March 2024
This Factsheet does not bind the Court and is not exhaustive

Persons with disabilities and the European Convention on Human Rights

Article 1 (obligation to respect human rights) of the European Convention on Human Rights ("the Convention"):

"The High Contracting Parties shall secure to ***everyone*** within their jurisdiction the rights and freedoms defined in … this Convention."

Right to life (Article 2 of the Convention)

Death of a deaf and mute person in police custody

Jasinskis v. Latvia

21 December 2010

The applicant complained about the death in police custody of his deaf and mute son. The latter had sustained serious head injuries in a fall down some stairs, had been taken to the local police station and placed in a sobering-up cell for 14 hours as the police officers believed him to be drunk. The applicant also complained about the ineffectiveness of the ensuing investigation into his son's death.

The European Court of Human Rights held that there had been a **violation of Article 2** (right to life) of the European Convention on Human Rights under its substantial limb. It reiterated that Article 2 of the Convention not only required a State to not "intentionally" take a life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. As concerned a disabled person in detention, all the more care should be taken to ensure that the conditions corresponded to their special needs. However, in the present case, the police had not had the applicant medically examined when they took into custody, as they were specifically required to do by the standards of the European Committee for the Prevention of Torture (CPT). Nor had they given him any opportunity to provide information about his state of health, even after he kept knocking on the doors and the walls of the sobering-up cell. Taking into account that he was deaf and mute, the police had a clear obligation under the domestic legislation and international standards, to at least provide him with a pen and paper to enable him to communicate his concerns. The Court therefore concluded that the police had failed to fulfil their duty to safeguard the applicant's son's life by providing him with adequate medical treatment. The Court further held that the investigation into the circumstances of the death of the applicant's son had not been effective, in **violation of Article 2** of the Convention under its procedural limb.

Death of disabled people in a care home or a psychiatric hospital

Nencheva and Others v. Bulgaria

18 June 2013

Fifteen children and young adults died between December 1996 and March 1997 in a home for physically and mentally disabled young people, from the effects of cold and shortages of food, medicines and basic necessities. The manager of the home, observing

the problems, had tried without success on several occasions to alert all the public institutions which had direct responsibility for funding the home and which could have been expected to act.
The Court held that there had been a **violation of Article 2** (right to life) of the Convention in that the authorities had failed in their duty to protect the lives of the vulnerable children placed in their care from a serious and immediate threat. The authorities had also failed to conduct an effective official investigation into the deaths, occurring in highly exceptional circumstances. The Court considered that the authorities should have known that there was a real risk to the lives of the children in the home, and that they had not taken the necessary measures within the limits of their powers. The children and young people under the age of 22 placed in the home had been vulnerable persons suffering from severe mental and physical disabilities, who had either been abandoned by their parents or had been placed in the home with their parents' consent. All of them had been entrusted to the care of the State in a specialised public facility and had been under the exclusive supervision of the authorities.

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 Grand Chamber 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 Grand Chamber 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 Grand Chamber 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.

See also: **Centre for Legal Resources on behalf of Mioriţa Malacu and Others v. Romania**, decision (strike out) of 27 September 2016.

Bulgarian Helsinki Committee v. Bulgaria

28 June 2016 (decision on the admissibility)
This case concerned the death of two girls with mental disabilities in special homes in which they had been placed, and the request submitted to the Court by an association specialising in human rights protection to grant it legal standing either as an indirect victim or as the representative of the two deceased adolescents.
The Court declared the applications **inadmissible**, as being incompatible *ratione personae* within the meaning of Article 34 (individual applications) of the Convention.

In view of the fact that the applicant association had not been in contact with the girls before they died, the fact that it did not have a procedural status encompassing all the rights enjoyed by parties to criminal proceedings, and the fact that its intervention in the criminal proceedings following the discontinuance orders had been delayed, the Court made a distinction between the present cases and the case of *Center of Legal Resources on behalf of Valentin Câmpeanu v. Romania* (see above). As the criteria established in that case were not satisfied, the Court was unable to find that the applicant association had legal standing. The Court specified however that its decision should not be interpreted as disregard for civil society's work to protect the rights of extremely vulnerable people, noting the active and vigilant role played by the applicant association, which had alerted the competent institutions and had cooperated with them during the investigations and inspections that had been carried out.

Prohibition of inhuman or degrading treatment (Article 3 of the Convention)

Birth-control measures and forced abortions

Gauer and Others v. France

23 October 2012 (decision on the admissibility)

This case concerned the sterilisation for the purposes of contraception of five young women with mental disabilities who were employed at a local work-based support centre (Centre d'aide pour le travail – CAT). They submitted in particular that there had been an interference with their physical integrity as a result of the sterilisation which had been carried out without their consent having been sought, and alleged a violation of their right to respect for their private life and their right to found a family. They further submitted that they had been subjected to discrimination as a result of their disability.

The Court found that the application had been lodged out of time and therefore declared it **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention.

G.M. and Others v. the Republic of Moldova (no. 44394/15)

22 November 2022

This case concerned the imposition of abortions and birth-control measures on three intellectually disabled women, residents in a neuropsychiatric asylum, after they had been repeatedly raped by one of the head doctors there, and the investigation into their complaints.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in both its substantive and its procedural aspects. It noted in particular that the domestic authorities had failed to carry out an effective investigation into the applicants' allegations of ill-treatment despite it having been reopened on four occasions following their appeals. Moreover, the inquiry had not factored in their vulnerability as intellectually disabled women exposed to sexual abuse in an institutional context. The Court also found that the domestic criminal law had not provided effective protection against such invasive medical interventions carried out without the patient's valid consent.

Conditions of detention[1]

Price v. the United Kingdom

10 July 2001

A four-limb deficient thalidomide victim who also suffers from kidney problems, the applicant was committed to prison for contempt of court in the course of civil proceedings. She was kept one night in a police cell, where she had to sleep in her

[1]. See also, concerning mentally-ill prisoners, the factsheets on "Detention and mental health" and "Prisoners health-related rights".

wheelchair, as the bed was not specially adapted for a disabled person, and where she complained of the cold. She subsequently spent two days in a normal prison, where she was dependent on the assistance of male prison guards in order to use the toilet.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that to detain a severely disabled person in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty, constituted a degrading treatment contrary to Article 3 of the Convention.

Vincent v. France

24 October 2006

The applicant was serving a ten-year prison sentence imposed in 2005. Paraplegic since an accident in 1989, he is autonomous, but cannot move around without the aid of a wheelchair. He complained in particular that the conditions in which he was detained in different prisons were not adapted to his disability.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the fact that it had been impossible for the applicant, who is a paraplegic, to move autonomously around Fresnes Prison, which was particularly unsuited to the imprisonment of persons with a physical handicap who could move about only in a wheelchair. There was no evidence of any positive intention to humiliate or debase the applicant. However, the Court considered that to detain a handicapped person in a prison where he could not move about and, in particular, could not leave his cell independently, amounted to degrading treatment within the meaning of Article 3 of the Convention.

Z.H. v. Hungary (no. 28973/11)

8 November 2011

Deaf and mute, unable to use sign language or to read or write, and having a learning disability, the applicant complained in particular that his detention in prison for almost three months had amounted to inhuman and degrading treatment.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention. Despite the authorities' laudable but belated efforts to address the applicant's situation, it found that his incarceration without requisite measures being taken within a reasonable time had resulted in a situation amounting to inhuman and degrading treatment.
In this case the Court also found a **violation of Article 5 § 2** (right to liberty and security) of the Convention. Given the applicant's multiple disabilities, it was in particular not persuaded that he could be considered to have obtained the information required to enable him to challenge his detention. The Court further found it regrettable that the authorities had not taken any truly "reasonable steps" – a notion quite akin to that of "reasonable accommodation" in Articles 2, 13 and 14 of the United Nations Convention on the Rights of Persons with Disabilities[2] – to address his condition, in particular by procuring him assistance by a lawyer or another suitable person.

Arutyunyan v. Russia[3]

10 January 2012

The applicant was wheelchair-bound and had numerous health problems, including a failing renal transplant, very poor eyesight, diabetes and serious obesity. His cell was on the fourth floor of a building without an elevator; the medical and administrative units were located on the ground floor. Owing to the absence of an elevator, the applicant was required to walk up and down the stairs on a regular basis to receive haemodialysis and other necessary medical treatment.

---

[2]. Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 at the United Nations Headquarters in New York, opened for signature on 30 March 2007, and entered into force on 3May 2008.
[3]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the domestic authorities had failed to treat the applicant in a safe and appropriate manner consistent with his disability, and had denied him effective access to the medical facilities, outdoor exercise and fresh air. It observed in particular that, for a period of almost fifteen months, the applicant, who was disabled and depended on a wheelchair for mobility, was forced at least four times a week to go up and down four flights of stairs on his way to and from lengthy, complicated and tiring medical procedures that were vital to his health. The effort had undoubtedly caused him unnecessary pain and exposed him to an unreasonable risk of serious damage to his health. It was therefore not surprising that he had refused to go down the stairs to exercise in the recreation yard, and had thus remained confined within the walls of the detention facility twenty-four hours a day. In fact, due to his frustration and stress, the applicant had on several occasions even refused to leave his cell to receive life-supporting haemodialysis.

Zarzycki v. Poland

6 March 2013

The applicant is disabled; both his forearms are amputated. He complained that his detention of three years and four months without adequate medical assistance for his special needs and without refunding him the cost of more advanced bio-mechanical prosthetic arms had been degrading. He alleged that, as a result, he had been forced to rely on other inmates to help him with certain daily hygiene and dressing tasks.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, noting the pro-active attitude of the prison administration *vis-à-vis* the applicant. It was true that the Court had often criticised the scheme of providing routine assistance to a prisoner with a physical disability through cellmates, even if they were volunteers and even if their help had been solicited only when the prison infirmary was closed. In the particular circumstances of the present case, however, the Court did not find any reason to condemn the system which had been put in place by the authorities to secure the adequate and necessary aid to the applicant. As further regards obtaining prostheses, bearing in mind that the basic-type mechanical prostheses had been available and indeed provided to the applicant free of charge and that a refund of a small part of the cost of bio-mechanical prostheses had also been available, the Polish State could not be said to have failed to discharge its obligations under Article 3 of the Convention by not paying the full costs of a prosthetic device of an advanced type. The authorities had thus provided the applicant with the regular and adequate assistance his special needs warranted and there was no evidence of any incident or positive intention to humiliate or debase the applicant. Therefore, even though a prisoner with amputated forearms was more vulnerable to the hardships of detention, the treatment of the applicant in the circumstances of the present case had not reached the threshold of severity required to constitute degrading treatment contrary to Article 3 of the Convention.

Grimailovs v. Latvia

25 June 2013

In June 2002 the applicant, who had a metal insert in his spine after breaking his back two years earlier, was given a five and a half year prison sentence. He complained, *inter alia*, that the prison facilities were unsuitable for him as he was paraplegic and wheelchair-bound. In 2006 he was conditionally released.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention. The applicant had been detained for nearly two-and-a-half years in a regular detention facility which was not adapted for persons in a wheelchair. Moreover, he had had to rely on his fellow inmates to assist him with his daily routine and mobility around the prison, even though they had not been trained and did not have the necessary qualifications. Although the medical staff had visited the applicant in his cell for ordinary medical check-ups, they had not provided any assistance with his daily routine. The State's obligation to ensure adequate conditions of detention

included making provision for the special needs of prisoners with physical disabilities and the State could not absolve itself from that obligation by shifting the responsibility to cellmates. The conditions of the applicant's detention in view of his physical disability and, in particular, his inability to have access to various prison facilities, including the sanitation facilities, independently and the lack of any organised assistance with his mobility around the prison or his daily routine, had thus reached the threshold of severity required to constitute degrading treatment.

See also: **Farbtuhs v. Latvia**, judgment of 2 December 2004; **D.G. v. Poland (no. 45705/07)**, judgment of 12 February 2013.

Semikhvostov v. Russia[4]

6 February 2014

Being paralysed from the waist down and confined to a wheelchair, the applicant alleged that the premises of the correctional facility where he had been detained for almost three years were unsuitable for his condition. He further complained that he did not have an effective remedy at national level in respect of those complaints.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, finding that the conditions of the applicant's detention and, in particular, his lack of independent access to parts of the facility, including the canteen and sanitation blocks, and the lack of any organised assistance with his mobility, must have caused the applicant unnecessary and avoidable mental and physical suffering amounting to inhuman and degrading treatment. The Court also found that there had been a **violation of Article 13** (right to an effective remedy) of the Convention in this case.

Asalya v. Turkey

15 April 2014

Paraplegic and wheel-chair bound, the applicant, a Palestinian, complained in particular about the conditions of his detention in Kumkapı Foreigners' Admission and Accommodation Centre (Turkey) pending his deportation, principally because of the inadequate facilities – no lifts and squat toilets – for wheel-chair bound detainees like himself.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the applicant's conditions of detention at the Kumkapı Foreigners' Admission and Accommodation Centre. It observed in particular that there was no evidence in the case of any positive intention to humiliate or debase the applicant. It nevertheless considered that the detention of the applicant in conditions where he was denied some of the minimal necessities for a civilised life, such as sleeping on a bed and being able to use the toilet as often as required without having to rely on the help of strangers, was not compatible with his human dignity and exacerbated the mental anguish caused by the arbitrary nature of his detention, regardless of its relatively short period. In these circumstances, the Court found that the applicant had been subjected to degrading treatment.

