



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THEMATIC REPORT

***Health-related issues in the case-law of the
European Court of Human Rights***

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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INTRODUCTION

The European Convention on Human Rights does not guarantee a right to health-care or a right to be healthy. Matters such as health, housing, social benefits and other socio-economic rights are traditionally more appropriately addressed in instruments such as the [European Social Charter](#)¹ or the [European Code of Social Security](#)² or, at a more global level, by reference to the socio-economic rights set out in the [United Nations International Covenant on Economic, Social and Cultural Rights](#)³.

However this traditional view must be read in the light of developments in the case-law under the Convention. It is increasingly becoming difficult to define precise and clear boundaries between the fundamental rights and freedoms enshrined in the Convention and socio-economic rights of the type referred to above. The Court is thus inevitably called upon to consider cases having a socio-economic dimension, including health, where they raise an issue under one or more fundamental civil and political rights guaranteed under the Convention. Consequently, health issues have arisen before the Court in a wide variety of circumstances, of which this report is intended to give an overview.

Furthermore, it is important to bear in mind that the Court is particularly attentive to the legal and policy materials relating to health which have been adopted within the framework of the Council of Europe. The case-law quite frequently refers to the recommendations of the Committee of Ministers in the health sector (*Biriuk v. Lithuania*, § 21), as well as to conventions such as the [Oviedo Convention](#) (*Glass v. the United Kingdom*, § 58; *Vo v. France*, §§ 35 and 84) and the [Council of Europe Convention 108](#) (*S. and Marper v. the United Kingdom*). The case-law under the European Social Charter on health-related issues is another source of guidance (*Zehnalova and Zehnal v. the Czech Republic*; *Mólka v. Poland*).

Such materials enrich the Court's judgments and provide a key point of departure when it comes to assessing whether there is an emerging European trend in a particular area⁴. The standard-setting activities of the Council of Europe in the health sector may also enable the Court to evaluate the scope of the margin of appreciation afforded to the Contracting States on particular issues.

¹. Article 11 of the European Social Charter guarantees the right to protection of health.

². Articles 7-12 of the European Code of Social Security regulate the right to medical care.

³. Article 12 of the Covenant recognises the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

⁴. For example, allowing individuals access, on compassionate grounds, to experimental but unauthorised medicinal products (*Hristozov v. Bulgaria*, no. 47039/11 et al., 13 November 2012).

I. GENERAL SCOPE

The obligations the Contracting States assume under the Convention are of a negative as well as of a positive kind. Under the negative obligation, a Contracting State must not interfere with the health of an individual unless there is Convention-compliant justification for so doing. A Contracting State may also be required to take measures to safeguard the health of an individual under the so-called positive obligations. The scope of any such positive obligation, including in health-related matters, will be determined by the circumstances of the individual case submitted.

Health-related cases brought before the Court have most frequently been argued under Articles 2, 3, 8 and 14 of the Convention.

Under Article 2 State agents are obliged to refrain from acts or omissions of a life-threatening nature, or which place the health of individuals at grave risk (see, among many other authorities, *Ilhan v. Turkey*). Without Convention-compliant justification, they must not use lethal force or force which, while not resulting in death, gives rise to serious injury. States also have positive obligations under Article 2 to protect the health of individuals in particular circumstances. An issue may thus arise under Article 2 where it is shown that the authorities of a Contracting State have put an individual's life at risk through the denial of health care they have undertaken to make available to the population in general (*Cyprus v. Turkey*, § 219; *Nitecki v. Poland*; *Oyal v. Turkey*).

As regards Article 3, State agents must refrain from treatment which damages a person's physical health (for example, beatings or other forms of violence; *Kaçiu and Kotorri v. Albania*) or causes them mental or psychological harm (for example, the wilful causing of anguish, torment or other forms of psychological suffering; *Gäfgen v. Germany*). The State may also be required to take positive measures to protect the physical and mental health of individuals, such as prisoners, for whom it assumes special responsibility. This will be examined in more detail in section IV below.

The right to respect for private life guaranteed by Article 8 of the Convention has assumed particular prominence in the Court's case-law on "the right to health". The Court has interpreted the notion of private life as covering the right to the protection of one's physical, moral and psychological integrity, as well as the right to choose, or to exercise one's personal autonomy – for example, to refuse medical treatment or to request a particular form of medical treatment (*Glass v. the United Kingdom*, §§ 74-83; *Tysiqc v. Poland*).

