The applicants complained in particular about their or their deceased relative's exposure to asbestos and the Maltese Government's failure to protect them from its fatal consequences.

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[2]. These are measures adopted as part of the procedure before the Court, under Rule 39 (interim measures) of the Rules of Court, at the request of a party or of any other person concerned, or of the Court's own motion, in the interests of the parties or of the proper conduct of the proceedings. See also the factsheet on "Interim measures".

The Court held that there had been a **violation of Article 2** (right to life) of the Convention in respect of the applicants whose relative had died, and a **violation of Article 8** (right to respect for private and family life) of the Convention in respect of the remainder of the applicants. It found in particular that, in view of the seriousness of the threat posed by asbestos, and despite the room for manoeuvre ("margin of appreciation") left to States to decide how to manage such risks, the Maltese Government had failed to satisfy their positive obligations under the Convention, to legislate or take other practical measures to ensure that the applicants were adequately protected and informed of the risk to their health and lives. Indeed, at least from the early 1970s, the Maltese Government had been aware or should have been aware that the ship-yard workers could suffer from consequences resulting from the exposure to asbestos, yet they had taken no positive steps to counter that risk until 2003.

Forcible medical intervention or treatment

Jalloh v. Germany

11 July 2006 (Grand Chamber)

This case concerned the forcible administration of emetics to a drug-trafficker in order to recover a plastic bag he had swallowed containing drugs. The drugs were subsequently used as evidence in the criminal proceedings against him. The applicant claimed in particular that he had been subjected to inhuman and degrading treatment as a result of having been forcibly administered the emetics in question.

The Court reiterated that the Convention did not, in principle, prohibit recourse to a forcible medical intervention that would assist in the investigation of an offence. However, any interference with a person's physical integrity carried out with the aim of obtaining evidence had to be the subject of rigorous scrutiny. In the present case, the Court held that the applicant had been subjected to inhuman and degrading **treatment contrary to Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that the German authorities had forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could equally have obtained by less intrusive methods. Not only had the manner in which the impugned measure was carried out been liable to arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him, but the procedure had furthermore entailed risks to the applicant's health, not least because of the failure to obtain a proper anamnesis beforehand. Although this had not been the intention, the measure had also been implemented in a way which had caused the applicant both physical pain and mental suffering.

Bogumil v. Portugal

7 October 2008

On arriving at Lisbon Airport, the applicant was searched by customs officers, who found several packets of cocaine hidden in his shoes. The applicant informed them that he had swallowed a further packet. He was taken to hospital and underwent surgery for its removal. He complained in particular that he had sustained serious physical duress on account of the surgery performed on him.

The Court considered that the operation had not been such as to constitute inhuman or degrading treatment and held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. There was in particular insufficient evidence to establish that the applicant had given his consent or that he had refused and had been forced to undergo the operation. The operation had further been required by medical necessity as the applicant risked dying from intoxication and had not been carried out for the purpose of collecting evidence. As to the effects of the operation on the applicant's health, the evidence before the Court did not establish that the ailments from which the applicant claimed to have been suffering since were related to the operation.

Dvořáček v. the Czech Republic

6 November 2014

This case concerned the conditions surrounding the compulsory admission of the applicant to a psychiatric hospital to undergo protective sexological treatment. The applicant complained in particular that the hospital had failed to provide him with appropriate psychotherapy and that he had been subjected to forcible medicinal treatment and psychological pressure.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention with regard to the applicant's detention in a psychiatric hospital and the medical treatment administered. It noted in particular that anti-androgen treatment had been a therapeutic necessity and that it had not been established that the applicant had been pressured into undergoing it. While there was further no reason to cast doubt on the hospital's statements to the effect that the applicant had been apprised of the side-effects of the said treatment, the Court nonetheless considered that a specific form setting out his consent and informing him of the benefits and side-effects of the treatment and his right to withdraw his original consent at any stage would have clarified the situation. However, even though such a procedure would have reinforced legal certainty for all concerned, the failure to use such a form was insufficient for a breach of Article 3. Therefore, the Court could not establish beyond reasonable doubt that the applicant had been subjected to forcible medicinal treatment. The Court also held that there been **no violation of Article 3** of the Convention concerning the investigation into the applicant's allegations of ill-treatment.

