July 2023
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Older people and the European Convention on Human Rights

Right to life (Article 2 of the European Convention on Human Rights)

Death allegedly caused by poor hospital conditions and/or inappropriate treatment

Pending application

Volintiru v. Italy (application no. 8530/08)

Application communicated to the Italian Government on 19 March 2013

In February 2007, at the age of 85, the applicant's mother was rushed to hospital for hypoglycaemia accompanied by serious neurological damage, a comatose state, the simultaneous presence of a bloodstream infection of the left lung and a diuretic blockage. About a month later the doctors decided that she should be discharged from hospital; even though her state of health was still considered serious, there had been a slight improvement and her condition now appeared stable. On 10 March 2007 she was taken to the casualty department in a coma. She died on 19 March 2007. The applicant complains in particular that her mother did not receive all the necessary treatment to protect her life. She also submits that the poor conditions in hospital caused the infection leading to her mother's death, and complains of the lack of an effective investigation by the authorities into the matter.

The European Court of Human Rights communicated the application to the Italian Government and put questions to the parties under Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private and family life) and 35 (admissibility criteria) of the European Convention on Human Rights.

Disappearance of Alzheimer patient from nursing home

Dodov v. Bulgaria

17 January 2008

This case concerned the disappearance of the applicant's mother, who suffered from Alzheimer's disease, from a state-run nursing home for the older. The applicant alleged that his mother's life had been put at risk through the negligence of the nursing home staff, that the police had not undertaken all necessary measures to search for his mother immediately after her disappearance and that the ensuing investigation had not resulted in criminal or disciplinary sanctions. He further complained about the excessive length of the civil proceedings to obtain compensation.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention. It found it reasonable to assume that the applicant's mother had died. It also found that there was a direct link between the failure to supervise his mother, despite the instructions never to leave her unattended, and her disappearance. In the instant case, the Court observed that, despite the availability in Bulgarian law of three

avenues of redress – criminal, disciplinary and civil – the authorities had not, in practice, provided the applicant with the means to establish the facts surrounding the disappearance of his mother and bring to account those people or institutions that had breached their duties. Faced with an arguable case of negligent acts endangering human life, the legal system as a whole had thus failed to provide an adequate and timely response as required by the State's procedural obligations under Article 2. The Court further held that there had been **no violation of Article 2** of the Convention concerning the reaction of the police to the applicant's mother's disappearance. Bearing in mind the practical realities of daily police work, it was not convinced that the reaction of the police to the disappearance had been inadequate. Lastly, the Court held that the civil proceedings, which had lasted ten years, had not corresponded to the reasonable time requirement, in **violation of Article 6 § 1** (right to a fair trial) of the Convention.

Global warming

Pending application

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20)

Referral to the Grand Chamber in April 2022

This case, which has been brought by a Swiss association and its members, a group of older people concerned with the consequences of global warming on their living conditions and health, relates to a complaint of various failings of Swiss authorities in the area of climate protection. The applicants submit in particular that the respondent State has failed to fulfil its positive obligations to protect life effectively and to ensure respect for their private and family life, including their home.

The Chamber of the Court to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber on 26 April 2022.

A large number of third-party interveners, including member States, have taken part in the written stage of the proceedings.

On 29 March 2023 the Court held a Grand Chamber hearing in the case.

Involuntary transfer of residents from one care home to another home

Watts v. the United Kingdom

4 May 2010 (decision on the admissibility)

The 106-year-old applicant had been living for several years in a care home which, for budgetary reasons, the City Council – which was the owner and the manager of the home – decided to close. The applicant complained in particular that her involuntary transfer by the local authorities to a new residential care home resulted in a risk to her life and her health. She submitted in particular that the transfer in question would reduce her life expectancy by 25 per cent.

The Court, finding the applicant's complaints ill-founded, declared the application **inadmissible**, pursuant to Article 35 (admissibility criteria) of the Convention. It was persuaded that a badly managed transfer of older residents of a care home could well have a negative impact on their life expectancy as a result of the general frailty and resistance to change of older people. However, having regard to the operational choices which must be made by local authorities in their provision of residential care to the older and the careful planning and the steps which had been undertaken to minimise any risk to the applicant's life, the Court considered that the authorities had met their positive obligations under Article 2 (right to life) of the Convention.

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

Alleged insufficiency of old-age pension to maintain adequate standard of living

Larioshina v. Russia

23 April 2002 (decision on the admissibility)

The applicant was an older woman who lived off her old-age pension and other welfare benefits. She alleged in particular that these benefits were insufficient to maintain a proper standard of living.

The Court declared the application **inadmissible** (manifestly ill-founded), pursuant to Article 35 (admissibility criteria) of the Convention. It considered that a complaint about a wholly insufficient amount of pension and the other social benefits may, in principle, raise an issue under Article 3 (prohibition of inhuman or degrading treatment) of the Convention. However, on the basis of the material in its possession, the Court found no indication that the amount of the applicant's pension and the additional social benefits had caused such damage to her physical or mental health capable of attaining the minimum level of severity falling within the ambit of Article 3.

Budina v. Russia

18 June 2009 (decision on the admissibility)

The applicant was in receipt of a disability allowance. On reaching retirement age and at her request the allowance was replaced by an old-age pension. Considering the pension inadequate for her needs, she unsuccessfully sought to have it upgraded by the courts. Subsequently, she complained to the Russian Constitutional Court that the Law on Pensions allowed pensions below the established subsistence level, but to no avail.