Article 8 also gives rise to both negative and positive obligations. The Court has found States to be under a positive obligation to secure the right to effective respect for physical and psychological integrity (*Sentges v. the Netherlands*; *Pentiacova and Others v. Moldova*; *Nitecki v. Poland*). In addition, these obligations may require the State to take measures to provide effective and accessible protection of the right to respect for private life (*Airey v. Ireland*, § 33; *McGinley and Egan v. the United Kingdom*, § 101; *Roche v. the United Kingdom*, § 162), through both a regulatory framework of adjudicatory and enforcement machinery and the implementation, where appropriate, of specific measures (*Tysiqc v. Poland*, § 110). The issue of free and informed consent to medical treatment has also been a dominant feature of the case-law under Article 8 (see III.E. below).

The right under Article 14 of the Convention not to be discriminated against on account of one's physical or mental condition has also been examined by the Court, which has expressly acknowledged health as being one of the protected grounds which can be relied on in non-discrimination cases (*Kiyutin v. Russia*; *I.B. v. Greece*).

Health issues may also be relevant to the right not to be subjected to arbitrary deprivation of liberty. For example, detaining persons suffering from acute mental-health problems in a place of detention which is entirely ill-adapted to their condition may give rise to a breach of Articles 3 (*M.S. v. the United Kingdom*) or Article 5 (*Stanev v. Bulgaria*) of the Convention.

Lastly, a court's failure to take into consideration an accused's mental or physical disabilities may give rise to a breach of the right to a fair trial. For example, a failure to accommodate the needs of an

accused suffering from an extreme hearing disability and who is thus prevented from following the proceedings effectively may be considered to undermine the rights of the defence and thus breach Article 6 of the Convention (*Timergaliyev v. Russia*).

II. MEDICAL NEGLIGENCE

A. General principles

As stated above, acts and omissions of the authorities in the field of health care may in certain circumstances engage the State's responsibility under the Convention. However, where the State has taken adequate steps to secure high standards among health professionals and to protect patients' lives, matters such as an error of judgment on the part of a doctor or negligent co-ordination among health professionals in the treatment of a particular patient will not of themselves suffice to call it to account from the standpoint of its positive obligations under Article 2 of the Convention to protect life (*Byrzykowski v. Poland*, § 104).

The positive obligations under Article 2 require States to make regulations compelling hospitals, whether public or private, to take appropriate measures to protect patients' lives (*Trocellier v. France* § 4). They also require an effective independent judicial system to be put in place so that the cause of death of patients in medical care can be determined and those responsible held accountable. The States also have a duty to ensure that the legislative and administrative framework set up to protect patients' rights is properly implemented and any breaches put right and punished. The Court's task in such cases is to examine whether there has been an adequate procedural response on the part of the State to the infringement of the right to life.

In *Calvelli and Ciglio v. Italy*, following the death of their new-born baby, the applicants lodged a criminal complaint against the doctor in charge of the delivery. However, the criminal proceedings ultimately became time-barred because of procedural delays. Although the applicants also brought a civil action in damages against the doctor, they voluntarily waived their right to pursue those proceedings after agreeing to a settlement with the insurers. The Court noted that, by so doing, they had effectively denied themselves access to what would have been the best means of elucidating the extent of the doctor's responsibility for the death of their child, which in the specific circumstances of the case would have satisfied the positive obligations arising under Article 2. Accordingly, it found no violation of that provision.

In *Šilih v. Slovenia* the applicants' 20-year-old son had died in hospital after being injected with drugs to which he was allergic. The applicants complained, *inter alia*, that the authorities had failed to hold an effective investigation into their allegation that the death was the result of medical negligence. The Court found a violation of Article 2 of the Convention under its procedural aspect, primarily on account of the excessive length of the civil proceedings which were still pending 13 years later.

The case of *Dodov v. Bulgaria* dealt with a lack of accountability for the disappearance from a nursing home of the applicant's mother, who was suffering from Alzheimer's disease. The Court considered it reasonable to assume that the mother had died and found a direct link between the failure of the nursing home staff to supervise her, despite instructions never to leave her unattended, and her disappearance. Despite the availability in Bulgarian law of three avenues of redress – criminal, disciplinary and civil – the authorities had not provided the applicant with the means to establish the facts and bring to account those responsible. Faced with an arguable case of negligent endangering of human life, the legal system as a whole had failed to provide the adequate and timely response required by the State's procedural obligations under Article 2.