Liability of health professionals

Positive obligations under Article 2 (right to life) of the Convention "require States to make regulations compelling hospitals … to adopt appropriate measures for the protection of their patients' lives" and "an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable …" (**Calvelli and Ciglio v. Italy**, judgment (Grand Chamber) of 17 January 2002, § 49).

Šilih v. Slovenia

9 April 2009 (Grand Chamber)

The applicants' 20-year-old son, who sought medical assistance for nausea and itching skin, died in hospital in 1993 after he was injected with drugs to which he was allergic. The applicants complained that their son died because of medical negligence and that there had been no effective investigation into his death.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention on account of the inefficiency of the Slovenian judicial system in establishing the cause of and liability for the death of the applicant's son. It observed in particular that the criminal proceedings, and notably the investigation, had lasted too long, that six judges had been changed in a single set of first-instance civil court proceedings, which were still pending 13 years after they had been started.

See also: **Zafer Öztürk v. Turkey**, judgment of 21 July 2015.

G.N. and Others v. Italy

1 December 2009[3]

This case concerned the infection of the applicants or their relatives with human immunodeficiency virus (HIV) or hepatitis C. The persons concerned suffered from a hereditary disorder (thalassaemia) and were infected following blood transfusions carried out by the State health service. The applicants complained in particular that the authorities had not carried out the necessary checks to prevent infection. They also

[3]. See also the judgment on just satisfaction of 15 March 2011.

complained of shortcomings in the subsequent conduct of the civil proceedings and of the refusal to award them compensation. They further alleged that they had been discriminated against compared to other groups of infected persons.
The Court held that there had been **no violation of Article 2** (right to life) of the Convention regarding the obligation to protect the lives of the applicants and their relatives, observing in particular that it had not been established that at the material time the Ministry of Health had known or should have known about the risk of transmission of HIV or hepatitis C via blood transfusion, and that it could not determine from what dates onward the Ministry had been or should have been aware of the risk. The Court further held that there had been a **violation of Article 2** of the Convention concerning the conduct of the civil proceedings, considering that the Italian judicial authorities, in dealing with an arguable complaint under Article 2, had failed to provide an adequate and prompt response in accordance with the State's procedural obligations under that provision. It lastly held that there had been a **violation of Article 14** (prohibition of discrimination) **in conjunction with Article 2** of the Convention, finding that the applicants, as thalassaemia sufferers or their heirs, had been discriminated against compared with haemophilia sufferers, who had been able to take advantage of the out-of-court settlements offered by the Ministry.

Eugenia Lazăr v. Romania

16 February 2010
The applicant complained about the death of her 22-year-old son, caused in her view by shortcomings on the part of the hospital departments to which he had been admitted, and about the manner in which the authorities had conducted the investigation of her criminal complaint against the doctors who had treated her son.
Having regard to the Romanian courts' inability to reach a fully informed decision on the reasons for the applicant's son's death and whether the doctors could incur liability, the Court concluded that there had been a **violation of Article 2** of the Convention in its procedural aspect. It observed in particular that the investigation into the the applicant's son's death had been undermined by the inadequacy of the rules on forensic medical reports.