The Court declared the application **inadmissible** (manifestly ill-founded), pursuant to Article 35 (admissibility criteria) of the Convention. It observed that it could not exclude that State responsibility could arise for "treatment" where an applicant wholly dependent on State support found herself faced with official indifference when in a situation of serious deprivation or want incompatible with human dignity. However, even though the applicant's income was not high in absolute terms, she had failed to substantiate her allegation that the lack of funds translated itself into concrete suffering. Indeed there was no indication in the materials before the Court that the level of pension and social benefits available to the applicant were insufficient to protect her from damage to her physical or mental health or from a situation of degradation incompatible with human dignity. Therefore, even though her situation was difficult, the Court was not persuaded that in the circumstances of the present case the high threshold of Article 3 (prohibition of inhuman or degrading treatment) of the Convention had been met.

Alleged risk of treatment contrary to Article 3 if a deportation order was to be enforced

Chyzhevska v. Sweden

25 September 2012 (strike-out decision)

The applicant, a 91-year-old Ukrainian national, complained that an implementation of the deportation order to return her to Ukraine would be in violation of Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect of private and family life) of the Convention, due to her poor health and since she had no relatives or other social network in Ukraine.

The Court decided to **strike the application out of** its **list of cases**, pursuant to Article 37 (striking out applications) of the Convention, as the applicant had been granted a permanent residence permit in Sweden and thus no longer faced a deportation to Ukraine. Indeed, having regard to a medical certificate dated February 2012, which

stated that the applicant's poor health had further deteriorated and that her life would be at great risk if she were put on an airplane to be deported, the Swedish Migration Board had concluded that there were medical obstacles to the enforcement of the deportation order.

Frolova v. Finland

14 January 2014 (strike-out decision)

Relying in particular on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect of private and family life) of the Convention, the applicant, a Russian national, who was born in 1935, submitted that she was fully dependent on her family in Finland and that her removal to Russia would have serious consequences.

The Court decided to **strike the application out of** its **list of cases**, pursuant to Article 37 (striking out applications) of the Convention. It noted that the domestic proceedings had ended and that the applicant had been granted a continuous residence permit in Finland which was renewable. The applicant was thus no longer subject to an expulsion order.

Senchishak v. Finland

18 November 2014

This case concerned the threatened removal from Finland of a 72-year-old Russian national. She claimed that she would not have access to medical care in Russia, it being impossible for her to obtain a place in a nursing home there, and because she would be separated from her daughter, a Finnish national.

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 to be expelled** to Russia. It found that neither the general situation in Russia nor the applicant's personal circumstances would put her at real risk of inhuman or degrading treatment if she were expelled. In particular, she had failed to provide evidence to prove her allegation that she had no access to medical treatment in Russia, there being both private and public care institutions there or the possibility of hiring external help. The Court was also assured that her state of health at the time of her removal would be taken into account and appropriate transportation – by ambulance for example – would be organised. The Court further held that **Article 8** (right to respect for private and family life) of the Convention was not applicable in the applicant's case and this part of her complaint was declared **inadmissible**.

Conditions of detention and compatibility of continued detention with age

Sawoniuk v. the United Kingdom

29 May 2001 (decision on the admissibility)

The applicant, who was born in 1921, referred to his advanced age (79-80), health problems and inadequacies of treatment in prison rendering imprisonment an exceptional hardship. He complained in particular that the imposition of a mandatory life sentence had violated Article 3 (prohibition of inhuman or degrading punishment or treatment) of the Convention.

In this case the Court reiterated that there is no prohibition in the Convention against the detention in prison of persons who attain an advance age. Nevertheless, a failure to provide the necessary medical care to prisoners may constitute inhuman treatment and there is an obligation on States to adopt measures to safeguard the well-being of persons deprived of their liberty. Whether the severity of the ill-treatment or neglect reaches the threshold prohibited by Article 3 (prohibition of inhuman or degrading punishment or treatment) of the Convention will depend on the particular circumstances of the case, including the age and state of health of the person concerned as well as the duration and nature of the treatment and its physical or mental effects. In the instant case, insofar as he complained of the conditions of his detention or the lack of medical

treatment in the context of Article 3 of the Convention, the Court noted that the applicant had not taken proceedings in the domestic courts, where, due to the Human Rights Act 1998 in force since October 2000, he would have been able to rely directly on the provisions of the Convention. He had not therefore exhausted domestic remedies in that regard as required by Article 35 (admissibility criteria) of the Convention and the Court consequently declared the application **inadmissible**.

Papon v. France

7 June 2001 (decision on the admissibility)

The applicant, who was serving a prison sentence for aiding and abetting crimes against humanity, was 90 years old when he lodged his complaint before the European Court of Human Rights. He maintained that keeping a man of his age in prison was contrary to Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention, and that the conditions of detention in the prison where he was kept were not compatible with extreme old age and with his state of health.