The Court has also underlined the importance of giving access to information regarding risks to health. The Contracting States are, for example, required to adopt the necessary regulatory

measures to ensure that doctors consider the foreseeable consequences of a planned medical procedure and inform their patients beforehand to enable them to give informed consent. If a foreseeable risk materialises without the patient having been duly informed in advance, the State may be found in breach of Article 8 (*Trocellier v. France*, § 4; *Codarcea v. Romania*, § 105).

Thus, in *Csoma v. Romania* the applicant was given medication to induce an abortion, but owing to complications the doctors had to perform a hysterectomy to save her life. The Court concluded that because she had not been involved in the choice of medical treatment or properly informed of the risks, she had suffered an infringement of her right to respect for her private life, contrary to Article 8.

B. Pregnancy and birth

Many of the medical negligence cases have arisen in the context of pregnancy or birth.

In the case of *Vo v. France* a doctor performed a medical procedure on the applicant that had been intended for another person. The applicant had to terminate her pregnancy as a result. Before the Court the applicant complained that the lack of criminal-law protection for her unborn child violated Article 2 of the Convention. Noting that there was no clear legal definition in French law of the unborn child or a European consensus on the status of the embryo, the Court declined to rule on when life began or whether the unborn child was a person for the purposes of Article 2, but instead examined the adequacy of the mechanisms in place for proving any negligence by the doctor in the loss of the applicant's child. Noting that the applicant could, with reasonable prospects of success, have brought an action in damages against the authorities for negligence, it concluded that there had been no failure on the part of the respondent State to comply with the requirements relating to the preservation of life in the public-health sphere.

In the subsequent case of *Spyra and Kranczkowski v. Poland* the Court reached a similar conclusion, albeit under Article 8 of the Convention. The first applicant's prematurely born son had suffered respiratory complications and remained severely disabled. The first applicant believed that her son's disability had been caused principally by the negligence of medical staff who had failed to transfer him to intensive care immediately after the birth. The Court observed that the applicants' case had been examined by three levels of jurisdiction and a medical disciplinary authority, all of which had rejected the possibility of a causal link between the procedure followed by the medical staff and the child's disability. It could therefore not be said that the Polish judicial system taken as a whole had failed adequately to examine the case.

In *Mehmet and Bekir Şentürk v. Turkey* the Court examined this issue in a different context. The first applicant's pregnant wife went to a university hospital complaining of persistent pain. She was examined by a team of doctors, who found that the child she was carrying had died and that she required immediate surgery. She was then allegedly told that a fee would be charged for her operation and that a substantial deposit (approximately EUR 1,000) had to be paid. Since the first applicant did not have the money, the emergency doctor arranged for the wife to be transferred to another hospital, but she died on the way there.

Although it was not its task to rule *in abstracto* on the State's public-health policy at the time of the events, the Court noted that the provision of treatment at the first hospital had been contingent on advance payment. That requirement had served as a deterrent for the patient, causing her to decline treatment. Such a decision could not possibly be regarded as informed, or as exempting the national authorities from liability as regards the treatment she should have been given. The medical staff had been fully aware that transferring her to another hospital would put her life at risk. Furthermore, the domestic law did not appear to have been capable of preventing the failure to give her the medical treatment she required. Accordingly, as a result of the blatant failings of the hospital authorities, she had been denied access to appropriate emergency treatment. That finding was sufficient for the Court to hold that the State had failed to comply with its obligation to protect her physical integrity.

In *Oyal v. Turkey* the applicants' son had been infected with HIV through a blood transfusion following his premature birth. The domestic courts found the supplier and the Ministry of Health liable in damages. They also established that one of the reasons HIV had not been detected was that the medical staff had failed to test the donor blood because of the costs involved.

The applicants complained that the State authorities had failed to take measures to prevent the spread of HIV through blood transfusions and had not conducted an effective investigation. While noting that the domestic courts had established the liability of those responsible for the infection and made an order for damages, the Court observed that the awards only covered one year's treatment for their son, and the family was unable to meet the high costs of continued medication. In these circumstances, the most appropriate remedy would have been to have ordered the authorities to pay for the applicants' son's treatment and medication throughout his lifetime. There had thus been a breach of Article 2. Moreover, knowledge of the facts and of possible medical errors was essential to enable the institutions and staff concerned to remedy the potential deficiencies and prevent similar errors. A prompt examination of such cases was therefore important for the safety of users of all health services.