Helhal v. France

19 February 2015

Suffering from paraplegia of the lower limbs and urinary and faecal incontinence, the applicant complained that, in view of his severe disability, his continuing detention amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that, although the applicant's continuing detention did not in itself constitute inhuman or degrading treatment in the light of his disability, the inadequacy of the physical rehabilitation treatment provided to him and the fact that the prison premises were not adapted to his disability amounted to a breach of Article 3 of the Convention. The Court also noted in

4. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

this case that the assistance in washing himself provided to the applicant by a fellow inmate in the absence of showers suitable for persons of reduced mobility did not suffice to fulfil the State's obligations with regard to health and safety.

Topekhin v. Russia[5]

10 May 2016

The applicant, a remand prisoner suffering from serious back injuries, paraplegia and bladder and bowel dysfunction, complained, *inter alia*, of the conditions of his detention and of his transfer to a correctional colony.

The Court held that there had been a **violation of Article 3** of the Convention, finding that the conditions of the applicant's detention in the remand prisons had amounted to inhuman and degrading treatment. It noted in particular that the applicant's inevitable dependence on his fellow inmates and the need to ask for their help with intimate hygiene procedures had put him in a very uncomfortable position and adversely affected his emotional well-being, impeding his communication with the cellmates who had to perform this burdensome work involuntarily. The conditions had further been exacerbated by the failure to provide him with a hospital bed or other equipment, such as a special pressure-relieving mattress, affording a minimum of comfort. The Court also held that there had been a **violation of Article 3** on account of the conditions of the applicant's transfer, finding that the cumulative effect of the material conditions of the transfer, and the duration of the trip, had been serious enough to qualify as inhuman and degrading treatment. The Court held, however, that there had been **no volation of Article 3** of the Convention on account of the quality of the medical treatment provided to the applicant in detention.

Bayram v. Turkey

4 February 2020 (Committee judgment)

This case concerned the conditions of detention of the applicant, a paraplegic, who could not move around by his own means. The applicant complained that he had had to spend years in prison in spite of his serious disability.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention as regards the applicant's conditions of detention in Batman Prison from 11 April 2001 to 25 September 2012, and **no violation of Article 3** as regards the applicant's conditions of detention in Diyarbakır Prison from 25 September 2012 to 14 June 2013. It noted in particular that the applicant, whose degree of physical incapacity was 92%, had received no assistance between 11 April 2011 and 27 April 2011 in Batman Prison, and that on 27 April 2011 the prison authorities had appointed two of his fellow inmates to assist him. The period during which the applicant, being unable to move by his own means, had to be carried between different floors, had continued until 25 September 2012, and therefore lasted some seventeen months. The Court reiterated in this judgment that detaining disabled persons in an institution where they are unable to move about by their own means amounts to degrading treatment within the meaning of Article 3 of the Convention.

Aggerholm v. Denmark

15 September 2020

The applicant, who was schizophrenic, complained about being strapped to a restraint bed in a psychiatric hospital for nearly 23 hours, one of the longest periods of such immobilisation ever examined by the European Court. He argued in particular that there had been no imminent danger requiring physical restraint, that the measures should only have been used as a last resort after all other reasonable options had been exhausted, and that he had been restrained longer than had been strictly necessary.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, finding that the Danish authorities had not sufficiently proven that continuing to strap the applicant to a restraint bed for 23 hours

[5]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

had been strictly necessary. Given the context and the applicant's history of violent offences, the Court, like the domestic courts, was satisfied that the decision to strap him to a restraint bed had been the only means available to prevent immediate or imminent harm to staff and patients at the hospital. However, the domestic courts had failed to address several issues in so far as the continuation and duration of the measure was concerned. In particular, a duty doctor had continued the measure throughout the night despite having found the applicant calm four hours earlier. There had also been a one and half hour delay in releasing him from the restraint bed the next day. In the present case, the Court could not conclude that the measures had respected the applicant's human dignity and had not exposed him to pain and suffering.

See also, among others:

Ābele v. Latvia
5 October 2017

Potoroc v. Romania
2 June 2020

Epure v. Romania
11 May 2021

Laniauskas v. Lithuania
29 March 2022

Living conditions and treatment in psychiatric institutions or social care homes

Stanev v. Bulgaria (see also below, under "Right to liberty and security" and under "Right to a fair trial")
17 January 2012 (Grand Chamber)
This case concerned a man who claimed he had been placed against his will, for many years, in a psychiatric institution in a remote mountain location, in degrading conditions.
The Grand Chamber observed that Article 3 of the Convention prohibited the inhuman and degrading treatment of anyone in the care of the authorities, whether detention ordered in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned. The Grand Chamber also noted that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had concluded, after visiting the home, that the living conditions there at the relevant time could be said to amount to inhuman and degrading treatment. In the present case, even though there was no suggestion that the Bulgarian authorities had deliberately intended to treat the applicant in a degrading way, taken as a whole, his living conditions (the food was insufficient and of poor quality; the building was inadequately heated and in winter the applicant had to sleep in his coat; he could shower only once a week in an unhygienic and dilapidated bathroom; the toilets were in an execrable state; etc.) for a period of approximately seven years had amounted to degrading treatment, in **violation of Article 3** of the Convention.

L.R. v. North Macedonia (no. 38067/15)
23 January 2020
This case concerned an eight-year-old child who had been in the care of State-run institutions since he was three months old and allegations of inadequate care and ill-treatment. His case had come to the notice of an NGO when the Ombudsman had visited him in an institute in 2013 and found him tied to his bed. The applicant submitted that he had been wrongly diagnosed as physically disabled, which had led to his being placed in an institute which had not been able to cater for his needs and to inadequate care and treatment amounting to neglect. He also complained that the investigation into his allegations had been ineffective.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the authorities had been responsible for the applicant's placement in an institute which could not cater for his needs, the lack of requisite care and the inhuman and degrading treatment he had endured, and that there had been a **violation of Article 3** (investigation) because of the authorities' failure to hold a proper inquiry into the case. It found it particularly worrying that someone as vulnerable as the applicant, an eight-year old mentally disabled child who was deaf and could not speak, had frequently been tied to his bed during his stay of approximately a year and nine months in an institute which had clearly been inappropriate as it was for the physically disabled, despite the staff there voicing their concerns to the authorities from the outset that it was understaffed and not qualified to cope with him. Moreover, the investigation, instead of looking into the general failure of the system in the applicant's case, had focussed on the institute's employees' individual criminal liability, which had led to the prosecutors finding that there had been no intention to harm the child and dismissing his case.

V.I. v. Republic of Moldova (no. 38963/18)

26 March 2024[6]

This case concerned the placement of an orphan who was perceived to have a mild intellectual disability in a psychiatric hospital against his will. He was under the care of the State at the time. At the end of what was supposed to be a three-week placement, he was left there for another four months, with nobody coming to visit or fetch him and being treated with neuroleptics and anti-psychotics. The applicant alleged that his placement and treatment, together with the conditions in the hospital and the conduct of the medical staff and other patients, had amounted to ill treatment. He complained that the investigation into his allegations had been ineffective and alleged that social stigma and discrimination against people with psychosocial disabilities and a lack of alternative care solutions had been to blame.

In the present case, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as concerned the lack of an effective investigation, a **violation of Article 3** as regards the applicant's involuntary placement and treatment in a psychiatric hospital, a **violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 3**, and a **violation of Article 13** (right to an effective remedy) of the Convention **read in conjunction with Articles 3 and 14**. The Court found, in particular, that the authorities had failed to investigate the circumstances in which the applicant had been placed in the psychiatric hospital, and whether the relevant legal safeguards relating to involuntary placement and psychiatric treatment had been respected, and whether there had been any justification for in-patient treatment in the first place. They had not tried to clarify what impact the treatment with neuroleptics and anti-psychotics had had on him, nor whether that treatment had been warranted from a medical point of view or whether it had simply been used as chemical restraint. Moreover, the investigation had not factored in the applicant's vulnerability, his age or the disability aspects of his complaints. The Court also noted, in this case, that the existing Moldovan legal framework fell short of the State's duty ("positive obligation") to establish and apply effectively a system providing protection to intellectually disabled persons in general, and to children without parental care in particular, against serious breaches of their integrity. Finding that the case disclosed a systemic problem, the Court decreed, under **Article 46** (binding force and execution of judgments) of the Convention, that it fell upon the Republic of Moldova to take general measures to resolve the problems at the root of the violations found and to prevent similar violations from taking place in the future.

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

Risk of ill-treatment in case of expulsion or extradition

Hukic v. Sweden

27 September 2005 (decision on the admissibility)

This case concerned the expulsion to Bosnia and Herzegovina of a family who allegedly risked being persecuted, and whose younger child who was suffering from Down's syndrome would not receive adequate medical care for his handicap if deported.

The Court declared **inadmissible** (manifestly ill-founded) the applicants' complaints under Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Concerning the alleged irreparable harm to the younger child as he would not receive treatment for his handicap in Bosnia and Herzegovina, it observed in particular that, according to information obtained in the case file, treatment and rehabilitation for children with Down's syndrome could be provided in the applicants' home town, although not of the same standard as in Sweden. Moreover, despite the seriousness of his handicap, Down's syndrome could not be compared to the final stages of a fatal illness.

S.H.H. v. the United Kingdom (no. 60367/10)

29 January 2013

Seriously injured during a rocket launch in Afghanistan in 2006 and left disabled following several amputations, the applicant arrived in the United Kingdom on 30 August 2010. On 1 September 2010, he applied for asylum alleging that his removal to Afghanistan would expose him to ill-treatment. The applicant unsuccessfully complained that his removal to Afghanistan would breach Article 3 (prohibition of inhuman or degrading treatment) of the Convention on two grounds linked with his disability: first, he asserted that disabled persons were at higher risk of violence in the armed conflict currently underway in Afghanistan; and, second, that, since he had lost contact with his family, he would face a total lack of support as well as general discrimination.

The Court held that there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if the applicant were removed to Afghanistan. It held in particular that the responsibility of Contracting States under Article 3 of the Convention could only be engaged in very exceptional cases of general violence where the humanitarian grounds against removal were compelling. In this case, the applicant neither complained before the Court that his removal to Afghanistan would put him at risk of deliberate ill-treatment from any party, nor that the levels of violence in Afghanistan were such as to entail a breach of Article 3. Furthermore, the applicant had failed to prove that his disability would put him at greater risk of violence than the general Afghan population. As lastly regards the foreseeable degradation of the applicant's living conditions, even though the Court acknowledged that the quality of the applicant's life would be negatively affected upon removal, this fact alone could not be decisive.

Aswat v. the United Kingdom

16 April 2013

The applicant, who suffers from paranoid schizophrenia, was detained in a high security psychiatric hospital in the United Kingdom. He had been indicted in the United States as a co-conspirator in respect of a conspiracy to establish a jihad training camp in Oregon and in 2005 he was arrested in the United Kingdom following a request for his arrest and extradition by the US authorities. The applicant complained that his extradition to the United States of America would amount to ill-treatment, in particular because the detention conditions (a potentially long period of pre-trial detention and his possible placement in a "supermax" prison) were likely to exacerbate his condition of paranoid schizophrenia.

While the Court held that the applicant's **extradition** to the United States **would be in violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, it was solely on account of the current severity of his mental illness and not as a result of the length of his possible detention there. In light of the medical evidence before it, it found that there was a real risk that the applicant's extradition to the USA, a

country to which he had no ties, and to a different, potentially more hostile prison environment, would result in a significant deterioration in his mental and physical health. Such deterioration would be capable of amounting to treatment in breach of Article 3 of the Convention.

Aswat v. the United Kingdom

6 January 2015 (decision on the admissibility)

In a judgment of April 2013 (see above), the European Court of Human Rights had held that the applicant's extradition from the United Kingdom to the United States of America would be in violation of Article 3 of the Convention. Following a set of specific assurances given by the US Government to the Government of the UK regarding the conditions in which he would be detained in the US before trial and after a possible conviction, the applicant was eventually extradited to the United States in October 2014. The applicant complained that the assurances provided by the US Government did not respond to the risks identified by the Court in its judgment of April 2013 and that his extradition would therefore be in breach of Article 3 of the Convention.

The Court found that the concerns raised in its judgment of April 2013 had been directly addressed by the comprehensive assurances and additional information received by the Government of the UK from the US Government. It therefore considered the applicant's complaint to be manifestly ill-founded pursuant to Article 35 (admissibility criteria) of the Convention and declared the application **inadmissible**.

Savran v. Denmark

7 December 2021 (Grand Chamber)

The applicant, a Turkish national, had been resident in Denmark for most of his life. After being convicted of aggravated assault committed with other people, which had led to the victim's death, he was in 2008 placed in the secure unit of a residential institution for the severely mentally impaired for an indefinite period. His expulsion with a permanent re-entry ban was ordered. He was deported in 2015. He complained that, because of his mental health, his removal to Turkey had violated his rights.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It considered in particular that it had not been demonstrated that the applicant's expulsion to Turkey had exposed him to a "serious, rapid and irreversible decline in his state of health resulting in intense suffering", let alone to a "significant reduction in life expectancy". Indeed, the risk posed by the reduction in treatment seemed to apply mainly to others rather than to the applicant himself. The Court held, however, that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that, overall, the domestic authorities had failed to take account of the individual circumstances of the applicant and to balance the issues at stake, and that the effective permanent re-entry ban had been disproportionate. In particular, whilst the applicant's criminal offence – violent in nature – had undoubtedly been a serious one, no account had been taken of the fact that at the time he had committed the crime he had been, very likely, suffering from a mental disorder, with physically aggressive behaviour one of its symptoms, and that, owing to that mental illness, he had been ultimately exempt from any punishment but instead had been committed to psychiatric care. In the Court's view, these facts had limited the extent to which the respondent State could legitimately rely on the seriousness of the criminal offence to justify his expulsion.