The Court declared the application **inadmissible** (manifestly ill-founded). It did not exclude the possibility that in certain conditions the detention of an older person over a lengthy period might raise an issue under Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention, but pointed out that regard was to be had to the particular circumstances of each specific case. It also noted that none of the States Parties to the Convention had an upper age limit for detention. In the instant case, the Court held that in view of the applicant's general state of health and his conditions of detention, his treatment had not reached the level of severity required to bring it within the scope of Article 3 of the Convention. While he had heart problems, his overall condition had been described as "good" by an expert report.

See also: ***Priebke v. Italy***, decision on the admissibility of 5 April 2001; ***Enea v. Italy***, judgment (Grand Chamber) of 17 September 2009.

Farbtuhs v. Latvia

2 December 2004

The applicant, who in September 1999 was found guilty of crimes against humanity and genocide for his role in the deportation and deaths of tens of Latvian citizens during the period of Stalinist repression in 1940 and 1941, complained that, in view of his age and infirmity, and the Latvian prisons' incapacity to meet his specific needs, his prolonged imprisonment had constituted treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention. In 2002 the domestic courts finally excused the applicant from serving the remainder of his sentence after finding *inter alia* that he had contracted two further illnesses while in prison and that his condition generally had deteriorated. The applicant was released the next day.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatments) of the Convention. It observed that the applicant was 84 years old when he was sent to prison, paraplegic and disabled to the point of being unable to attend to most daily tasks unaided. Moreover, when taken into custody he was already suffering from a number of serious illnesses, the majority of which were chronic and incurable. The Court considered that when national authorities decided to imprison such a person, they had to be particularly careful to ensure that the conditions of detention were consistent with the specific needs arising out of the prisoner's infirmity. Having regard to the circumstances of the case, the Court found that, in view of his age, infirmity and condition, the applicant's continued detention had not been appropriate. The situation in which he had been put was bound to cause him permanent anxiety and a sense of inferiority and humiliation so acute as to amount to degrading treatment. By delaying his release from prison for more than a year in spite of the fact that the prison governor had made a formal application for his release supported by medical evidence, the Latvian authorities had therefore failed to treat the applicant in a manner that was consistent with the provisions of Article 3 of the Convention.

Haidn v. Germany

13 January 2011

In this case, the applicant, who was born in 1934, complained in particular that his placement in detention for preventive purposes for an indefinite duration after having served his full prison sentence had constituted an inhuman and degrading treatment.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the minimum level of severity required for inhuman or degrading treatment or punishment had not been attained in the present case. The Court was in particular not persuaded that the combination of the applicant's advancing years and declining (but not critical) health had been such as to bring him within the scope of Article 3 of the Convention.

Contrada (no. 2) v. Italy

11 February 2014

Almost 83, the applicant alleged in particular that, in view of his age and his state of health, the authorities' repeated refusal of his requests for a stay of execution of his sentence or for the sentence to be converted to house arrest had 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 observed in particular that it was beyond doubt that the applicant had suffered from a number of serious and complex medical disorders, and that all the medical reports and certificates that had been submitted to the competent authorities during the proceedings had consistently and unequivocally found that his state of health was incompatible with the prison regime to which he was subjected. The Court further noted that the applicant's request to be placed under house arrest had not been granted until 2008, that is to say, until nine months after his first request. In the light of the medical certificates that had been available to the authorities, the time that had elapsed before he was placed under house arrest and the reasons given for the decisions refusing his requests, the Court found that the applicant's continued detention had been incompatible with the prohibition of inhuman or degrading treatment under Article 3 of the Convention.

Obligation to perform military service

Taştan v. Turkey

4 March 2008

Registered in the civil status register in 1986, the applicant was called up in February 2000 – at the age of 71 – to do military service. He was forced to undergo military training and to take part in all the same physical activities as 20-year old conscripts. After his state of health deteriorated he obtained a certificate exempting him from military service in April 2000. The applicant complained in particular that he had been forced to perform military service despite his age, alleging in particular that he had been subjected to both physical and mental ill-treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **taken in conjunction with Article 13** (right to an effective remedy). It found in particular that calling the applicant up to do military service and keeping him there, making him take part in training reserved for much younger recruits then himself, had been a particularly distressing experience and had affected his dignity. It had caused him suffering in excess of that which would be involved for any man in being obliged to perform military service and had, in itself, amounted to degrading treatment within the meaning of Article 3.

Prohibition of slavery and forced labour (Article 4 of the Convention)

Meier v. Switzerland

9 February 2016

This case concerned the requirement for a prisoner to work beyond the retirement age. The applicant alleged in particular that there had been a violation of his right not to be required to perform forced or compulsory labour.

The Court held that there had been **no violation of Article 4 § 2** (prohibition of forced labour) of the Convention. It noted in particular that there was insufficient consensus among Council of Europe member States regarding compulsory work for prisoners after retirement age. Accordingly, it emphasised, on the one hand, that the Swiss authorities enjoyed a considerable margin of appreciation and, on the other, that no absolute prohibition could be inferred from Article 4 of the Convention. The compulsory work performed by the applicant during his detention could therefore be regarded as "work required to be done in the ordinary course of detention", for the purpose of Article 4 of the Convention. Consequently, it did not constitute "forced or compulsory labour" within the meaning of that Article.

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

H.M. v. Switzerland (no. 39187/98)

26 February 2002

The applicant, who was born in 1912, complained of the unlawfulness of her deprivation of liberty in that she had been placed in a nursing home on account of neglect. She submitted in this respect that the Convention only cited "vagrancy", and not neglect, as a ground of detention. She complains that her detention was unlawful.

The Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that, in the circumstances of the present case, the applicant's placement in the nursing home had not amounted to a deprivation of liberty within the meaning of Article 5 § 1, but had been a responsible measure taken by the competent authorities in the applicant's interests, in order to provide her with the necessary medical care and satisfactory living conditions and standards of hygiene. The Court noted in particular that the applicant had had an opportunity to receive care in her own home, but that she and her son had refused to co-operate. Subsequently, her living conditions had deteriorated to such an extent that the authorities had decided to take action. The appeals commission carefully reviewed the circumstances of the case and decided that the nursing home in question, which was in an area familiar to the applicant, could provide her with the necessary care. The applicant was also able to maintain social contact with the outside world while in the home. The Court further noted that, after the applicant had moved to the nursing home, she had agreed to stay there.

Vasileva v. Denmark

25 September 2003

The applicant, a 67 year old woman in poor health, had an argument on a bus with a ticket inspector who accused her of travelling without a valid ticket. The police were called and she was arrested for failing to disclose her name, address and date of birth to the police on request. She was taken to the police station, where she was detained from 9.30 p.m. until 11 a.m. the next day, after she had identified herself. Following her release, the applicant collapsed and was hospitalised for three days with high blood pressure. She complained that her detention was unlawful.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the authorities had failed to strike a fair balance between the right to liberty and the need to ensure the fulfilment of an obligation prescribed by law. The detention had admittedly been in accordance with the

Administration of Justice Act, which obliged every person to disclose his name, address and date of birth to the police upon request, and aimed at securing the fulfilment of this obligation. The Court also acknowledged that it was fundamental for the police to be able to identify citizens in discharging of their duties, as well as legitimate for transport companies to involve the police in disputes concerning the validity of a bus ticket. However, as regards the length of the detention, depriving the applicant of her liberty for thirteen and a half hours had been longer than necessary, and not proportionate to the purpose of her detention, taking into account that efforts to establish her identity had not been undertaken during the full detention period. In addition, the applicant had not been attended by a doctor, which would have been justified given her advanced age and could have also served to overcome the communication impasse between her and the police.

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

Allegedly excessive length of proceedings

Süssmann v. Germany

16 September 1998

The applicant, who was born in 1916, complained of the length of proceedings in the Federal Constitutional Court concerning the reduction in his supplementary pension.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention in respect of the length of proceedings. It observed that what was at stake in the proceedings for the applicant was admittedly a material consideration: his supplementary pension had been reduced and, in view of his age, the proceedings before the Federal Constitutional Court had been of undeniable importance for him. However, the amendments to the supplementary pensions scheme had not caused prejudice to the applicant to such an extent as to impose on the court concerned a duty to deal with his case as a matter of very great urgency, as is true of certain types of litigation.

Jablonská v. Poland

9 March 2004

The 81-year-old applicant complained that the length of proceedings concerning the annulment of a notarial deed had exceeded a reasonable time. She maintained in particular that, despite her very old age and the fact that her every appearance before the Regional Court had involved a long and tiring travel, she had attended hearings and given evidence whenever necessary and had never caused any undue delay.

The Court held that there had been a **violation of Article 6 § 1** (right to fair trial) of the Convention in respect of the length of proceedings, having regard more particularly to the fact that in view of the applicant's old age – she was already 71 years old when the litigation started – the Polish courts should have displayed particular diligence in handling her case.

Proceedings to divest individuals of their legal capacity

X and Y v. Croatia (no. 5193/09)

3 November 2011

This case concerned proceedings brought by the social services to divest a mother and a daughter of their legal capacity. The first applicant, who was born in 1923, was bedridden and suspected to be suffering from dementia. She was first appointed a guardian in July 2006 and was divested of her legal capacity in August 2008. She alleged that these proceedings had been unfair as she had not been notified of them and had therefore not been heard by a judge or been able to give evidence.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention in respect of the first applicant, finding that she had been deprived of adequate procedural safeguards in proceedings resulting in a decision adversely affecting

her private life. As regards in particular the reasons adduced by the domestic court for its decision, the Court could not but observe that in order to ensure proper care for the ill and older, the State authorities had at their disposal much less intrusive measures than divesting them of legal capacity.

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

Assisted suicide

Gross v. Switzerland
30 September 2014 (Grand Chamber)
This case concerned the complaint of an older woman – who had wished to end her life but had not been suffering from a clinical illness – that she had been unable to obtain the Swiss authorities' permission to be provided with a lethal dose of a drug in order to commit suicide. The applicant complained that by denying her the right to decide by what means and at what point her life would end the Swiss authorities had breached Article 8 (right to respect for private and family life) of the Convention.
In its Chamber judgment in the case on 14 May 2013, the Court held, by a majority, that there had been a violation of Article 8 (right to respect for private life) of the Convention. It found in particular that Swiss law was not clear enough as to when assisted suicide was permitted.
The case was subsequently referred to the Grand Chamber at the request of the Swiss Government.
In January 2014 the Swiss Government informed the Court that it had learned that the applicant had died in November 2011.
In its Grand Chamber judgment of 30 September 2014 the Court has, by a majority, declared the application inadmissible. It came to the conclusion that the applicant had intended to mislead the Court on a matter concerning the very core of her complaint. In particular, she had taken special precautions to prevent information about her death from being disclosed to her counsel, and thus to the Court, in order to prevent the latter from discontinuing the proceedings in her case. The Court therefore found that her conduct had constituted an abuse of the right of individual application (Article 35 §§ 3 (a) and 4 of the Convention). As a result of this judgment, the findings of the Chamber judgment of 14 May 2013, which had not become final, are no longer legally valid.