Oyal v. Turkey

23 March 2010
This case concerned the failure to provide a patient, infected with HIV virus by blood transfusions at birth, with full and free medical cover for life. He and his parents alleged in particular that the national authorities had been responsible for his life-threatening condition as they had failed to sufficiently train, supervise and inspect the work of the medical staff involved in his blood transfusions.
The Court held that there had been a **violation of Article 2** (right to life) of the Convention. While it acknowledged the sensitive and positive approach adopted by the national courts, it considered that the most appropriate remedy in the circumstances would have been to have ordered the defendants, in addition to the payment in respect of non-pecuniary damage, to pay for the first applicant's treatment and medication expenses during his lifetime. The redress offered to the applicants had therefore been far from satisfactory for the purposes of the positive obligation under Article 2. Moreover, as the domestic proceedings had lasted over nine years, it could not be said that the administrative courts had complied with the requirements of promptness and reasonable expedition implicit in this context. The Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention on account of the length of the administrative proceedings, and a **violation of Article 13** (right to an effective remedy) of the Convention.

Mehmet Şentürk and Bekir Şentürk v. Turkey

9 April 2013
This case concerned the death of a pregnant woman following a series of misjudgments by medical staff at different hospitals and the subsequent failure to provide her with

emergency medical treatment when her condition was known to be critical. The applicants, her husband and her son, alleged in particular that the right to life of their wife and mother and the child she had been carrying had been infringed as a result of the negligence of the medical staff involved.
The Court held that there had been a **violation of Article 2** (right to life) of the Convention. It found in particular that the deceased had been the victim of blatant shortcomings on the part of the hospital authorities and had been denied the possibility of access to appropriate emergency treatment, in violation of the substantive aspect of Article 2. In view of its findings concerning deficiencies in the criminal proceedings, the Court also found a violation of the procedural aspect of Article 2.

Gray v. Germany

22 May 2014
This case concerned the death of a patient in his home in the United Kingdom as a result of medical malpractice by a German doctor, who had been recruited by a private agency to work for the British National Health Service. The patient's sons complained that the authorities in Germany, where the doctor was tried and convicted of having caused the death by negligence, had not provided for an effective investigation into their father's death.
The Court held that there had been **no violation of Article 2** (right to life) of the Convention, finding that the criminal proceedings in Germany against the doctor responsible for the applicants' father's death had been adequate. It accepted in particular that the German trial court had sufficient evidence available to it for the doctor's conviction by penal order without having held a hearing. Moreover, the applicants had been sufficiently informed of the proceedings in Germany, and the German authorities had been justified in not extraditing the doctor to the United Kingdom in view of the proceedings before the German courts.

Asiye Genç v. Turkey

27 January 2015
This case concerned a prematurely born baby's death in an ambulance, a few hours after birth, following the baby's transfer between hospitals without being admitted for treatment. The applicant complained in particular about alleged deficiencies in the investigation into her son's death.
The Court held that there had been a **violation of Article 2** (right to life) of the Convention. It considered, firstly, that the Turkish State had not sufficiently ensured the proper organisation and functioning of the public hospital service, or its health protection system. The child died because it had not been offered any treatment. Such a situation, the Court observed, constituted a denial of medical care such as to put a person's life in danger. Secondly, the Court considered that the Turkish judicial system's response to the tragedy had not been appropriate for the purposes of shedding light on the exact circumstances of the child's death. The Court therefore found that it could be considered that Turkey had failed in its obligations under Article 2 of the Convention in respect of the child, who had died a few hours after birth.

Altuğ and Others v. Turkey

30 June 2015
This case concerned the death of a relative of the applicants at the age of 74 as the result of a violent allergic reaction to a penicillin derivative administered by intravenous injection in a private hospital. The applicants alleged in particular that the medical team had not complied with their legal obligations to conduct an anamnesis (questioning of patients or their relatives on their medical history and possible allergies), to inform the patient of the possibility of an allergic reaction and to obtain their consent to administration of the drug.
The Court held that there had been a **violation of Article 2** (right to life) of the Convention. It pointed out in particular that it was not its role to speculate on the possible responsibility of the medical team in question in the applicants'

mother's/grandmother's death. It considered, nevertheless, that the authorities had failed to ensure appropriate implementation of the relevant legislative and statutory framework geared to protecting patients' right to life. Indeed, neither the medical experts, who considered that the death had been a question of therapeutic contingency, nor the Turkish courts had addressed the possibility that the medical team had infringed the current legal provisions (obligation to question patients or their families on their medical record, to inform them of the possibility of an allergic reaction and to obtain their consent to the administration of the drug in question).