Sexual abuse

I.C. v. Romania (no. 36934/08)

24 May 2016

This case concerned the applicant's alleged rape when she was fourteen years old and the ensuing investigation. The applicant complained that, there having been no physical evidence of assault, the criminal justice system in Romania had been more inclined to believe the men involved in the abuse, rather than her. Furthermore, the authorities,

refusing to take into consideration her young age and physical/psychological vulnerability, had shown no concern for the need to protect her as a minor.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, finding that the investigation of the case had been deficient, notably on account of the Romanian State's failure to effectively apply the criminal-law system for punishing all forms of rape and sexual abuse. The Court noted in particular that neither the prosecutors nor the judges deciding on the case had taken a context-sensitive approach, failing to take into account the applicant's young age, her slight intellectual disability and the fact that the alleged rape, involving three men, had taken place at night in cold weather – all factors which had heightened her vulnerability. Indeed, particular attention should have been focused on analysing the validity of the applicant's consent to the sexual acts in the light of her slight intellectual disability. International materials on the situation of people with disabilities pointed out that the rate of abuse and violence committed against people with disabilities was considerably higher than the rate for the general population. In that context, the nature of the sexual abuse against the applicant had been such that the existence of useful detection and reporting mechanisms had been fundamental to the effective implementation of the relevant criminal laws and to her access to appropriate remedies. Moreover, those shortcomings were aggravated by the fact that no psychological evaluation had ever been ordered by the national courts in order to obtain a specialist analysis of the applicant's reactions in view of her young age. At the same time, the authorities had not considered at all the extensive medical evidence of the trauma she had suffered following the incident.

Verbal and / or physical harassment

Đorđević v. Croatia

24 July 2012

This case concerned the complaint by a mother and her mentally and physically disabled son that they had been harassed, both physically and verbally, for over four years by children living in their neighbourhood, and that the authorities had failed to protect them. These attacks had left the first applicant deeply disturbed, afraid and anxious. The applicants had on numerous occasions complained to various authorities. They had also rung the police many times to report the incidents and seek help. Following each call, the police arrived at the scene, sometimes too late, and sometimes only to tell the children to disperse or stop making a noise. They also interviewed several pupils and concluded that, although they had admitted to having behaved violently towards the first applicant, they were too young to be held criminally responsible.
This case concerned the State's positive obligations in a situation outside the sphere of criminal law where the competent State authorities were aware of serious harassment directed at a person with physical and mental disabilities. The Court held in particular that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the first applicant, finding that the Croatian authorities had not done anything to end the harassment, despite their knowledge that he had been systematically targeted and that future abuse had been quite likely.

Prohibition of forced labour (Article 4 of the Convention)

Radi and Gherghina v. Romania

5 January 2016 (decision on the admissibility)

This case concerned in particular the conditions of employment of a personal assistant (the first applicant) caring for a severely disabled relative. The first applicant argued that the personal-assistance scheme imposed a disproportionate burden – amounting to forced and compulsory labour – on the relatives of persons with disabilities acting as personal assistants.

The Court declared the first applicant's complaint **inadmissible** as being manifestly ill-founded. It noted in particular that the first applicant had accepted her work willingly, having voluntarily entered into a bilateral contract with the local authority. She was remunerated for her work. The fact that she was not satisfied with the salary level did not equate to a lack of remuneration and she had been able to take the matter to the courts. She had also been free to denounce the contract at any given moment without any consequences for her and she risked no penalties or loss of rights or privileges. Moreover, her studies and professional qualifications opened up a wider range of opportunities for her on the employment market. Neither the uncertainty as to how she would in practice be able to find suitable work nor the manner in which the authorities might find an alternative solution for her nephew's care altered her freedom to terminate the contract. Accordingly, the first applicant had not been required to perform compulsory work.

Right to liberty and security (Article 5 of the Convention)

H.L. v. the United Kingdom (no. 45508/99)

5 October 2004

The applicant is autistic, unable to speak and his level of understanding is limited. In July 1997, while at a day centre, he started inflicting harm on himself. He was subsequently transferred to a hospital's intensive behavioural unit as an "informal patient". The applicant mainly alleged that his treatment as an informal patient in a psychiatric institution amounted to detention and that this detention had been unlawful, and that the procedures available to him for a review of the legality of his detention did not satisfy the requirements of Article 5 (right to liberty and security) of the Convention.

The Court observed in particular that, as a result of the lack of procedural regulation and limits, the hospital's health care professionals had assumed full control of the liberty and treatment of a vulnerable incapacitated individual solely on the basis of their own clinical assessments completed as and when they had considered fit. It found that this absence of procedural safeguards had failed to protect the applicant against arbitrary deprivation of liberty on grounds of necessity and, consequently, to comply with the essential purpose of **Article 5 § 1** (right to liberty and security) of the Convention, in **violation** of that provision. The Court further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, finding that it had not been demonstrated that the applicant had had available to him a procedure to have the lawfulness of his detention reviewed by a court.

Stanev v. Bulgaria (see also above, under "Prohibition of inhuman or degrading treatment" and below, under "Right to a fair trial")

17 January 2012 (Grand Chamber)

In 2000, at the request of two of the applicant's relatives, a court declared him to be partially lacking legal capacity on the ground that he was suffering from schizophrenia. In 2002 the applicant was placed under partial guardianship against his will and admitted to a social care home for people with mental disorders, near a village in a remote mountain location. Under Article 5 (right to liberty and security) of the Convention, the applicant alleged in particular that he had been deprived of his liberty unlawfully and arbitrarily as a result of his placement in an institution against his will and that it had been impossible under Bulgarian law to have the lawfulness of his deprivation of liberty examined or to seek compensation in court.

The Grand Chamber held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, in that the applicant had been illegally detained in the institution in question. It observed in particular that the decision to place the applicant had not been lawful within the meaning of Article 5 § 1 of the Convention since none of the exceptions provided for in that Article were applicable, including Article 5 § 1 (e) – deprivation of liberty of a "person of unsound mind". The period that had elapsed between the expert psychiatric assessment relied on by the authorities and

the applicant's placement in the home, during which time his guardian had not checked whether there had been any change in his condition and had not met or consulted him had furthermore been excessive and a medical opinion issued in 2000 could not be regarded as a reliable reflection of the state of the applicant's mental health at the time of his placement in the home (in 2002). The Grand Chamber further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, concerning the impossibility for the applicant to bring proceedings to have the lawfulness of his detention decided by a court, and a **violation of Article 5 § 5** (right to compensation) concerning the impossibility for him to apply for compensation for his illegal detention and the lack of review by a court of the lawfulness of his detention.

D.D. v. Lithuania (no. 13469/06)

14 February 2012

Suffering from schizophrenia, the applicant was legally incapacitated in 2000. Her adoptive father was subsequently appointed her legal guardian and, at his request, she was interned in June 2004. She was then placed in a care home where she remains to date. The applicant complained in particular about being admitted to this care home without her consent and without possibility of judicial review.

The Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that it had been reliably established that the applicant was suffering from a mental disorder warranting compulsory confinement. Moreover, her confinement appeared to have been necessary since no alternative measures had been appropriate in her case. The Court further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, considering that where a person capable of expressing a view, despite being deprived of legal capacity, was also deprived of liberty at the request of his or her guardian, he or she must be accorded the opportunity of contesting that confinement before a court with separate legal representation.

P.W. v. Austria (no. 10425/19)

21 June 2022

This case concerned the confinement of the applicant in an institution for mentally ill offenders as a preventive measure. She had been charged with resisting arrest after she had struck a police officer who had been called when she had been unable to pay a taxi fare. The applicant submitted in particular that her confinement in an institution for mentally ill offenders had not been proportionate or necessary.

The Court held that there had been **no violation of Article 5 § 1 (e)** (right to liberty and security) of the Convention in respect of the applicant, finding that her deprivation of liberty had been shown to have been necessary in the circumstances of her case. It noted, in particular, that three psychiatric experts, who were all medical specialists in psychiatry and neurology, had given their opinion concerning the applicant, and the applicant had been diagnosed by all three experts with a type of schizophrenic disorder. This was undoubtedly serious enough to be considered as a "true" mental disorder which might render treatment in an institution necessary. The applicant had thus been reliably shown to be of unsound mind. Further, the applicant's mental disorder had been established before a competent authority on the basis of objective medical expertise and had been of a kind or degree warranting compulsory confinement. Moreover, when deciding on her confinement as opposed to outpatient treatment, the domestic courts had taken into account that the applicant had been described as lacking awareness of the fact that she suffered from a disorder, as displaying a negative attitude towards treatment, and as sometimes having refused to take medication in the past.

Right to a fair trial (Article 6 of the Convention)

Mocie v. France

8 April 2003

The applicant had applied to the competent national courts seeking mainly an increase in his military invalidity pension. The first set of proceedings, which had commenced in 1988, was still pending when the European Court of Human Rights delivered its judgment almost 15 years later; a second set of proceedings had lasted for almost eight years.

The Court 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 in question. It noted that the invalidity pension had made up the bulk of the applicant's income. The proceedings, which had, in substance, been aimed at boosting the applicant's pension in view of his deteriorating health, had therefore been of particular importance to him and called for particular diligence on the part of the authorities.

Shtukaturov v. Russia (see also below, under "Right to respect for private and family life")

27 March 2008

The applicant has a history of mental illness and was declared officially disabled in 2003. Following a request lodged by his mother, the Russian courts declared him legally incapable in December 2004. His mother was subsequently appointed his guardian and, in November 2005, she admitted him to a psychiatric hospital. The applicant alleged in particular that he had been deprived of his legal capacity without his knowledge.

The Court held that there had been a **violation of Article 6** (right to a fair trial) of the Convention concerning the proceedings which deprived the applicant of his legal capacity. Having reiterated that, in cases concerning compulsory confinement, a person of unsound mind should be heard either in person or, where necessary, through some form of representation, it observed in particular that the applicant, who appeared to have been a relatively autonomous person despite his illness, had not been given any opportunity to participate in the proceedings concerning his legal capacity. Given the consequences of those proceedings for the applicant's personal autonomy and indeed liberty, his attendance had been indispensable not only to give him the opportunity to present his case, but also to allow the judge to form an opinion on his mental capacity. Therefore, the decision of December 2004, based purely on documentary evidence, had been unreasonable and in breach of the principle of adversarial proceedings enshrined in Article 6 § 1 of the Convention.

Farcaş v. Romania

14 September 2010 (decision on the admissibility)

This case concerned the alleged impossibility for the applicant, who since the age of ten has been suffering from a physical disability (progressive muscular dystrophy), to access certain buildings, in particular those of the courts that have jurisdiction in respect of disputes over his civil rights. The applicant claimed in particular that he had not been able to challenge the termination of his contract before the domestic courts because, since the entrance to the local court building was not specially adapted, he could not enter the court or seek assistance from the bar association.

The Court declared the application **inadmissible** (manifestly ill-founded) under Articles 6 § 1 (right to a fair trial) and 34 (right to individual application), taken alone or in conjunction with Article 14 (prohibition of discrimination) of the Convention, finding that neither the right of access to a court nor the right of individual petition had been hindered by insurmountable obstacles preventing the applicant from bringing proceedings or from lodging an application or communicating with the Court. He could have brought proceedings before the courts or the administrative authorities by post, if necessary through an intermediary. The local post-office was accessible and, in any event, access to it was not indispensible for posting letters. The assistance of a lawyer was not necessary to bring the proceedings in question, and the applicant could always

have contacted the bar association by letter or fax, or could have made a request to the court for free legal assistance. Moreover, no appearance of discriminatory treatment against the applicant had been noted.

Stanev v. Bulgaria (see also above, under "Prohibition of inhuman or degrading treatment" and under "Right to liberty and security")

17 January 2012 (Grand Chamber)

Placed under partial guardianship against his will and admitted to a social care home for people with mental disorders, the applicant complained in particular that he could not apply to a court to seek release from partial guardianship.

The Grand Chamber held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, in that the applicant had been denied access to a court to seek restoration of his legal capacity. While the right of access to the courts was not absolute and restrictions on a person's procedural rights could be justified, even where the person had been only partially deprived of legal capacity, the right to ask a court to review a declaration of incapacity was one of the most important rights for the person concerned. It followed that such persons should in principle enjoy direct access to the courts in this sphere. In addition, the Grand Chamber observed that there was now a trend at European level towards granting legally incapacitated persons direct access to the courts to seek restoration of their capacity. International instruments for the protection of people with mental disorders were likewise attaching growing importance to granting them as much legal autonomy as possible[7]. Article 6 § 1 of the Convention should be interpreted as guaranteeing in principle that anyone who had been declared partially incapable, as was the applicant's case, had direct access to a court to seek restoration of his or her legal capacity. Direct access of that kind was not guaranteed with a sufficient degree of certainty by the relevant Bulgarian legislation.

See also: **Nataliya Mikhaylenko v. Ukraine**, judgment of 30 May 2013.