Care allowances and personal assistance

McDonald v. the United Kingdom
20 May 2014
This case concerned a 71-year-old lady with severely limited mobility who complained about a reduction by a local authority of the amount allocated for her weekly care. The reduction was based on the local authority's decision that her night-time toileting needs could be met by the provision of incontinence pads and absorbant sheets instead of a night-time carer to assist her in using a commode. The applicant alleged that the decision to reduce her care allowance on the basis that she could use incontinence pads at night, even though she was not incontinent, had amounted to an unjustifiable and disproportionate interference with her right to respect for private life, and had exposed her to considerable indignity.
The Court considered that the decision to reduce the amount allocated for the applicant's care had interfered with her right to respect for her family and private life, insofar as it required her to use incontinence pads when she was not actually incontinent. It held that there had been **a violation of Article 8** (right to respect for private and family life) of the Convention in respect of the period between 21 November 2008 and 4 November 2009 because the interference with the applicant's rights had not been in accordance with domestic law during this period. The Court further declared **inadmissible**

(manifestly ill-founded) the applicant's complaint concerning the period after 4 November 2009 because the State had considerable discretion when it came to decisions concerning the allocation of scarce resources and, as such, the interference with the applicant's rights had been "necessary in a democratic society".

Jivan v. Romania

8 February 2022

In 2017 the applicant, born in 1930 and who was already suffering from several allegedly debilitating medical conditions, had a leg amputated. The case concerned a court ruling that he was only medium-level disabled, not severely disabled. The applicant complained, in particular, that he was forced into isolation by the Romanian authorities' decision and the consequent denial of support, and that the related proceedings were overlong, especially for someone of his age.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the Romanian authorities did not do what was reasonable in the circumstances of the case to ensure the applicant, an older disabled person, effective protection of his right to respect for his private life, thus failing to strike the fair balance required by Article 8. The Court noted, in particular, that the applicant's right to autonomy and respect for his dignity did not seem to have been taken into account in the domestic assessments in question. His living conditions and the lack of a support network were not mentioned in those decisions either. Moreover, the authorities did not take into account the applicant's age or the fact that he had lost his leg at the age of eighty-five. The implications that such a drastic change must have had on the life of an old person were not referred to in the domestic assessments either. As a consequence of those decisions, the applicant had been left to fend for himself and the authorities did not offer any alternative practical arrangements to ensure him the constant support he needed.

Gender identity

Grant v. the United Kingdom

23 May 2006

The applicant, a 68-year-old post-operative male-to-female transsexual, complained about the lack of legal recognition of her change of gender and the refusal to pay her a retirement pension at the age applicable to other women (60). Her application was refused on the ground that she would only be entitled to a State pension when she reached 65, this being the retirement age applicable to men. She appealed unsuccessfully. In 2002 she requested that her case be reopened in the light of the European Court of Human Rights' judgment of 11 July 2002 in *Christine Goodwin v. the United Kingdom*[1]. On 5 September 2002 the Department for Work and Pensions refused to award her a State pension in light of the *Christine Goodwin* judgment. In December 2002, when the applicant had reached the age of 65, her pension payments began.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. While the applicant's victim status had ceased when the Gender Recognition Act 2004 had entered into force, thereby providing her with the means on a domestic level to obtain legal recognition, she could however claim to be a victim of the lack of legal recognition from the moment, after the *Christine Goodwin* judgment, when the British authorities had refused to give effect to her claim, namely from 5 September 2002.

[1]. In this case, where the applicant complained about the lack of legal recognition of her post-operative sex and about the legal status of transsexuals in the United Kingdom, the Grand Chamber of the Court found, in particular, a violation of Article 8 (right to respect for private life) of the Convention. In the instant case, the Court considered that the situation, as it had evolved, no longer fell within the United Kingdom's margin of appreciation and that it would be for the United Kingdom Government in due course to implement such measures as it considered appropriate to fulfil its obligations to secure the applicant's, and other transsexuals', right to respect for private life in compliance with the judgment.

Schlumpf v. Switzerland

8 January 2009

This case concerned the applicant's health insurers' refusal to pay the costs of her sex-change operation on the ground that she had not complied with a two-year waiting period to allow for reconsideration, as required by the case-law of the Federal Insurance Court as a condition for payment of the costs of such operations. The applicant submitted that the psychological suffering caused by her gender identity disorder went back as far as her childhood and had repeatedly led her to the brink of suicide. In spite of everything, and although by the age of about 40 she was already certain of being transsexual, she had accepted the responsibilities of a husband and father until her children had grown up and her wife had died of cancer.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It considered, *inter alia*, that the period of two years, particularly at the applicant's age of 67, was likely to influence her decision as to whether to have the operation, thus impairing her freedom to determine her gender identity. In view of the applicant's very particular situation, and the respondent State's limited margin of appreciation in relation to a question concerning one of the most intimate aspects of private life, the Court therefore concluded that a fair balance had not been struck between the insurance company's and the applicant's interests. The Court further held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, as regards both the Federal Insurance Court's refusal to hear expert evidence and the lack of public hearing.