III. HEALTH AND BIOETHICS

A. Medically assisted procreation

Given the fast-moving medical and scientific developments in this sphere, the Court is increasingly faced with questions relating to various forms of medically assisted procreation.

In *S.H. v. Austria* the applicants were two married couples who wished to have recourse to *in vitro* fertilisation (IVF) using donor gametes. The Austrian Artificial Procreation Act prohibited the use of sperm from a donor for IVF treatment and egg donation in general.

The Court gave weight to the fact that the Austrian legislature had not completely ruled out artificial procreation as it had allowed the use of homologous techniques. Moreover, it had sought to avoid possible conflicts between biological and genetic parents in the wider sense by trying to reconcile, on the one hand, the wish to make medically assisted procreation available and, on the other, the existing unease among large sections of society as to the role and possibilities of modern reproductive medicine. The fact that Austrian law prohibited sperm and egg donation for the purposes of *in vitro* fertilisation without at the same time proscribing sperm donation for *in vivo* fertilisation was another matter of significance in the balancing of the respective interests since it showed the careful and cautious approach adopted by the legislature in seeking to reconcile social realities with its approach of principle in this field. In conclusion, the State had not exceeded the wide margin of appreciation afforded to it at the relevant time.

The Court has also examined the need for consent to use fertilised eggs. In *Evans v. the United Kingdom* the applicant, who had to have her ovaries removed due to cancer, had stored her eggs fertilised by her then partner for future insemination. After their relationship ended, the partner withdrew his consent to the continued storage or the implantation of the embryos. The applicant complained that domestic law had permitted her former partner effectively to prevent her from ever having a biological child.

The Court noted that keeping human embryos in frozen storage gave rise to the possibility of allowing a lapse of time between the creation of the embryo and its implantation. It was therefore legitimate and desirable for a State to set up a legal scheme which took that possibility of delay into account. When she consented to have all her eggs fertilised with her former partner's sperm, the applicant knew that, as a matter of law, her partner would be free to withdraw his consent to implantation at any moment. Given the wide margin of appreciation accorded to the respondent

State, the Court did not consider that the applicant's right to respect for her decision to become a parent in the genetic sense should be accorded greater weight than her former partner's right to respect for his decision not to have a genetically-related child with her.

The Court has also considered issues of medically-assisted procreation in a prison context. In *Dickson v. the United Kingdom* the applicants wished to conceive a child while the husband was still serving a prison sentence. They requested artificial insemination facilities, arguing that conception would not otherwise be possible in view of the husband's earliest release date and his wife's age (she was 49 at the time). Their request was, however, refused. The Court held this was another area in which the States enjoyed a wide margin of appreciation as the Convention had not yet been interpreted as obliging them to make provision for conjugal visits⁵. Nevertheless, the policy as structured at the material time effectively excluded any real weighing of the competing individual and public interests and prevented the required assessment of the proportionality of a restriction in any individual case. The absence of such assessment had to be seen as falling outside any acceptable margin of appreciation so that a fair balance had not been struck between the competing public and private interests involved.

B. Surrogacy

In 2014 the Court for the first time examined issues stemming from surrogacy arrangements concluded abroad.

In *Mennesson v. France* the applicants became parents of twins using surrogacy treatment in the United States. Following their return to France, they were unable to enter the children's birth certificates into the French register of birth on public-policy grounds. The Court accepted that the lack of recognition in French law of the parent-child relationship between the applicants affected their family life on various levels, but the practical difficulties they faced had not been insurmountable nor were the applicants prevented from exercising their right to respect for family life. They were able to settle in France shortly after the birth of the children, to live there together in circumstances which, by and large, were comparable to those of other families, and there was nothing to suggest that they were at risk of being separated by the authorities because of their situation in the eyes of French law. Given that there was no European consensus in this area and the consequent State's wide margin of appreciation, the Court found no violation of the "family life" aspect of the applicants' complaint. In examining the "private life" complaint of the applicant children, the Court accepted that France might well wish to discourage its nationals from having recourse abroad to a reproductive technique prohibited inside the country. However, the effects of the refusal to recognise a parent-child relationship in French law between children conceived in this way and the intended parents were not confined to the situation of only the parents, who chose the disputed reproductive technique. The effects also extended to the situation of children themselves, whose right to respect for their private life – which implied that everyone should be able to establish the essence of his or her identity, including his or her parentage – was significantly affected. There was therefore a serious issue as to the compatibility of that situation with the children's best interests, which must guide any decision concerning them. In the applicants' case, one of the intended parents was also the children's biological father. Given the importance of biological parentage as a component of each individual's identity, it could not be said that it was in the children's best interests to deprive them of a legal tie of this nature when both the biological reality of that tie was established and the children and the parent concerned sought its full recognition. Given the implications of this serious restriction in terms of the identity of the applicant children and their right to respect for private life, as well as the importance to be attached to the child's best interests, the European Court held that France had overstepped its permissible margin of appreciation.