R.P. and Others v. the United Kingdom (no. 38245/08)

9 October 2012

The first applicant was the mother of a premature baby who suffered from a number of serious medical conditions requiring constant care. The local authority commenced care proceedings owing to doubts over the ability of the first applicant, who had learning disabilities, to provide such care. The first applicant instructed lawyers to represent her in those proceedings, but amid serious concerns that she was unable to understand their advice, a consultant clinical psychologist was asked to carry out an assessment to determine whether or not she had capacity to provide instructions. The psychologist concluded that she would find it very difficult to understand the advice given by her lawyers and would not be able to make informed decisions on the basis of that advice. The court then appointed the Official Solicitor[8] to act as the first applicant's guardian *ad litem* and to provide instructions to her lawyer on her behalf. The first applicant complained that the appointment of the Official Solicitor had violated her right of access to a court.

The Court reiterated that, given the importance of the proceedings to the first applicant – who stood to lose both custody of and access to her only child – and bearing in mind the requirement in the United Nations Convention on the Rights of Persons with Disabilities[9] that State parties provide appropriate accommodation to facilitate disabled persons' effective role in legal proceedings, measures to ensure that her best interests

[7]. The Court refers in this connection to the United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006 and to Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults of 23 February 1999, which recommend that adequate procedural safeguards be put in place to protect legally incapacitated persons to the greatest extent possible, to ensure periodic reviews of their status and to make appropriate remedies available (see paragraph 244 of the judgment).

[8]. In England and Wales the Official Solicitor acts for people who, because they lack mental capacity and cannot properly manage their own affairs, are unable to represent themselves and no other suitable person or agency is able and willing to act.

[9]. See above, footnote no. 2.

were represented were not only appropriate but also necessary. Observing that, in the present case, the appointment of the Official Solicitor to represent the applicant had been proportionate to the legitimate aim pursued and, in particular, that it had not been taken lightly and that procedures were in place that would have afforded the applicant an appropriate and effective means by which to challenge it at any time, the Court found that the very essence of the first applicant's right of access to a court had not been impaired. It therefore held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention.

Blokhin v. Russia[10]

23 March 2016 (Grand Chamber)

This case concerned the detention for 30 days of a 12-year old boy, who was suffering from a mental and neurobehavioural disorder, in a temporary detention centre for juvenile offenders. The applicant maintained in particular that the proceedings against him had been unfair, both because he had allegedly been questioned by the police in the absence of his guardian, a legal counsel or a teacher and because he had not been given the opportunity to cross-examine the two witnesses against him.

The Grand Chamber held that there had been a **violation of Article 6 §§ 1 and 3** (right to a fair trial) of the Convention, finding that the applicant's defence rights had been violated because he had been questioned by the police without legal assistance and the statements of two witnesses whom he was unable to question had served as a basis for his placement in temporary detention. In this judgment the Grand Chamber underlined in particular that it was essential for adequate procedural safeguards to be in place to protect the best interest and well-being of a child when his or her liberty was at stake. Children with disabilities might moreover require additional safeguards to ensure that they were sufficiently protected. In this case the Grand Chamber also held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) and a **violation of Article 5 § 1** (right to liberty and security) of the Convention.

See also: **Hasáliková v. Slovakia**, judgment of 24 June 2021, concerning the trial and conviction of the applicant, who was suffering from an intellectual disability, on charges of "particularly serious" murder, and where the Court found no violation of Article 6 §§ 1 and 3.

Nikolyan v. Armenia

3 October 2019

The applicant in this case had lodged a divorce and eviction claim before the courts against his wife, submitting that their conflictual relationship made co-habitation unbearable. However, the domestic courts never examined his claim as he was declared legally incapable, following proceedings brought by his wife and son, who was living with his family in the same flat. The applicant argued that after he had been declared legally incapable he had no standing before the domestic courts to pursue his divorce and eviction claim or to apply for judicial review of his legal incapacity. He also complained that his being deprived of legal capacity had breached his right to respect for his private life.

The Court found that the applicant's lack of access to court in the divorce and eviction proceedings and to seek restoration of his legal capacity had **breached Article 6 § 1** (right to a fair trial) of the Convention. It observed in particular that the applicant could neither pursue his divorce and eviction claim against his wife nor seek restoration of his legal capacity in court because Armenian law imposed a blanket ban on direct access to the courts for those declared incapable. That situation had been exacerbated by the fact that the authorities had appointed the applicant's son as his legal guardian, despite their having a conflictual relationship. The Court also held that there had been a **violation of Article 8** (right to respect for private life) in this case, finding that the applicant's right to respect for his private life had been restricted more than had been strictly necessary. Indeed, the judgment depriving the applicant of his legal capacity had relied on just one,

[10]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

out dated psychiatric report, without analysing in any detail the degree of his mental disorder or taking into account that he had no history of such illness.

Right to respect for private and family life (Article 8 of the Convention)

Access to the beach

Botta v. Italy
24 February 1998
In 1990 the applicant, physically disabled, went on holiday to the seaside resort of Lido degli Estensi (Italy) with a friend, who was also physically disabled. There he discovered that the bathing establishments were not equipped with the facilities needed to enable disabled people to gain access to the beach and the sea. He complained in particular of impairment of his private life and the development of his personality resulting from the Italian State's failure to take appropriate measures to remedy the omissions imputable to the private bathing establishments of Lido degli Estensi, namely the lack of lavatories and ramps providing access to the sea for the use of disabled people.
The Court held that **Article 8** (right to respect for private life) of the Convention was **not applicable** in the instant case. It found in particular that the right asserted by the applicant, namely the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays, concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life.

Access to public buildings and buildings open to the public

Zehnalova and Zehnal v. the Czech Republic
14 May 2002 (decision on the admissibility)
The applicants, a physically disabled person and her husband, complained in particular that they had suffered discrimination in the enjoyment of their rights on account of the first applicant's physical condition. They submitted that a large number of public buildings and buildings open to the public in their home town were not accessible to them and that the national authorities had failed to remedy the situation.
The Court declared the application **inadmissible**. It found in particular that Article 8 (right to respect for private and family life) of the Convention was not applicable in the instant case and that the complaints relating to an alleged violation of that Article should be rejected as being incompatible *ratione materiae* with the provisions of the Convention. In the Court's view, the first applicant had notably not demonstrated the existence of a special link between the lack of access to the buildings in question and the particular needs of her private life. In view of the large number of buildings complained of, doubts remained as to whether the first applicant needed to use them on a daily basis and whether there was a direct and immediate link between the measures the State was being urged to take and the applicants' private life; the applicants had done nothing to dispel those doubts. The Court further observed that the national authorities had not remained inactive and that the situation in the applicants' home town had improved in the past few years.

See also: **Farcaş v. Romania**, decision on the admissibility of 14 September 2010.

Molka v. Poland
11 April 2006 (decision on the admissibility)
The applicant was a severely handicapped person and could move only in a wheelchair. In 1998 he was driven by his mother to a polling station where he intended to vote in the elections to municipality and district councils and provincial assemblies. The Chairman of the Local Electoral Commission informed the applicant's mother that the

applicant could not cast his vote because it was not allowed to take a ballot paper outside the premises of the polling station and he was not going to carry the applicant inside the station. The applicant returned home without casting his vote. The applicant alleged in particular that he had been deprived of his right to vote on account of his disability.

The Court declared the application **inadmissible**. Concluding that the municipal councils, district councils and regional assemblies did not possess any inherent primary rulemaking powers and did not form part of the legislature of the Republic of Poland, it held that Article 3 (right to free elections) of Protocol No. 1 to the Convention was not applicable to elections to those organs. It followed that this part of the application was incompatible *ratione materiae* with the provisions of the Convention. As further regards Article 8 (right to respect for private and family life) of the Convention, The Court noted that in a number of cases it had held that Article 8 was relevant to complaints about public funding to facilitate the mobility and quality of life of disabled applicants[11]. More generally, it observed that the effective enjoyment of many of the Convention rights by disabled persons may require the adoption of various positive measures by the competent State authorities. In this respect, the Court refers to various texts adopted by the Council of Europe which stress the importance of full participation of people with disabilities in society, in particular in political and public life[12]. The Court did not rule out that, in circumstances such as those in the present case, a sufficient link between the measures sought by an applicant and the latter's private life would exist for Article 8 of the Convention to be engaged. However, it did not find it necessary finally to determine the applicability of Article 8 in the present case since the application was in any event inadmissible on other grounds (the applicant had in particular not shown that he could not have been assisted by other persons in entering the polling station, and the situation complained of concerned one isolated incident as opposed to a series of obstacles, architectural or otherwise, preventing physically disabled applicants from developing their relationships with other people and the outside world). The complaint under Article 8 of the Convention was therefore manifestly ill-founded.

Glaisen v. Switzerland

25 June 2019 (decision on the admissibility)

Paraplegic and using a wheelchair, the applicant complained about his inability to gain access to a cinema in Geneva and that the refusal of access to the cinema on account of his disability had not been characterised as discrimination by the Swiss courts.

The Court declared the application **inadmissible**. It was of the view that Article 8 (right to respect for private life) of the Convention could not be construed as requiring access to a specific cinema to see a given film in a situation where access to other cinemas in the vicinity was possible. As regards the rights of disabled people and in the circumstances of the present case, the Court found pertinent one of the principles of the United Nations Convention on the Rights of Persons with Disabilities[13], namely that of "[f]ull and effective participation and inclusion in society". It nevertheless reiterated that Article 8 of the Convention only applied in such circumstances to exceptional cases where a lack of access to public buildings and buildings open to the public affected the person's life in such a way as to interfere with his or her right to personal

[11]. See *Marzari v. Italy*, decision on the admissibility of 4 May 1999; *Maggiolini v. Italy*, decision on the admissibility of 13 January 2000; *Sentges v. the Netherlands*, decision on the admissibility of 8 July 2003; *Pentiacova and Others v. the Republic of Moldova*, decision on the admissibility of 4 January 2005.

[12]. Recommendation no. R (92) 6 of the Council of Europe Committee of Ministers to Member States of 9 April 1992 on a coherent policy for people with disabilities; Recommendation 1185 (1992) of the Parliamentary Assembly of the Council of Europe to Member States of 7 May 1992 on rehabilitation policies for the disabled; Article 15 ("Right of persons with disabilities to independence, social integration and participation in the life of the community") of the revised European Social Charter, opened for signature on 3 May 1996; Recommendation Rec(2006)5 of the Committee of Ministers of 5 April 2006 on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

[13]. See above, footnote no. 2.

development and right to establish and develop relationships with other human beings and the outside world.

Arnar Helgi Lárusson v. Iceland

31 May 2022

This case concerned the applicant's access to municipal buildings which housed cultural and social institutions in Reykjanesbær as a wheelchair user. He submitted in particular that the lack of accessibility to the two buildings in question had hindered his personal development and right to establish and develop relationships with his community.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 8** (right to respect for private life) of the Convention in the present case, finding that, overall, Reykjanesbær had taken adequate measures to address accessibility to public buildings, within the confines of the available budget and having regard to the cultural heritage protection of the buildings in question, and that the applicant had not been discriminated against. The Court referred in particular to the United Nations Convention on the Rights of Persons with Disabilities[14], which stated that the denial of access of people with disabilities to facilities and services open to the public should be viewed as discrimination. It affirmed that States have a certain discretion in this area. The State had to facilitate individuals with disabilities provided that that did not involve a disproportionate burden. It the instant case, noting the general efforts made to improve access to municipal buildings in Iceland, the Court was not convinced that there had been a discriminatory failure that had prevented the applicant from enjoying the access others had. Reykjanesbær had elected to improve access to sports and educational facilities initially, which the Court found to be a reasonable decision. It noted that there had been improvements made since and there is a commitment to gradual improvement of access for disabled people. It concluded that obliging Iceland to take further immediate measures would have amounted to a "disproportionate or undue burden".

See also:

Neagu v. Romania

29 January 2019 (decision on the admissibility)

Assisted suicide[15] and personal autonomy

Pretty v. the United Kingdom

29 April 2002

This case concerned the authorities' refusal to give undertaking not to prosecute the applicant's husband if he assisted her to commit suicide. The applicant was dying of motor neurone disease, a degenerative disease affecting the muscles for which there is no cure. Given that the final stages of the disease are distressing and undignified, she wished to be able to control how and when she died. Because of her disease, she could not commit suicide alone. The applicant argued in particular that, while the right to self-determination ran like a thread through the Convention as a whole, it was Article 8 (right to respect for private and family life) in which that right was most explicitly recognised and guaranteed. She submitted that it was clear that this right encompassed the right to make decisions about one's body and what happened to it, and that this included the right to choose when and how to die.

Although no previous case had established as such any right to self-determination as being contained in Article 8 (right to respect for private and family life) of the Convention, the Court considered that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees. In the present case, the applicant was suffering from the devastating effects of a degenerative disease which would cause her condition to deteriorate further and increase her physical and mental

14. See above, footnote no. 2.
15. See also the factsheet on "End of life and the ECHR".

suffering. Without in any way negating the principle of sanctity of life, it is under Article 8 that notions of the quality of life take on significance and it could not be excluded that preventing the applicant from exercising her choice to avoid an undignified and distressing end to her life constituted an interference with her right to respect for her private life. Article 8 of the Convention was therefore applicable.
In the present case, the Court held that there had been **no violation of Article 8** of the Convention, finding that the interference in issue may be justified as necessary in a democratic society for the protection of the rights of others. Doubtless the condition of terminally ill individuals will vary. But many will be vulnerable and it is the vulnerability of the class which provided the rationale for the law in issue. It is primarily for States to assess the risk and the likely incidence of abuse if the general prohibition on assisted suicides were relaxed or if exceptions were to be created.