Global warming

Pending application

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20)

Application communicated to the Swiss Government on 17 March 2021

See above, under "Right to life (Article 2 of the Convention)".

Legal protection

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

18 May 2021

The applicant in this case, an older 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.

Calvi and C.G. v. Italy

6 July 2023[2]

The first applicant in this case was acting in his own name and also on behalf of his cousin, the second applicant, who was born in 1930, for whom a legal-protection measure had been decided by a guardianship judge and who had been placed in a nursing home since October 2020. The applicants complained about the second applicant's placement under legal protection and of his consequent social isolation as a result of being placed in a nursing home.

The Court held that there had been a violation of Article 8 (right to respect of private life) of the Convention in respect of the second applicant, finding that, although the interference with his rights had pursued the legitimate aim of protecting his welfare in the broad sense, it had not, in view of the range of measures available to the authorities, been either proportionate or adapted to his individual situation. The Court noted, in particular, that the second applicant had been made entirely dependent on his legal guardian in almost all areas of his life and that the measure had not been limited in time. It was concerned that the authorities had effectively taken advantage of the flexibility of the guardianship system to achieve aims for which Italian law provided, subject to strict limitations, in the context of the TSO procedure (compulsory medical treatment – *trattamento sanitario obbligatorio*); the TSO legal framework had thus been circumvented by means of abusive recourse to legal guardianship.

Freedom of expression (Article 10 of the Convention)

Heinisch v. Germany

21 July 2011

This case concerned the dismissal of a geriatric nurse after having brought a criminal complaint against her employer alleging deficiencies in the care provided. The applicant complained that her dismissal and the courts' refusal to order her reinstatement had violated Article 10 (freedom of expression) of the Convention.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the applicant's dismissal without notice had been disproportionate and the domestic courts had failed to strike a fair balance between the need to protect the employer's reputation and the need to protect the applicant's right to freedom of expression. The Court observed in particular that, given the particular vulnerability of older patients and the need to prevent abuse, the information disclosed had undeniably been of public interest. Further, the public interest in being informed about shortcomings in the provision of institutional care for the older by a State-owned company was so important that it outweighed the interest in protecting a company's business reputation and interests. Finally, not only had this sanction had negative repercussions on the applicant's career, it was also liable to have a serious chilling effect both on other company employees and on nursing-service employees generally, so discouraging reporting in a sphere in which patients were frequently not capable of defending their own rights and where members of the nursing staff would be the first to become aware of shortcomings in the provision of care.

Tešić v. Serbia

11 February 2014

In 2006 the applicant, a pensioner suffering from various illnesses, was found guilty of defaming her lawyer and ordered to pay him 300,000 dinars in compensation, together with default interest, plus costs in the amount of 94,120 dinars (equivalent to approximately 4,900 euros in all). In July 2009 the Municipal Court issued an enforcement order requiring two thirds of the applicant's pension to be transferred to the lawyer's bank account each month, until the sums awarded had been paid in full. After

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

these deductions the applicant was left with approximately 60 euros a month on which to live.
The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It observed in particular that the damages plus costs awarded against the applicant were equal to a total of more than 60% of her monthly pension. Furthermore, it could not be said that the applicant's statement in respect of her former counsel had been merely a gratuitous personal attack. Moreover but most strikingly, the municipal court had issued an enforcement order requiring two thirds of the applicant's pension to be transferred to her lawyer's bank account each month, notwithstanding that the applicable law had provided that that was the maximum that could be withheld, thus clearly leaving room for a more nuanced approach. By 30 June 2013 the applicant had paid a total of approximately 4,350 euros, but with accrued and future interest, she would have to continue with the payments for approximately another two years. In May 2012 her monthly pension was some 170 euros, so that after deductions she was left with approximately 60 euros on which to live and buy her monthly medication, which at approximately 44 euros, she could no longer afford. This, the Court found, was a particularly precarious situation for an older person suffering from a number of serious illnesses. Therefore, while the impugned measures had been prescribed by law and had been adopted in pursuit of a legitimate aim, namely for the protection of the reputation of another, this interference with the applicant's right to freedom of expression had not been "necessary in a democratic society".

Right to marry (Article 12 of the Convention)

Delecolle v. France

25 October 2018

This case concerned the right of an older 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 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 General prohibition of discrimination (Article 1 of Protocol No. 12 to the Convention)

Burden v. the United Kingdom

29 April 2008 (Grand Chamber)

The applicants, both in their eighties, were unmarried sisters who had lived together all their lives, for the last 30 years in a house built on land they had inherited from their parents. Each sister had made a will leaving all her property to the other sister. The applicants complained that, when one of them died, the survivor would face a heavy inheritance tax bill, unlike the survivor of a marriage or a civil partnership.
The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention, finding that the applicants, as co-habiting sisters, could not be compared for the purposes of Article 14 to a married or Civil Partnership Act couple. The Court observed in particular that, just as there can be no analogy between married and Civil Partnership Act couples, on the one hand, and heterosexual or homosexual couples who choose to live together but not to become husband and wife or civil partners, on the other hand, the absence of such a legally binding agreement between the applicants rendered their relationship of cohabitation,

despite its long duration, fundamentally different to that of a married or civil partnership couple. This view was unaffected by the fact that member States had adopted a variety of different rules of succession as between survivors of a marriage, civil partnership and those in a close family relationship and had similarly adopted different policies as regards the grant of inheritance-tax exemptions to the various categories of survivor; States, in principle, remaining free to devise different rules in the field of taxation policy.