Pending applications

Lopes de Sousa Fernandes v. Portugal

16 December 2015 (Chamber judgment) – case referred to the Grand Chamber in May 2016

This case concerns the death of the applicant's husband following nasal polyp surgery and the subsequent procedures opened for various instances of medical negligence. The applicant alleges in particular a violation of her late husband's right to life.

In its Chamber judgment of 15 December 2015, the Court held, by five votes to two, that there had been a violation of Article 2 (right to life) of the Convention as to the right to life and, unanimously, that there had been a violation of Article 2 as concerned the related investigation. The Chamber found in particular that the mere fact that the patient had undergone a surgical operation presenting a risk of infectious meningitis should have warranted a medical intervention in conformity with the medical protocol on post-operative supervision. Without wishing to speculate on the chances of survival of the applicant's husband, the Chamber took the view that the lack of coordination between the ear, nose and throat department and the emergencies unit inside the hospital revealed a deficiency in the public hospital service, depriving the patient of the possibility of accessing appropriate emergency care. The Chamber further found that the Portuguese legal system had not functioned effectively, since, firstly, the length of three sets of internal proceedings did not meet the requirement of promptness and, secondly, none of the proceedings conducted, nor any of the experts' assessments presented, had addressed satisfactorily the question of the possible causal link between the various illnesses suffered by the patient two days after undergoing his operation. The Chamber found, lastly, that the patient should have been clearly informed by the doctors prior to the operation about the risks incurred.

On 2 May 2016 the Grand Chamber Panel accepted the Portuguese Government's request that the case be referred to the Grand Chamber.

Bochkareva v. Russia (no. 49973/10)

Application communicated to the Russian Government on 14 March 2011

The applicant's husband, suffering from kidney cancer, was operated in March 2005 when he also had a blood transfusion. He died a few months later from cancer complications. The applicant complains that her late husband suffered during his cancer treatment because of the way it was carried out, and that the investigation conducted into the blood transfusion given to her husband did not make clear findings about the responsibility of the officials and medical officers involved.

The Court gave notice of the application to the Russian Government and put questions to the parties under Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention.

Ismayilova v. Azerbaijan (no. 27860/07)

Application communicated to the Azerbaijani Government on 17 March 2011

The applicant experienced profuse bleeding several months after an operation to remove a cyst and an ovary. She sued for damages caused to her by medical negligence. Before the Court, she complains that the domestic courts failed to take all evidence into account and that the court proceedings lasted too long.

The Court gave notice of the application to the Azerbaijani Government and put questions to the parties under Article 6 § 1 (right to a fair trial) of the Convention.

Ulusoy v. Turkey (no. 54969/09)

Application communicated to the Turkish Government on 25 June 2012

This case concerns the severe disability of the first and second applicants' child as a result of alleged series of omissions and negligent acts of the health personnel during prenatal care and birth.

The Court gave notice of the application to the Turkish Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 6 (right to a fair trial) and 8 (right to private and family life) of the Convention.

Organ transplantation

Petrova v. Latvia

24 June 2014

Having sustained life-threatening injuries in a car accident, the applicant's son was taken to hospital, where he died. Shortly afterwards, a laparotomy was performed on his body, in the course of which his kidneys and spleen were removed for organ-transplantation purposes. The applicant alleged that the removal of her son's organs had been carried out without her or her son's prior consent and that, in any event, no attempt had been made to establish her views.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that the Latvian law in the area of organ transplantation as applied at the time of the death of the applicant's son had not been sufficiently clear and had resulted in circumstances whereby the applicant, as the closest relative to her son, had certain rights with regard to removal of his organs, but was not informed – let alone provided with any explanation – as to how and when these rights could have been exercised.