Financial aid to parents to raise a disabled child

La Parola and Others v. Italy

30 November 2000 (decision on the admissibility)
The first two applicants, who were unemployed, were the parents of the third applicant, a minor who had been disabled since birth, on whose behalf they also acted. They alleged in particular that, by refusing their disabled child effective medical and financial assistance, the Italian State was violating his right to life and health.
The Court declared the application **inadmissible** (manifestly ill-founded), pursuant to Article 35 (admissibility criteria) of the Convention. It observed that the applicants were already in receipt of benefit on a permanent basis to assist them to cope with their son's disabilities. The scale of that benefit showed that Italy was already discharging its positive obligations under Article 8 (right to respect for private and family life) of the Convention.

Lack of access to prenatal genetic tests

R.R. v. Poland (no. 27617/04)

26 May 2011
A pregnant mother-of-two – carrying a child thought to be suffering from a severe genetic abnormality – was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Six weeks elapsed between the first ultrasound scan indicating the possibility that the foetus might be deformed and the results of the amniocentesis, too late for her to make an informed decision on whether to continue the pregnancy or to ask for a legal abortion, as the legal time limit had by then expired. Her daughter was subsequently born with abnormal chromosomes. The applicant submitted that bringing up and educating a severely-ill child had been damaging to herself and her other two children. Her husband also left her following the birth of their third child.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention because Polish law did not include any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to take, in the light of their results, an informed decision as to whether or not to seek an abortion. Given that Polish domestic law allowed for abortion in cases of foetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, full and reliable information on the foetus' health be made available to pregnant women. The Court did not agree with the Polish Government that providing access to prenatal genetic tests was in effect providing access to abortion. Women sought access to such tests for many reasons. In addition, States were obliged to organise their health services to ensure that the effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled. In this case the Court also found a **violation of Article 3** (prohibition of inhuman and

degrading treatment) of the Convention as the applicant, who was in a very vulnerable position, had been humiliated and "shabbily" treated, the determination of whether she should have had access to genetic tests, as recommended by doctors, being marred by procrastination, confusion and lack of proper counselling and information.

Lack of legal representation of a disabled child

A. M. M. v. Romania (no. 2151/10)

14 February 2012

This case concerned proceedings to establish paternity of a minor who was born in 2001 outside marriage and who has a number of disabilities. He had been registered in his birth certificate as having a father of unknown identity. Before the European Court, the applicant was first represented by his mother and subsequently, since his mother suffered from a serious disability, by his maternal grandmother.

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 domestic courts did not strike a fair balance between the child's right to have his interests safeguarded in the proceedings and the right of his putative father not to undergo a paternity test or take part in the proceedings. Having to ascertain whether the Romanian State, in its conduct of the proceedings to establish the applicant's paternity, had acted in breach of its positive obligation under Article 8 of the Convention, it observed in particular that the guardianship office, which under the national legislation was responsible for protecting the interests of minors and persons lacking legal capacity, including in judicial proceedings in which they were involved, had not taken part in the proceedings as it was required to do, while neither the applicant nor his mother had been represented by a lawyer at any point in the proceedings. Regard being had to the child's best interests and the rules requiring the guardianship office or a representative of the public prosecutor's office to participate in paternity proceedings, it had been up to the authorities to act on behalf of the applicant in order to compensate for the difficulties facing his mother and avoid his being left without protection.

Legal capacity

Shtukaturov v. Russia[16] (see also above, under "Right to a fair trial")

27 March 2008

The applicant has a history of mental illness and was declared officially disabled in 2003. Following a request lodged by his mother, the Russian courts declared him legally incapable in December 2004. His mother was subsequently appointed his guardian and, in November 2005, she admitted him to a psychiatric hospital. The applicant alleged in particular that he had been deprived of his legal capacity without his knowledge. He further alleged that he had been unlawfully confined to a psychiatric hospital where he had been unable to obtain a review of his status or meet his lawyer and he had received medical treatment against his will.

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 applicant being fully deprived of his legal capacity, finding that the interference with his private life had been disproportionate to the legitimate aim pursued by the Russian Government of protecting the interests and health of others. This interference had resulted in the applicant having become fully dependent on his official guardian in almost all areas of his life for an indefinite period, and it could only be challenged through his guardian, who had opposed all attempts to discontinue the measure. Referring in particular to the principles for the legal protection of incapable adults outlined by the Council of Europe's Committee of Ministers in Recommendation no. R (99) 4 of 23 February 1999, recommending that legislation be more flexible by providing a "tailor-made" response to each individual case, the Court observed that Russian legislation only made a distinction between full

[16]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

capacity and full incapacity of mentally ill persons and made no allowances for borderline situations.

Ivinović v. Croatia

18 September 2014

Since her early childhood the applicant – who was born in 1946 –suffered from cerebral palsy and used a wheelchair. The case concerned proceedings, brought by a social welfare centre, in which she had been partly divested of her legal capacity.

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 Croatian courts, in depriving partially the applicant of her legal capacity, did not follow a procedure which could be said to be in conformity with the guarantees under Article 8.

A.N. v. Lithuania (no. 17280/08)

31 May 2016

The applicant, who had a history of mental illness, complained that he had been deprived of his legal capacity without his participation or knowledge and that, as an incapacitated person, he had then been unable to himself request that his legal capacity be restored.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. Having examined the decision-making process and the reasoning behind the domestic decisions, it concluded that the interference with the applicant's right to respect for his private life had been disproportionate to the legitimate aim pursued. The Court noted in particular that the district court had had no opportunity to examine the applicant in person and had relied in its decision essentially on the testimony of his mother and the psychiatric report. While the Court did not doubt the competence of the medical expert or the seriousness of the applicant's illness, it stressed that the existence of a mental disorder, even a serious one, could not be the sole reason to justify full incapacitation. The Court also held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that the regulatory framework for depriving people of their legal capacity had not provided the necessary safeguards and that the applicant had been deprived of a clear, practical and effective opportunity to have access to court in connection with the incapacitation proceedings, in particular, in respect of his request to restore his legal capacity.

A.-M.V. v. Finland (no. 53251/13)

23 March 2017

This case concerned an intellectually disabled man's complaint about the Finnish courts' refusal to replace his court-appointed mentor, meaning that he has been prevented from deciding where and with whom he would like to live. His court-appointed mentor had previously decided that it was not in his best interests for him to move from his home town in the south of Finland to live in a remote village in the far north with his former foster parents. In the related court proceedings his request to replace the mentor was refused.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the Finnish courts' refusal to replace the mentor, thus preventing him from living in the place of his choice, was justified. The Court considered in particular that the Finnish courts' decision to refuse to make changes in the mentor arrangements, reached following a concrete and careful consideration of the applicant's situation, had essentially taken into account his inability to understand what was at stake if he moved, namely that it would involve a radical change in his living conditions. Such a decision, taken in the context of protecting the applicant's health and well-being, had not therefore been disproportionate. Moreover, the applicant had been involved at all stages of the proceedings and his rights, will and preferences had been taken into account by competent, independent and impartial domestic courts. The Court also held that there had been **no violation of**

Article 2 (freedom of movement) **of Protocol No. 4** to the Convention in the present case.

Nikolyan v. Armenia

3 October 2019

See above, under "Right to a fair trial".

M.K. v. Luxembourg (no. 51746/18)

18 May 2021

The applicant in this case, an elderly and vulnerable person, was placed under protective supervision (*curatelle simple*) by the Luxembourg courts, on the grounds of her extravagant spending, a concept interpreted by reference to the former French Civil Code. She considered that her placement under supervision amounted to an interference with her right to respect for private life.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It firstly noted that the interference with the applicant's private life, namely the decision to place her under protective supervision, had been "in accordance with the law". Moreover, the interference had pursued the legitimate aims of the economic well-being of the country and the protection of the applicant. Lastly, the Court found that the interference, which was ultimately minimal on the scale of possible measures, had been proportionate and appropriate to the applicant's individual circumstances, while being consistent with the legitimate aim of protecting her welfare in the broadest sense. Accordingly, the interference had remained within the margin of appreciation afforded to the judicial authorities in the present case. In this regard, the Court noted, in particular, that the judicial authorities had endeavoured to strike a balance between respect for the applicant's dignity and self-determination and the need to protect her and safeguard her interests in the face of her vulnerability, which they believed they had identified based on their impression that she was unaware of the object and scope of important decisions taken on her behalf.

N. v. Romania (no. 2) (no. 38048/18)

16 November 2021

This case concerned proceedings in which the domestic courts, basing their decisions mainly on medical expert opinions, divested the applicant (who was suffering from paranoid schizophrenia as confirmed by a psychiatric commission) of his legal capacity and placed him under the full authority of a legal guardian. It also concerned the manner in which the domestic authorities subsequently changed his legal guardian.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention in respect of the applicant being divested of his legal capacity. It also held that there had been a **violation of Article 8** in respect of the change of his legal guardian[17]. The Court found in particular that the legal provisions meant that the applicant's actual needs and wishes could not be factored into the decision making process and the measure divesting him of his legal capacity could not be tailored to suit his situation. As a result, his rights under Article 8 had been restricted by law more than was strictly necessary. In addition, the Court considered that the decision-making process for the applicant's change of legal guardian had not been accompanied by adequate safeguards. The applicant had been excluded from the proceedings for the sole reason that he had been placed under guardianship. No consideration had been given to his capacity to understand the matter and express his preferences. Moreover, the reason for the change was insufficient and the decision was disproportionate. Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court was of the view that the shortcomings identified in this judgment were liable to give rise to further justified applications in the future. For this reason, it found it crucial that the Romanian State adopt the appropriate general measures with a view to bringing its

[17]. This is the second judgment by the Court finding a violation of the applicant's rights. In its judgment N. v. Romania (no. 59152/08) of 28 November 2017, the Court held that N. should be released without delay and recommended general measures for safeguarding the rights of individuals detained in psychiatric hospitals.

legislation and practice into line with the the international standards, including the Court's case law, in the matter.

Medical negligence

Spyra and Kranczkowski v. Poland

25 September 2012

The applicants, a mother and son – who now has a serious disability, requiring permanent assistance, continuous re-adaptation and a special diet –, alleged that the second applicant's disability had been caused by a lack of appropriate medical treatment when the first applicant had given birth in hospital, in particular because the nursing staff had failed to meet the standards for the care of new-born babies. The applicants also complained about the lack of effectiveness of the procedures undertaken by the Polish authorities to elucidate the origin of the handicap.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. Noting in particular that according to the experts' reports the treatment provided to the applicants had been adequate and in line with the rules of medical practice, it found that the State's responsibility was not engaged under the substantive head of Article 8. As to the procedural head of that Article, the Court first noted that the applicants had made good use of the remedies available to them in order to shed light on the origins of the son's disability. The applicants had also had their case examined in civil proceedings at three levels of jurisdiction and by the disciplinary board of the medical association, in the context of procedures that could not be criticised and that had ruled out any connection between the medical staff's actions and the applicant's disability, having shed light on the origin of the problem. Therefore, even though the conducting of the criminal investigation might have raised issues under Article 8, the Polish legal system, taken as a whole, had provided the applicants with remedies by which to have their case examined adequately.

See also recently:

Vilela and Others v. Portugal

23 February 2021

Medical treatment and lack of consent

Glass v. the United Kingdom

9 March 2004

This case concerned the administration of drugs to a severely disabled child (the second applicant) despite his mother's (the first applicant) opposition. Believing that the child had entered a terminal phase and, with a view to relieving his pain, the doctors had administered diamorphine to him against the mother's wishes. Moreover, a "do not resuscitate" notice had been added to the child's file without consulting the mother. During this time, disputes broke out in the hospital involving family members and the doctors. The child survived the crisis and was able to be discharged home. The applicants argued in particular that United Kingdom law and practice had failed to guarantee the respect for the child's physical and moral integrity.

The Court held that the decision of the authorities to override the mother's objections to the proposed treatment in the absence of authorisation by a court had resulted in a **breach of Article 8** (right to respect for private and family life) of the Convention. It considered that the decision to impose treatment on the second applicant in defiance of his mother's objections had given rise to an interference with his right to respect for his private life, and in particular his right to physical integrity. This interference was in accordance with the law and the action taken by the hospital staff had pursued a legitimate aim. As to the necessity of the interference at issue, it had however not been explained to the Court's satisfaction why the hospital had not sought the intervention of the courts at the initial stages to overcome the deadlock with the mother. The onus to

take such an initiative and defuse the situation in anticipation of a further emergency was on the hospital. Instead, the doctors used the limited time available to try to impose their views on the mother.

Rape of a mentally disabled person

X and Y v. the Netherlands (no. 8978/80)

26 March 1985

A girl with a mental handicap (the second applicant) was raped, in the home for children with mental disabilities where she lived, the day after her sixteenth birthday (which was the age of consent for sexual intercourse in the Netherlands) by a relative of the person in charge. She was traumatised by the experience but deemed unfit to sign an official complaint given her low mental age. Her father (the first applicant) signed in her place, but proceedings were not brought against the perpetrator because the girl had to make the complaint herself. The domestic courts recognised that there was a gap in the law.

The Court recalled that although the object of Article 8 (right to respect for private and family life) of the Convention is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. In the present case, the Court found that the protection afforded by the civil law in the case of wrongdoing of the kind inflicted on the second applicant was insufficient. This was a case where fundamental values and essential aspects of private life were at stake. Effective deterrence was indispensable in this area and it could be achieved only by criminal-law provisions. Observing that the Dutch Criminal Code had not provided her with practical and effective protection, the Court therefore concluded, taking account of the nature of the wrongdoing in question, that the second applicant had been the victim of a **violation of Article 8** of the Convention.