Carson and Others v. the United Kingdom

16 March 2010 (Grand Chamber)

This case concerned allegedly discriminatory rules governing the entitlement to index-linking of the State pension. Under the rules, pensions were only index-linked if the recipient was ordinarily resident in the United Kingdom or in a country having a reciprocal agreement with the United Kingdom on the uprating of pensions. Those resident elsewhere continued to receive the basic State pension, but this was frozen at the rate payable on the date they left the United Kingdom. The thirteen applicants (aged between 65 and 92) had spent most of their working lives in the United Kingdom, paying National Insurance contributions in full, before emigrating or returning to South Africa, Australia or Canada, none of which had a reciprocal agreement with the United Kingdom on pension uprating. Their pensions were accordingly frozen at the rate payable on the date of their departure. Considering this to be an unjustified difference in treatment, the first applicant sought judicial review of the decision not to index-link her pension. However, her application was dismissed in 2002 and ultimately on appeal before the House of Lords in 2005.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **in conjunction with Article 1** (protection of property) **of Protocol No. 1** to the Convention. It found in particular that the applicants' principal argument that, because they had worked in the United Kingdom and paid compulsory contributions to the National Insurance Fund, they were in a relevantly similar situation to pensioners who received uprating was misconceived. Moreover, as regards the comparison with pensioners living in the United Kingdom, it had to be remembered that the social-security system was essentially national in character with the aim being to ensure certain minimum standards of living for residents there. Nor did the Court lastly consider the applicants to be in a relevantly similar position to pensioners living in countries with which the United Kingdom had concluded a bilateral agreement providing for uprating.

Pending applications

Taipale v. Finland (no. 5855/18) and Tulokas v. Finland (no. 5854/18)

Applications communicated to the Government of Finland on 12 July 2018

These applications concern national legislation providing, in certain situations, for higher taxation of pension income than earned income.

The Court gave notice of the applications to the Government of Finland and put questions to the parties under Articles 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention and Article 1 (general prohibition of discrimination) of Protocol No. 12 to the Convention.

Just satisfaction (Article 41 of the Convention)

Georgel and Georgeta Stoicescu v. Romania

26 July 2011

In 2000 the second applicant, 71-year-old at the time, was attacked, bitten and knocked to the ground by a pack of stray dogs in a residential area of Bucharest. Following the incident, she started to suffer from amnesia and from shoulder and thigh pains and had difficulty walking. She lived in a constant state of anxiety and never left the house for fear of another attack. By 2003 she had become totally immobile. Her husband and heir continued her case following her death in December 2007.

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, in the particular circumstances of the case, by failing to take sufficient measures to address the issue of stray dogs and to provide appropriate redress to the second applicant for her injuries, the authorities had failed to discharge their positive obligation to secure respect for her private life. The Court further held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, as the second applicant had been denied a clear, practical opportunity of claiming compensation in court for the attack and had therefore not had an effective right of access to a court. Lastly, regarding the amount to be awarded in the present case in respect of damage, under **Article 41** (just satisfaction) of the Convention, the Court observed that, in assessing the suffering that the applicant must have been experiencing, regard was also to be had to her dire financial situation, her advanced age and deteriorating state of health and to the fact that she had been unable to benefit from free medical assistance and medicines until two and a half years after the incident.

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

Klaus and Iouri Kiladze v. Georgia

2 February 2010

The applicants were two brothers born in 1926 and 1928 respectively who had been recognised as victims of Soviet political repression. In 1998 they brought an action seeking compensation for pecuniary and non-pecuniary damage on the basis of the Law on recognition of victim status and social welfare arrangements for persons subjected to political repression ("the 1997 Law"). They complained of the "legislative void" which denied them their economic rights under the Law in question.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No.1** to the Convention, considering that the complete lack of action over a period of several years, which was attributable to the State and deprived the applicants of effective enjoyment of their right to payment of compensation for non-pecuniary damage within a reasonable time, had imposed a disproportionate and excessive burden on them which could not be justified by the authorities' supposed pursuit of a legitimate general interest in the instant case. The Court found in particular that the Georgian State was apparently still unwilling to embark upon the process of considering the issue and taking action, thus depriving the older applicants of any prospect of benefiting in their lifetime from the rights vested in them under section 9 of the 1997 Law.

Under **Article 46** (binding force and execution of judgments) of the Convention, observing that the issue of a gap in the legislation raised by this application did not just affect the applicants and that the situation was likely to give rise to numerous applications to the Court, the Court further held that general measures needed to be taken at national level in order to execute the judgment. The authorities therefore needed to act swiftly to adopt legislative, administrative and budgetary measures so that the persons concerned by section 9 of the Law of 11 December 1997 could effectively avail themselves of the rights guaranteed by that provision.