Elberte v. Latvia

13 January 2015

This case concerned the removal of body tissue from the applicant's deceased husband by forensic experts after his death, without her knowledge or consent. Unknown to the applicant, pursuant to a State-approved agreement, tissue had been removed from her husband's body after her husband's autopsy and sent to a pharmaceutical company in Germany for the creation of bio-implants. She only learned about the course of events two years after her husband's death when a criminal investigation was launched in Latvia into allegations of wide-scale illegal removal of organs and tissues from cadavers. However, domestic authorities eventually did not establish any elements of crime. The applicant complained in particular that the removal of her husband's tissue had been carried out without her prior consent. She also complained of emotional suffering as she had been left in a state of uncertainty regarding the circumstances of the removal of tissue from her husband, her husband's body having been returned to her after the autopsy with his legs tied together.

The Court held that there had been a **violation of Article 8** (right for respect to private and family life) and a **violation of article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that Latvian law regarding the operation of the consent requirement on tissue removal lacked clarity and did not have adequate legal safeguards against arbitrariness: although it set out the legal framework allowing the closest relatives to express consent or refusal in relation to tissue removal, it did not clearly define the corresponding obligation or discretion of experts to obtain consent. Indeed, the manner in which the relatives' right to express their wishes was to be exercised and the scope of the obligation to obtain consent were the subject of disagreement among the domestic authorities themselves. The Court further concluded that the applicant had had to face a long period of uncertainty and distress concerning the nature, manner and purpose of the tissue removal from her husband's body, underlining that, in the special field of organ and tissue transplantation, the human body had to be treated with respect even after death.

Providing medical information to the public

Open Door and Dublin Well Woman v. Ireland

29 October 1992

The applicants were two Irish companies which complained about being prevented, by means of a court injunction, from providing to pregnant women information about abortion abroad.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found that the restriction imposed on the applicant companies had created a risk to the health of women who did not have the resources or education to seek and use alternative means of obtaining information about abortion. In addition, given that such information was available elsewhere, and that women in Ireland could, in principle, travel to Great Britain to have abortions, the restriction had been largely ineffective.

Women on Waves and Others v. Portugal

3 February 2009

This case concerned the Portuguese authorities' decision to prohibit the ship *Borndiep*, which had been chartered with a view to staging activities promoting the decriminalisation of abortion, from entering Portuguese territorial waters. The applicant associations complained that this ban on their activities had breached their right to impart their ideas without interference.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the interference by the Portuguese authorities had been disproportionate to the aims pursued. It observed in particular that, in seeking to prevent disorder and protect health, the Portuguese authorities could have resorted to other means that were less restrictive of the applicant associations' rights, such as seizing the medicines on board. It also highlighted the deterrent effect for freedom of expression in general of such a radical act as dispatching a warship.

Refund of medical expenses

Nitecki v. Poland

21 March 2002 (decision on the admissibility)

The applicant, who had a very rare and fatal disease, alleged that he did not have the means to pay for his medical treatment. He complained before the Court of the authorities' refusal to refund the full cost of his treatment (under the general sickness insurance scheme only 70% of the costs were covered).

The Court declared the application **inadmissible** (manifestly ill-founded). While an issue could arise under Article 2 (right to life) of the Convention where it was shown that the authorities of a Contracting State put an individual's life at risk through the denial of health care which they had undertaken to make available to the population generally, it found that that was not the case with the applicant.

Panaitescu v. Romania

10 April 2012

The applicant alleged in particular that the authorities had cynically and abusively refused to enforce final court decisions acknowledging his father's right to appropriate free medical treatment, and that this had put his life at risk.

The Court held that there had been a procedural **violation of Article 2** (right to life) of the Convention on account of the Romanian authorities' failure to provide the applicant's father with the specific anti-cancerous medication he needed for free, in accordance with the domestic courts' judgments.

Further reading

See in particular:

- **Health-related issues in the case-law of the European Court of Human Rights**, Thematic Report, European Court of Human Rights Jurisconsult's Department, June 2015.

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