Unfitness for military service and requirement to pay a military service exemption tax

Ryser v. Switzerland

12 January 2021

This case concerned the applicant's liability to the military service exemption tax even though he had been declared unfit for service on health grounds. The applicant complained of discrimination on the grounds of his state of health.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 8** (right to respect for private and family life) of the Convention, finding that the applicant had suffered discriminatory treatment on the grounds of his state of health. It noted in that regard that the distinction between persons who were unfit for military service and were exempted from the tax in issue and persons who were unfit for service and were nonetheless required to pay the tax was unreasonable. The Court also noted that the applicant had been placed at a considerable disadvantage as compared with conscientious objectors who were fit for service but could conduct alternative civilian service and thereby avoid paying the tax in question. It also pointed out that the relatively low amount of the tax was not decisive per se. It further observed that the applicant had been a student at the relevant time.

Withdrawal of parental authority, placement of children, and disabled parents' access rights to their children

Kutzner v. Germany

26 February 2002

The applicants, husband and wife, and their two daughters had lived since the children's birth with the first applicant's parents and an unmarried brother in an old farmhouse.

The applicants had attended a special school for people with learning difficulties. Owing to their late physical and, more particularly, mental development, the girls were examined on a number of occasions by doctors. On the advice of one of the doctors and on application by the applicants, the girls had received educational assistance and support from a very early age. The applicants complained that the withdrawal of their parental authority in respect of their daughters and the placement of the latter in foster families, mainly on the grounds that they did not have the intellectual capacity to bring up their children, had breached their right to respect for their family life.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It recognised that the authorities may have had legitimate concerns about the late development of the children noted by the various social services departments concerned and the psychologists. However, it found that both the order for placement in itself and, above all, its implementation had been unsatisfactory. In the instant case, the Court considered that although the reasons relied on by the administrative and judicial authorities had been relevant, they had not been sufficient to justify such a serious interference in the applicants' family life. Notwithstanding the domestic authorities' margin of appreciation, the interference had therefore not been proportionate to the legitimate aims pursued.

Saviny v. Ukraine

18 December 2008

This case concerned the placement of children in public care on ground that their parents, who have both been blind since childhood, had failed to provide them with adequate care and housing. The domestic authorities based their decision on a finding that the applicants' lack of financial means and personal qualities endangered their children's life, health and moral upbringing. Notably they were unable to provide them with proper nutrition, clothing, hygiene and health care or to ensure that they adapt in a social and educational context. The applicants had appealed against the decision unsuccessfully.
The Court held that there had been a **violation of Article 8** (right to respect of private and family life) of the Convention, doubting the adequacy of the evidence on which the authorities had based their finding that the children's living conditions had in fact been dangerous to their life and health. The judicial authorities had only examined those difficulties which could have been overcome by targeted financial and social assistance and effective counselling and had not apparently analysed in any depth the extent to which the applicants' irremediable incapacity to provide requisite care had been responsible for the inadequacies of their children's upbringing. Indeed, as regards parental irresponsibility, no independent evidence (such as an assessment by a psychologist) had been sought to evaluate the applicants' emotional or mental maturity or motivation in resolving their household difficulties. Nor had the courts examined the applicants' attempts to improve their situation. Furthermore, the Court noted that at no stage of the proceedings had the children been heard by the judges. Moreover, not only had the children been separated from their family of origin, they had also been placed in different institutions.

A.K. and L. v. Croatia (no. 37956/11)

8 January 2013

The first applicant is the mother of the second applicant, who was born in 2008. Soon after his birth, the second applicant was placed, with his mother's consent, in a foster family in another town, on the grounds that his mother had no income and lived in a dilapidated property without heating. The first applicant complained in particular that she had not been represented in subsequent court proceedings which had resulted in a decision divesting her of her parental rights, on the ground that she had a mild mental disability, and that her son had been put up for adoption without her knowledge, consent or participation in the adoption proceedings.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. Observing in particular that, despite the legal

requirement and the authorities' findings that the first applicant suffered from a mild mental disability, she had not been represented by a lawyer in the proceedings divesting her of parental rights, and that, by not informing her about the adoption proceedings the national authorities had deprived her of the opportunity to seek restoration of her parental rights before the ties between her and her son had been finally severed by his adoption, the Court found that the first applicant had thus been prevented from enjoying her right guaranteed by domestic law and had not been sufficiently involved in the decision-making process.

Dmitriy Ryabov v. Russia[18]

1 August 2013

The applicant complained about only having restricted access to his son following his placement in his maternal grandparents' care soon after being born as he and his wife (now deceased) were both suffering from schizophrenia. He alleged in particular that the court decisions to restrict his parental rights on the ground that he was a danger to his son had not been convincing and that any contact that had been granted to him had been illusory as it had to take place with the consent of his son's guardian, the maternal grandmother, who was hostile to him having any contact with his son.

In the circumstances of the present case, the Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It was not disputed that the restriction of the applicant's parental rights had amounted to an interference with his right to respect for his family life. This interference had however been in accordance with the law, pursued the legitimate aim of protecting the health and morals and rights and freedoms of the child, and had been necessary in a democratic society, within the meaning of Article 8 of the Convention.

Kocherov and Sergeyeva v. Russia[19]

29 March 2016

The first applicant, who had a mild intellectual disability, lived in a care home between 1983 and 2012. In 2007 he and another resident of the care home had a daughter, the second applicant. A week after her birth the child was placed in public care, where, with the first applicant's consent, she remained for several years. In 2012 the first applicant was discharged from the care home and expressed his intention to take the second applicant into his care. However, the domestic courts restricted his parental authority over the child. The second applicant thus remained in public care although the first applicant was allowed to maintain regular contact with her. In 2013 he managed to have the restriction of his parental authority lifted and the second applicant went to live with him. The applicants complained that, as a result of the restriction of the first applicant's parental authority, their reunification had been postponed for a year.

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 reasons relied on by the Russian courts to restrict the first applicant's parental authority over the second applicant had been insufficient to justify the interference with the applicants' family life, which had therefore been disproportionate to the legitimate aim pursued. In particular, as to the first applicant's mental disability, the Court noted that it appeared from a report submitted to the domestic authorities that his state of health allowed him fully to exercise his parental authority. However, the domestic court had disregarded that evidence. Further, although the question whether the mother posed a danger to the child was directly relevant when it came to striking a balance between the child's interests and those of her father, the domestic courts had based their fears for the second applicant's safety on a mere reference to the fact that the mother had no legal capacity, without demonstrating that her behaviour had or might put the second applicant at risk. Their reference to the mother's legal status was thus not a sufficient ground for restricting the first applicant's parental authority.

[18]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
[19]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

Kacper Nowakowski v. Poland

10 January 2017

This case concerned the contact rights of a deaf and mute father with his son, who also has a hearing impairment. The applicant complained in particular about the dismissal of his request to extend contact with his son.

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, even though the parents' strained relationship had admittedly not made the Polish courts' task an easy one when deciding on contact rights, they should nonetheless have taken measures to reconcile the parties' conflicting interests, keeping in mind that the child's interests were paramount. The courts had notably not properly examined the possibilities which existed under domestic legislation of facilitating the broadening of contact between the applicant and his son. Moreover, they had failed to envisage measures more adapted to the applicant's disability, such as obtaining expert evidence from specialists familiar with the problems faced by those with hearing impairments. Indeed, the courts had relied on expert reports which had focused on the communication barrier between father and son instead of reflecting on the possible means of overcoming it.

Cînța v. Romania

18 February 2020

This case concerned court-ordered restrictions on the applicant's contact with his daughter. The applicant complained about the limited time allowed for contact with his daughter and the conditions placed on it. He also submitted that he had been discriminated against on the grounds of his health, notably his mental illness, in the setting of the contact rights.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention and a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 8**. It found in particular that the domestic decisions to restrict the applicant's contact had been based partly on the fact that he had a mental illness. The courts had ordered that he only have contact twice a week in the presence of his estranged wife, with whom the child was to live. However, the courts had failed to carry out any meaningful assessment to explain why his mental health should be a reason to curtail his contact rights even though there had been no evidence to show he could not take care of his daughter. Nor had the courts properly examined allegations that the child would be unsafe in his care; shown in what way they had taken account of the child's best interests; or considered alternative contact arrangements. The Court further considered that the fact that he suffered from a mental illness could not in itself justify treating him differently from other parents seeking contact with their children. His contacts rights had been restricted after the courts had made a distinction based on his mental health for which they had not provided relevant and sufficient reasons. In the present case, the applicant had made out a *prima facie* case of discrimination, which the respondent State had not been able to rebut.

See also, among others:

S.S. v. Slovenie (no. 40938/16)

30 October 2018

Workplace facilities

Bayrakcı v. Turkey

5 February 2016 (decision on the admissibility)

Following a road accident, the applicant, who was employed as a tax official, had one leg amputated and was registered as 60% disabled. He complained that his management had not complied with the legislation on disabilities, in particular by not having suitable toilet facilities installed at his workplace.

The Court rejected the applicant's complaint for failure to exhaust domestic remedies, finding that he had not brought an action in the Turkish courts against the State authorities for failure to comply with the statutory provisions on disabilities, and declared his application **inadmissible**. The lack of suitable toilet facilities at his workplace could admittedly have had real and serious consequences for the applicant's daily life, such as to arouse feelings of humiliation and distress that could impinge on the quality of his private life. The Court recalled, however, that before bringing their complaints before it, applicants were required to exhaust domestic remedies in order to afford States the opportunity to provide redress for violations of the Convention. In the present case, the applicant had simply brought an action for damages against his manager without raising his Convention grievances in the Turkish administrative courts and he could not therefore be said to have done everything that could reasonably have been expected of him to exhaust the remedies available in Turkey.

Freedom of expression (Article 10 of the Convention)

De Pracomtal and Fondation Jérôme Lejeune c. France

7 July 2022 (Committee – decision)

As a follow-up to World Down Syndrome Day the applicant association arranged for an awareness-raising video to be broadcast free of charge by three television channels. The video showed children and young adults with Down Syndrome, including the first applicant, evidently enjoying life. In response to a number of complaints the national broadcasting authority (*Conseil supérieur de l'audiovisuel* – "the CSA") wrote to the television channels concerned informing them that the video could not be broadcast during advertising breaks. An appeal against that decision was dismissed by the *Conseil d'État*. The applicants complained about the decision taken by the CSA, alleging a violation of their freedom of expression.

The Court declared the applications **inadmissible**, finding that they were incompatible *ratione personae* within the meaning of Article 34 (individual applications) of the Convention. It noted in particular that, as regards the decision of the CSA, which had by their nature had no effect on the broadcasting of the video at issue, the applicants could not claim to be victims within the meaning of Article 34 of the Convention.

Right to marry (Article 12 of the Convention)

Lashin v. Russia[20]

22 January 2013

The applicant suffers from schizophrenia and has been legally incapacitated since 2000. In 2002 he and his fiancée applied to the competent authority in order to register their marriage. However, they were unable to do so as the Russian Family Code prohibits persons legally incapacitated due to a mental disorder from getting married.

Having already found a **violation of Article 8** (right to respect for private and family life) of the Convention on account of the maintenance of the applicant's status as an incapacitated person and his inability to have it reviewed in 2002 and 2003, the Court considered that there was **no need for a separate examination under Article 12** (right to marry) of the Convention. The applicant's inability to marry was one of many legal consequences of his incapacity status.

Delecolle v. France

25 October 2018

This case concerned the right of a person placed under protective supervision to marry without the authorisation of his supervisor or of the guardianship judge.

The Court held that there had been **no violation of Article 12** (right to marry) of the Convention. It found in particular that any limitations on the right to marry resulting

[20]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

from domestic legislation of Contracting States could not restrict this right in a manner which would impair its very essence. It took, however, the view that the limitation on the applicant's right to get married had not been arbitrary or disproportionate.

Prohibition of discrimination (Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention)

Glor v. Switzerland

30 April 2009

The applicant, who suffered from diabetes and was declared unfit for military service by a military doctor, was nevertheless required to pay a tax for not doing his military service. He considered this as discrimination and argued that he was quite willing to do military service but was prevented from doing it, yet nevertheless obliged to pay a tax by the competent authorities, who considered his disability a minor one. The applicant alleged that the disability threshold (40% physical or mental disability) used as the criterion for exemption from the impugned tax had no legal basis.

Referring in particular to Recommendation 1592 (2003) towards full social inclusion of people with disabilities, adopted by the Parliamentary Assembly of the Council of Europe on 29 January 2003, and to the United Nations Convention on the Rights of Persons with Disabilities[21], the Court considered that there was a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment. It held that in the present case 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, finding that the domestic authorities had not struck a fair balance between the protection of the interests of the community and respect for the applicant's rights and freedoms. In the light of the aim and effects of the impugned tax, the objective justification for the distinction made by the domestic authorities, particularly between persons who were unfit for service and not liable to the tax in question and persons who were unfit for service but nonetheless obliged to pay it, did not seem reasonable in relation to the principles which prevailed in democratic societies.

Çam v. Turkey

23 February 2016

This case concerned a refusal to enrol the applicant as a student at the Turkish National Music Academy because she was blind. The applicant complained of a violation of her right to education, submitting that the State had failed to provide persons with disabilities with the same opportunities as anyone else. She also stated that she had been discriminated against on account of her blindness.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to education) **of Protocol No. 1**. It found in particular that the applicant's exclusion had been based on the music academy's rules of procedure. Although the applicant was completely qualified for admission to the academy, the refusal to enrol her had been based solely on the fact that she was blind. Furthermore, the Court considered that the discrimination on grounds of disability also extended to the refusal to make reasonable accommodation to facilitate access by persons with disabilities to education. Such accommodation was vital for the exercise of human rights. By refusing to enrol the applicant without considering the possibility of accommodating her disability, the national authorities had prevented her, without any objective and reasonable justification, from benefiting from a musical education, in breach of the Convention.