Da Conceição Mateus v. Portugal and Santos Januário v. Portugal

8 October 2013 (decision on the admissibility)

These cases concerned the payment of the applicants' public sector pensions, which were reduced in 2012 as a result of cuts to Portuguese government spending. The applicants, born respectively in 1939 and 1940, complained about the impact that the reduction of their pensions had had on their financial situation and living conditions.

The Court examined the compatibility of the reductions of the applicants' pension payments with Article 1 (protection of property) of Protocol No.1. It declared the applications **inadmissible** as being manifestly ill-founded. The Court held in particular that the pension reductions had been a proportionate restriction on the applicants' right

to protection of property. In light of the exceptional financial problems that Portugal faced at the time, and given the limited and temporary nature of the pension cuts, the Portuguese Government had struck a fair balance between the interests of the general public and the protection of the applicants' individual right to their pension payments.

Mauriello v. Italy

13 September 2016 (decision on the admissibility)

This case concerned the fact that the retirement pension contributions paid by the applicant during her ten-year career were not reimbursed, since she did not qualify for a civil servant's pension because she had not paid contributions for 15 years as required under domestic law. The applicant complained that she had been deprived of all the pension contributions deducted from her salary during her career and that she did not receive any corresponding amount in the form of a retirement pension or a lump sum.

The Court declared the application **inadmissible** as being manifestly ill-founded. It noted in particular that the obligation to pay retirement pension contributions amounted to an interference with the applicant's right to the peaceful enjoyment of her possessions, but held that it had been provided for by law. The Court found, however, that the interference did not amount to a disproportionate interference with the applicant's right to the peaceful enjoyment of her possessions, bearing in mind that the States enjoyed a wide margin of appreciation in choosing their retirement systems and that the Convention did not require them to adopt a specific model. The Court also noted that the applicant had begun to work and to pay contributions at a date when it was already certain that she would not obtain a pension entitlement, given that the national legislation stipulated at least 15 years' employment to qualify for such entitlement, and the applicant had been paying contributions for only 10 years when she reached the compulsory retirement age. Lastly, the Court noted that the applicant had provided no information about her allegedly poor financial position, which prevented her from making voluntary payments into a pension account, thus enabling her to obtain a pension.

Aielli and Others and Arboit and Others v. Italy

10 July 2018 (decision on the admissibility)

This case concerned a reform of the uprating of State pension payments for 2012 and 2013 in the context of the budget deficit crisis and its consequences. The applicants, who were all pensioners receiving more than three times the basic minimum pension, complained about the readjustment of their old-age pensions.

The Court declared the application **inadmissible** as being manifestly ill-founded. It observed in particular that the Italian legislature had been obliged to intervene in a difficult economic context. The Legislative Decree in question had sought to provide for redistribution in favour of lower pensions, while preserving the sustainability of the social security system for future generations. The Italian government's room for manoeuvre had also been restricted on account of the limited resources and the risk that the European Commission might take action for an excessive budget deficit. In conclusion, the Court took the view that the effects of the reform were not so severe that they risked causing the applicants difficulties in meeting living costs to an extent that would be incompatible with Article 1 (protection of property) of Protocol No. 1.

P.C. v. Ireland (no. 26922/19)

1 September 2022

This case concerned the statutory disqualification of a convicted prisoner from receipt of the State-contributory-pension for the duration of his or her imprisonment. The applicant, who was born in 1940, complained in particular of having been disqualified from receipt of his pension and of being discriminated against on several grounds. He alleged in particular an age discrimination.

The Court held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1** (protection of property) **of Protocol No. 1** in the present case. Concerning the allegation of discrimination in the policy, the Court found: that the applicant had not provided any

evidence of discrimination against older people; that comparisons with prisoners with alternative sources of income did not fall under Article 14; and that the applicant's situation was not sufficiently analogous to that of either individuals detained in secure psychiatric units or those detained on remand to make out an argument of discrimination on that basis. With regard, in particular, to the allegation of age discrimination, the Court noted that the stopping of social-security payments had applied to benefits for people of working age too and so could not be directly discriminatory against prisoners of retirement age. As for indirect age discrimination, it would be necessary to show that the measure had had a disproportionate effect on older people. The applicant had spoken of his personal situation, but had given no evidence that related to the group in question, whereas the evidence in the domestic proceedings had shown that older prisoners had been able to take on work in prison. The Court found the question of age discrimination unsubstantiated.

Žegarac and Others v. Serbia

17 January 2023 (decision on the admissibility)

This case primarily concerned the 11 applicants' complaints that the payment of their old-age pensions had been reduced from November 2014 to September 2018. The reduction followed legislative amendments introduced by the Serbian Government as part of a wider set of austerity measures. The legislation was repealed once it was considered that public debt had been sufficiently reduced.

The Court declared **inadmissible**, as being manifestly ill-founded, the complaints under Article 1 (protection of property) of Protocol No. 1 of eight of the applications. It ruled in particular that the reduction in pension payments had been limited to recipients of higher pensions, had been temporary – lasting just under four years – and had been part of the effort to balance the State budget. The authorities had therefore struck a fair balance between ensuring the financial stability of the pension system – which was in the general interest of the public – and protecting the applicants' property rights in order to prevent them from bearing an individual and excessive burden. The Court also decided to **strike** the other three applications **out of** its **list of cases**. In one of those cases the Court had had no response to its correspondence, while the applicants in the other two cases had died without an heir submitting a request to pursue the proceedings before it.

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