[21]. See above, footnote no. 2.

Guberina v. Croatia

22 March 2016

This case concerned the complaint by the father of a severely handicapped child about the tax authorities' failure to take account of the needs of his child when determining his eligibility for tax exemption on the purchase of property adapted to his child's needs.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1** (protection of property) **of Protocol No. 1**, finding that the Croatian State had failed to provide objective and reasonable justification for their lack of consideration of the inequality pertinent to the applicant's situation. The Court noted in particular that, in excluding the applicant from tax exemption, the tax authorities and the domestic courts had not given any consideration to the specific needs of the applicant's family related to the child's disability. They had thus failed to recognise the factual specificity of the applicant's situation with regard to the question of the basic infrastructure and technical accommodation required to meet the family's housing needs. Moreover, by ratifying the United Nations Convention on the Rights of Persons with Disabilities[22], Croatia was under an obligation to take into consideration relevant principles, such as reasonable accommodation, accessibility and non-discrimination against persons with disabilities with regard to their full and equal participation in all aspects of social life. However, the domestic authorities had disregarded those national and international obligations. Therefore, the manner in which the domestic legislation had been applied in practice had failed to sufficiently accommodate the requirements of the specific aspects of the applicant's case.

Belli and Arquier-Martinez v. Switzerland

11 December 2018

This case concerned the decision taken in respect of the first applicant, who was deaf and incapable of discernment owing to a severe disability affecting her since birth, discontinuing her entitlement to a special invalidity benefit and a disability allowance on the grounds that she was no longer resident in Switzerland[23]. Together with her mother and guardian since 2009 (the second applicant), she complained that they had been discriminated against in this respect.

The Court held that there had been **no violation of Article 14** (prohibtion of discrimination) of the Convention **taken together with Article 8** (right to respect for private and family life), as it did not consider it contrary to the Convention for the payment of non-contributory benefits to be made subject to a condition of habitual residence in Switzerland. It found in particuliar that the first applicant's interest in obtaining the benefits in question under the same conditions as persons who had contributed to the scheme should yield to the public interest of the State in guaranteeing the principle of solidarity in social-insurance schemes, which was especially important with regard to non-contributory benefits; this was so even though the reason why the applicant had not contributed to the scheme was entirely beyond her control or sphere of influence.

Negovanović and Others v. Serbia

25 January 2022

This case concerned alleged discrimination by the Serbian authorities against blind chess players, its own nationals, who had won medals at major international events, notably in the Blind Chess Olympiad. Unlike other Serbian athletes with disabilities and sighted chess players who had attained the same or similar sporting results, the applicants had been denied certain financial benefits and awards for their achievements as well as

[22]. See above, footnote no. 2.

[23]. The domestic legislation required persons in receipt of non-contributory benefits, like the applicant, to be habitually resident in Switzerland, whereas persons in receipt of an ordinary invalidity-insurance benefit who had contributed to the scheme could take up residence abroad.

formal recognition through an honorary diploma which, they alleged, had had a negative effect on their reputations.
The Court held that there had been a **violation of Article 1** (general prohibition of discrimination) **of Protocol No. 12** to the Convention, finding that there had been no objective and reasonable justification for treating the applicants differently on the basis of their disability. It noted, in particular, that while it was legitimate for the Serbian authorities to focus on the highest sporting achievements and the most important competitions in its award system, they had not shown why the high accolades won by the applicants, as blind chess players, were less significant than similar medals won by sighted chess players. The prestige of a game or a sport should not depend on whether it is practised by persons with or without a disability. Indeed, the Court pointed out that the Sporting Achievements Recognition and Rewards Decree itself, introduced by Serbia in 2016, which provided for a national recognition and rewards system consisting of an honorary diploma, a lifetime monthly cash benefit, and a one-off cash payment, had placed the Olympics and the Paralympics on an equal footing and thus regarded the achievements of disabled sportsmen and sportswomen as meriting equal recognition. Moreover, the distinction between Olympic and non-Olympic sports which had been used as an argument by the Serbian Government was of no relevance since the Chess Olympiad for sighted chess players, which was among the listed competitions in the decree, was neither part of the Olympic nor the Paralympic Games.

See also, recently:

Berisha v. Switzerland
24 January 2023 (decision on the admissibility)

Protection of property (Article 1 of Protocol No. 1 to the Convention)

Koua Poirrez v. France
30 September 2003
The applicant, an Ivory Coast national, who was adopted by a French national, has suffered from a severe physical disability since the age of seven. The French authorities issued him with a card certifying that he was 80% disabled. In 1990 the Family Allowances Office refused to award him a disabled adult's allowance (D.A.A.) on the ground that he was not a French national and there was no reciprocal agreement between France and the Ivory Coast in respect of this benefit. The applicant unsuccessfully challenged this decision in the French courts.
The Court considered that a non-contributory benefit such as the D.A.A. could give rise to a pecuniary right for the purposes of Article 1 (protection of property) of Protocol No. 1 to the Convention. It held that in the present case there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1 of Protocol No. 1**, finding that there was no objective and reasonable justification for the difference in treatment between French nationals or nationals of countries that had signed a reciprocal agreement and other foreigners. Even though – at the material time – France was not bound by a reciprocal agreement with the Ivory Coast, it had undertaken, in ratifying the Convention, to secure to everyone within its jurisdiction – which the applicant unquestionably was – the rights and freedoms defined in the Convention.

Kjartan Ásmundsson v. Iceland
12 October 2004
The applicant was seriously injured on board a trawler and had to give up his work as a seaman. His disability was assessed at 100%, which made him eligible for a disability pension from the Seamen's Pension Fund on the ground that he was unable to carry out the work he had performed before his accident. In 1992, on account of the Fund's

financial difficulties, changes were made to the way disability was assessed: the defining factor was no longer an inability to perform the same work, but an inability to perform any work. The applicant's disability was reassessed at 25%. As this rate was below the threshold of 35%, the Fund stopped paying him a pension.
The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. It observed that the legitimate concern to resolve the Fund's financial difficulties seemed hard to reconcile with the fact that the vast majority of the 689 disability pensioners had continued to receive disability benefits at the same level as before the adoption of the new rules, while 54 persons, including the applicant, had to bear the total loss of their pension entitlements. This was an excessive and disproportionate burden, which could not be justified by the legitimate community interests relied on by the authorities. It would have been otherwise had the applicant been obliged to endure a reasonable and commensurate reduction rather than the total deprivation of his entitlements.

Draon v. France and Maurice v. France

6 October 2005 (Grand Chamber)
The applicants are parents of children with severe congenital disabilities which, due to medical errors, were not discovered during prenatal medical examinations. They brought proceedings against the hospital authorities concerned, but as a result of a new law, which came into force while their actions were pending, they were awarded compensation only for non-pecuniary damage and not for the actual costs incurred as a result of their children's disability.
The Grand Chamber held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**, finding that the new law had abolished, with retrospective effect, a substantial portion of the claim to recovery of damages which the applicants could legitimately have expected to be realised, and they had not received appropriate compensation since then.

Kátai v. Hungary

18 March 2014 (decision on the admissibility)
The applicant complained in particular that the disability pension granted to him following a final judgment had been removed by an Act of 2011. He also alleged that, owing to the new legislation, he had lost his acquired pension rights. Finally, he complained that the 2011 reform had caused him to bear an excessive burden since he had lost a number of benefits related to his previous status as a pensioner.
The Court declared the application **inadmissible** (incompatible *ratione personae*), pursuant to Article 35 (admissibility criteria) of the Convention. It accepted that the applicant, as a former beneficiary of a disability pension, had been concerned by the 2011 Act. However, the legislation in question had not yet been applied and the applicant was still receiving a monthly amount which was equal to his former pension. Moreover, pending this reassessment, he had still received his entitlements. Therefore, the Court concluded that the applicant had not suffered any significant material prejudice on account of the new legislation.

Guberina v. Croatia

22 March 2016
See above, under "Prohibition of discrimination".

Béláné Nagy v. Hungary

13 December 2016 (Grand Chamber)
This case concerned the applicant's complaint of having lost her entitlement to a disability pension due to newly introduced eligibility criteria. The applicant complained in particular that she had lost her livelihood, previously secured by the disability pension – despite the fact that her health had remained as poor as at the time that she was first diagnosed with her disability.

The Grand Chamber held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1**. It found in particular that Article 1 of Protocol 1 had applied to the applicant's case, because she had had a legitimate expectation that she would receive the pension, if she had satisfied the criteria set out in the old legislation. The refusal to grant her the benefit had been in accordance with the law (as it arose from the new legislation), and had been in pursuit of a legitimate purpose (saving public funds). However, it had not been proportionate: in particular, because it had involved the complete deprivation of a vulnerable person's only significant source of income, resulting from retrospectively effective legislation that had contained no transitional arrangements applicable to the applicant's case.

Popović and Others v. Serbia

30 June 2020

The applicants were all paraplegics and were reliant on wheelchairs. The case concerned their complaint that the domestic legislation on disability benefits for paraplegics was discriminatory. They alleged in particular that paraplegic civilians such as themselves were awarded fewer benefits than war veterans with the same disability.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 1 of Protocol No. 1** (protection of property). It found in particular that the choice made by the Serbian legislator to vary the provision of benefits for paraplegics, depending on whether they were civilians or war veterans, had not been without reasonable foundation. That choice had been based on relevant and sufficient grounds, namely the distinct ways in which the two groups had sustained their injuries. Disabled war veterans were injured in the line of duty, involving greater risk and more difficulties to obtain redress, while disabled civilians, such as the applicants, had been injured in accidents and had access to other benefits not necessarily available to all war veterans.

N.M. and Others v. France (no. 66328/14)

3 February 2022

This case concerned the dismissal, by the administrative courts, of the arguments submitted by parents in their claim for compensation for the special costs arising from their child's disability. This disability had not been detected at the time of the prenatal diagnosis. Legislative provisions arising from the Law of 4 March 2002, and codified under Article L. 114-5 of the Social Action and Family Code (CASF) – which prohibited the inclusion of these costs when calculating the prejudice for which compensation was payable, and which had entered into force after the child's birth but prior to the parents' legal action for compensation – were applied to the dispute. The applicants complained about the retrospective application of the law

The Court held that there had been a violation of **Article 1** (protection of property) **of Protocol No. 1** to the Convention in respect of the applicant parents. It noted, firstly, that the applicants could legitimately have expected to be able to obtain compensation for the prejudice they had sustained, corresponding to the costs of caring for their disabled child, as soon as that damage occurred, namely from the child's birth, and that they had therefore had a "possession" within the meaning of the first sentence of Article 1 of Protocol No. 1. It then noted that, under the Constitutional Council's decision no. 2010-2 QPC, all of the transitional provisions requiring the retrospective application of Article L. 114-5 of the CASF had been repealed. Although the abolition of these transitional provisions immediately left scope for application of the rules of ordinary law governing application of the law over time, the Court found a divergence between the interpretation adopted by the Conseil d'État and that adopted by the Court of Cassation regarding the possibility of applying Article L. 114-5 of the CASF to events which arose prior to the entry into force of the Law of 4 March 2002 (that is, 7 March 2002). Although in its judgment of 15 December 2011, the Court of Cassation had ruled out the application of Article L. 114-5 of the CASF to events which had occurred prior to 7 March 2002, irrespective of the date on which the action for compensation was brought, the Conseil d'Etat had settled the dispute in line with its decision of 13 May 2011 which, for

its part, had maintained a certain retrospective scope to this provision. The Court concluded that it was unable to find that the legality of the interference resulting from the Conseil d'État's application of Article L. 114-5 of the CASF in its decision of 31 March 2014 could be derived from the settled and stabilised case-law of the domestic courts. In the Court's view, the retrospective interference with the applicants' possessions could not therefore be regarded as having been "provided for by law" within the meaning of Article 1 of Protocol No. 1.

Right to education (Article 2 of Protocol No. 1)

Gherghina v. Romania

18 September 2015 (Grand Chamber – decision on the admissibility)

This case concerned a disabled student's complaint that he was not able to continue his university studies owing to a lack of suitable facilities on the premises of the universities where he attended courses. The applicant complained in particular that he had been discriminated against on the basis of his disability. He also alleged that, because of the lack of access to the university and other public buildings, he had been confined to his home and unable to build relationships with the outside world. He relied in particular on Article 2 (right to education) of Protocol No. 1.

The Grand Chamber, reiterating that those who wish to complain to the European Court against a State have to first use remedies provided for by the national legal system, found that the applicant's reasons for not pursuing certain legal remedies with regard to his complaints had not been convincing. Notably, he could have: applied to the civil courts for an order requiring the universities concerned to install an access ramp and other facilities to accommodate his needs; brought an action in tort to make good the damage he had sustained; and/or challenged before the administrative courts the decisions to exclude him from university as he had not accumulated sufficient credits to continue with his studies. It had been up to the applicant to dispel any doubts he had had about the prospects of success of a particular remedy by applying to the domestic courts, thus creating an opportunity for the development of national case-law in the area of protection of disabled people's rights. The lack of examples in national practice of the use of, for example, a court order was hardly surprising as the trend towards increased protection of disabled persons' rights is a relatively recent branch of domestic law. The applicant had thus failed to provide the national courts with the opportunity to prevent or put right possible Convention violations in his case through their own legal system and the Grand Chamber therefore rejected his application as **inadmissible** for non-exhaustion of domestic remedies.

Çam v. Turkey

23 February 2016

See above, under "Prohibition of discrimination".

Sanlısoy v. Turkey

8 November 2016 (decision on the admissibility)

This case concerned the refusal to enrol a seven-year-old boy, suffering from autism, in a private school. The applicant complained in particular of a discriminatory breach of his right to education.

The Court declared the applicant's complaints **inadmissible** as being manifestly ill-founded, finding that there had not been a systemic denial of the applicant's right to education on account of his autism or a failure by the State to fulfil its obligations under Article 2 of Protocol No. 1 taken together with Article 14 of the Convention.

See also: **Kalkanlı v. Turkey**, decision on the admissibility of 13 January 2009.

Enver Şahin v. Turkey

30 January 2018

This case concerned the impossibility for a paraplegic person to gain access to the university buildings for the purpose of his studies owing to the lack of suitable facilities. The applicant complained in particular that he had been obliged to give up his studies owing to the refusal of his request for the facilities to be adapted.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 2** (right to education) **of Protocol No. 1**, finding that the Turkish Government had not demonstrated that the national authorities, and in particular the university and judicial authorities, had reacted with the requisite diligence in order to ensure that the applicant could continue to enjoy his right to education on an equal footing with other students. The Court noted in particular that a proposal by the rector's office to provide a person to assist him had not been made following an assessment of the applicant's actual needs and an honest appraisal of the potential impact on his safety, dignity and independence. Furthermore, the domestic courts had not ascertained whether a fair balance had been struck between the competing interests of the applicant (his educational needs) and of society as a whole. They had alsoomitted to look for possible solutions that would have enabled the applicant to resume his studies under conditions as close as possible to those provided to students with no disability, without imposing an undue or disproportionate burden on the administration.

Dupin v. France

18 December 2018 (decision on the admissibility)

The applicant, the mother of an autistic child, complained in particular that the domestic authorities had refused to allow her child to attend a mainstream school. She also argued that the State had failed to fulfil its positive obligation to take the necessary measures for disabled children, and that the lack of education in itself constituted discrimination. Lastly, she complained that the specific resources earmarked by the State for autistic children were insufficient.

The Court held that the complaint that there had been a violation of the right to education of the applicant's child was **inadmissible** as manifestly ill-founded, finding that the refusal to admit the child to a mainstream school did not constitute a failure by the State to fulfil its obligations under Article 2 of Protocol No. 1 or a systematic negation of his right to education on account of his disability. It observed in particular that the national authorities had regarded the child's condition as an obstacle to his education in a mainstream setting. After weighing in the balance the level of his disability and the benefit he could derive from access to inclusive education, they had opted for an education that was tailored to his needs, in a specialised setting. The Court also noted that this strategy had been satisfactory for the child's father, who had custody of the child. Moreover, since 2013, the child had received effective educational support within an institution for special health and educational needs, and this form of schooling was conducive to his personal development. The Court further considered that the complaint that the French authorities had failed to take the necessary measures to cater for disabled children was also manifestly ill-founded, for lack of evidence. The Court lastly observed that the complaint about the alleged insufficiency of the specific resources earmarked by the State for autistic children was inadmissible for non-exhaustion of domestic remedies.

Stoian v. Romania

25 June 2019 (Committee)

This case concerned complaints by the applicants, a disabled son and his mother, that the Romanian authorities had failed to provided suitable access to education for him.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life), **taken alone and in conjunction with Article 14** (prohibition of discrimination) of the Convention, and **no violation of Article 2** (right to education) **of Protocol No. 1** to the Convention, **taken alone and in conjunction with**

Article 14, finding that the Romanian authorities had complied with their obligation to make reasonable accommodation for the first applicant by allocating resources to meet the educational needs of children with disabilities.

G.L. v. Italy (no. 59751/15)

10 September 2020

This case concerned the inability for the applicant, a young girl suffering from nonverbal autism, to receive specialised learning support during her first two years of primary education (between 2010 and 2012) even though the support was provided for by law. The Italian Government relied, in particular, on a lack of financial resources.

The Court held that there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 2** (right to education) **of Protocol No. 1** to the Convention, finding that the applicant had not been able to continue attending primary school in equivalent conditions to those available to other children and that this difference was due to her disability. The Court considered in particular that the Italian authorities had not sought to determine the young girl's real needs and provide tailored support in order to allow her to continue her primary education in conditions that would, as far as possible, be equivalent to those in which other children attended the same school. In particular, the authorities had never considered the possibility that a lack of resources could be compensated for by a reduction in the overall educational provision, so that it would be distributed equally between non-disabled and disabled pupils. The Court further noted that the discrimination suffered by the young girl was all the more serious as it had taken place in the context of primary education, which formed the foundation of child education and social integration, giving children their first experience of living together in a community.

Charles and Others v. France

17 December 2020 (Committee – decision on the admissibility)

This case concerned the educational care for the applicants' son, a child suffering from a severe autistic syndrome resulting in a lack of functional communication, a lack of autonomy and serious behavioural disorders characterised in particular by aggressive outbursts towards his family circle. The applicants complained in particular about the national authorities' failure to create and allocate a place in an adapted structure.

The Court declared the application **inadmissible**, for non-exhaustion of domestic remedies, since the applicants had not brought an action against the authorities for failure to fulfil the State's obligation to provide multidisciplinary care which, in the particular circumstances of the present case, could be regarded as an effective remedy available to them. The Court also noted that, in the present case, the applicants did not appear to be the victims of a continuing failure by the State to provide care for their son. Indeed, based on the material before the Court, after the period in question, the applicants' son had been taken into the care of an institution for special health and educational needs.

T.H. V. Bulgaria (no. 46519/20)

11 April 2023

In 2012 the applicant, aged 8, who had behavioural difficulties, was diagnosed with a hyperkinetic disorder and a "specific developmental disorder of scholastic skills". The case concerned his allegation that he had been discriminated against in his first two years of primary school by his teachers and head teacher on account of his disability. He interrupted his schooling there in the second term of his second year and completed his primary education in another mainstream school. The applicant submitted in particular that the staff in his first primary school had harassed him and treated him in the same way as pupils without a disability because they assumed that his behaviour was due to lack of proper parenting. He complained that, as a result, the school had failed to adapt his schooling to his special educational needs.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 2** (right to

education) **of Protocol No. 1** to the Convention in respect of the applicant. In particular, having examined the incidents one by one and chronologically, it noted that it could not be said, on the available evidence, that the actions of the head teacher or the applicant's teacher had been unjustified, unreasonable or disproportionate. The Court also noted that it could not be said that the head teacher and the teacher had turned a blind eye to the applicant's disability and his resulting special needs; it appeared that they had made a series of reasonable adjustments for him.

Right to vote (Article 3 of Protocol No. 1)

Alajos Kiss v. Hungary

20 May 2010

Diagnosed with a psychiatric condition in 1991, the applicant was placed under partial guardianship in May 2005 on the basis of the civil code. In February 2006, he realised that he had been omitted from the electoral register drawn up in view of the upcoming legislative elections. His complaint to the electoral office was to no avail. He further complained to the district court, which in March 2006 dismissed his case, observing that under the Hungarian Constitution persons placed under guardianship did not have the right to vote. When legislative elections took place in April 2006, the applicant could not participate. He submitted in particular that his disenfranchisement, imposed on him because he was under partial guardianship for a psychiatric condition, constituted an unjustified deprivation of his right to vote, which was not susceptible to any remedy since it was prescribed by the Constitution.

The Court held that there had been a **violation of Article 3** (right to free elections) **of Protocol No. 1**, finding that the indiscriminate removal of voting rights without an individualised judicial evaluation, solely on the grounds of mental disability necessitating partial guardianship, could not be considered compatible with the legitimate grounds for restricting the right to vote. The Court observed in particular that the State had to have very weighty reasons when applying restrictions on fundamental rights to particularly vulnerable groups in society, such as the mentally disabled, who were at risk of legislative stereotyping, without an individualised evaluation of their capacities and needs. The applicant had lost his right to vote as a result of the imposition of an automatic, blanket restriction. It was questionable to treat people with intellectual or mental disabilities as a single class and the curtailment of their rights had to be subject to strict scrutiny.

See also: **Gajcsi v. Hungary**, judgment of 23 September 2014; **Harmati v. Hungary**, judgment of 21 October 2004.

Strøbye and Rosenlind v. Denmark

2 February 2021

This case concerned the disenfranchisement of the applicants, in 1984 and 2009 respectively, as a result of their having had their legal capacity removed. The applicants, who both regained the right to vote in general elections in 2019, complained that they had been illegally disenfranchised.

The Court held that there had been **no violation of Article 3** (right to free elections) **of Protocol No. 1** to the Convention, finding that the restriction on the applicants' voting rights had been lawful, had pursued the legitimate aim of ensuring that voters in the general elections had the required level of mental skills, and had been proportionate to the aim sought to be achieved. It noted in particular that the Danish authorities had made laudable efforts to assess and evolve the legal response to situations like the applicants'. It further considered that the State had operated within its discretion under the Convention, in particular given the quality of domestic judicial review of these matters. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 3 of Protocol No. 1**, as it was satisfied that the difference in the treatment of the applicants had pursued a legitimate aim and that there had been a reasonable

relationship of proportionality between the means employed and the aim sought to be realised.

Caamaño Valle v. Spain

11 May 2021

This case concerned the disenfranchisement of the applicant's daughter who was mentally disabled. The applicant complained that the restrictions on her daughter's right to vote had infringed her rights and had been discriminatory.

The Court held that there had been **no violation of Article 3** (right to free elections) **of Protocol No. 1** to the Convention. It also held that there had been **no violation of Article 14** (prohibition of discrimination) **read in conjunction with Article 3 of Protocol No. 1** and **no violation of Article 1** (general prohibition of discrimination) **of Protocol No. 12** to the Convention. The Court found in particular that "ensuring that only citizens capable of assessing the consequences of their decisions and making conscious and judicious decisions should participate in public affairs" was a legitimate aim that had informed the domestic courts' judgments in respect of the applicant's daughter. It further considered that the disenfranchisement decision had been individualised and proportionate to that aim. It lastly found that her disenfranchisement did not thwart "the free expression of the opinion of the people". The Court also found that the domestic authorities had taken into account the applicant's daughter's special status and had not discriminated against her.

Toplak and Mrak v. Slovenia

26 October 2021

This case concerned the alleged lack of adequate measures to allow the applicants, who had muscular dystrophy, to vote in the 2019 elections to the European Parliament and in a 2015 national referendum, and the alleged lack of effective remedies in this regard. The applicants complained of the lack of effective judicial means by which they could have requested an accessible polling station in advance. They also complained of the lack of any effective remedy by which to claim compensation for being discriminated against in exercising their right to vote.

The Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 1** (general prohibition of discrimination) **of Protocol No. 12** to the Convention as regards the participation at the 2015 Referendum with respect to both applicants, that there had been **no violation of Article 13** of the Convention **taken together with Article 14** (prohibition of discrimination) of the Convention **and Article 3** (right to free elections) **of Protocol No. 1** as regards the 2019 European Parliament elections with respect to both applicants, that there had been **no violation of Article 1 of Protocol No. 12** as regards the 2015 Referendum with respect to both applicants, and that there had been **no violation of Article 14** of the Convention **in conjunction with Article 3 of Protocol No. 1** as regards the first applicant's lack of participation in the 2019 European Parliament elections.

Anatoliy Marinov v. Bulgaria

15 February 2022

The applicant in this case complained that he had been unable to exercise his voting rights during the 2017 parliamentary elections in Bulgaria. His right to vote had been automatically withdrawn, in line with the Constitution, when he had been placed under partial guardianship owing to psychiatric issues in 2000. The applicant submitted that his automatic disenfranchisement on account of his being under partial guardianship and without an individual judicial assessment had been disproportionate. In his view, the exclusion of disabled people, including those suffering from mental disorders, from the possibility to vote in elections contravened international standards.

The Court held that there had been a **violation of Article 3** (right to free elections) **of Protocol No.° 1** to the Convention, finding that the indiscriminate removal of the applicant's voting rights – without individual judicial review and solely because he

had been placed under partial guardianship – had not been proportionate to the legitimate aim for restricting the right to vote. It noted, in particular, that the restriction did not distinguish between those under total guardianship and those under partial guardianship. Furthermore, there was nothing to show that the Bulgarian legislature had ever sought to weigh the competing interests or to assess the proportionality of the Constitutional restriction as it stood and thus open the way for the courts to analyse the capacity of a person to exercise the right to vote, independently of a decision to place that person under guardianship. In the present case, the applicant had lost his right to vote as the result of an automatic, blanket restriction on the franchise of those under partial guardianship with no individual judicial evaluation of his fitness to vote. The Court reiterated that such blanket treatment of all those with intellectual or psychiatric disabilities was questionable, and the curtailment of their rights must be subject to strict scrutiny.

Freedom of movement (Article 2 of Protocol No. 4)

A.-M.V. v. Finland (no. 53251/13)

23 March 2017

See above,under "Right to respect for private and family life", "Legal capacity".

Texts and documents

See in particular:

- **Handbook on European non-discrimination law – 2018 edition**, European Union Fundamental Rights Agency / Council of Europe, 2018

Media Contact:
Tel.: +33 (0) 3 90 21 42 08