⁵. See *Epnors-Gefnors v. Latvia*, no. 37862/02, 29 May 2012; *Aliev v. Ukraine*, no. 41220/98, § 188, 29 April 2003.

C. Abortion

The Court has approached the issue of abortion on a case by case basis, without stating in general terms whether and in which circumstances States should or should not allow legal abortion within their territories.

In the case of *A., B. and C. v. Ireland* the Court examined complaints from two applicants about their obligation to travel abroad for an abortion for health and/or well-being reasons owing to a statutory prohibition on abortions in Ireland. The third applicant complained that, although she believed her pregnancy put her life at risk owing to a pre-existing condition, it was impossible for her to establish whether she qualified for a lawful abortion on the very limited medical grounds permitted in Ireland.

The Court examined the complaints of the first and second applicants from the standpoint of the State's negative obligations and was satisfied that by not allowing abortion for health and/or well-being reasons Ireland had not overstepped the broad margin of appreciation afforded to it in protecting the profound moral values of its people. While it was not possible to terminate a pregnancy in Ireland on health and/or well-being grounds, relevant legislation enabled women to obtain information about services abroad, to travel for an abortion and to obtain necessary post-abortion medical care in Ireland. The Court thus found no violation of Article 8 in respect of the first two applicants.

The third applicant's situation was, however, different. She had a rare form of cancer and was worried that pregnancy might cause her relapse or inability to obtain treatment for the cancer. Having examined the relevant national law and practice, the Court found that, despite the existence of lawful abortion in theory, there was no implementing legislative or regulatory regime providing an accessible and effective procedure by which the third applicant could establish whether she qualified for a lawful abortion. The authorities had thus failed to comply with their positive obligation to secure to her effective respect for her private life, in breach of Article 8 of the Convention.

In the case of *Tysiąc v. Poland* the applicant sought an abortion because of the damage her pregnancy was liable to cause to her eyesight. However, she was unable comply with the statutory requirement to obtain medical certificates from two different doctors confirming that her pregnancy might endanger her health. The Court found that owing to a lack of procedural safeguards it had not been demonstrated that the domestic law, as applied in the applicant's case, contained any effective mechanism capable of determining whether the conditions for obtaining a lawful abortion had been met, in breach of the State's positive obligation under Article 8.

In *P. and S. v. Poland* a 14-year-old victim of rape wished to terminate her pregnancy, but the local public hospitals refused to perform an abortion and issued a press release confirming their decision. Thereafter the applicant experienced serious pressure from various groups including medical professionals, journalists, a priest and anti-abortion activists. After complaining to the Ministry of Health, the applicant was eventually taken in secret for an abortion in another hospital some 500 kilometres from her home.

The Court noted that, despite the applicant's great vulnerability, a prosecutor's certificate confirming that her pregnancy had resulted from unlawful intercourse and medical evidence that she had been subjected to physical force, the applicant had been subjected to considerable pressure by various medical professionals not to have an abortion. No proper regard had been given to her young age or to her views and feelings. The approach of the authorities had been marred by procrastination, confusion and a lack of proper and objective counselling and information. All of the foregoing led the Court to conclude that there had been a breach of Article 3 of the Convention. The Court also found violations of Article 8 on account of the disclosure of her personal and medical data and of the difficulties in the practical implementation of her right to obtain a legal abortion.

D. Prenatal testing

In the case of *Costa and Pavan v. Italy* the applicants, who were healthy carriers of cystic fibrosis, sought access to medically-assisted procreation techniques in order to have their embryos screened prior to implantation. In Italy, however, medically-assisted procreation was available only to infertile couples or where the man had a sexually transmissible viral disease. Embryo screening was prohibited altogether. The Court found the Italian legislation inconsistent since it prohibited the screening that would have enabled only uninfected embryos to be selected for implantation while at the same time permitting abortion of an infected foetus. Consequently, the interference with the applicants' right to respect for their private and family life was deemed disproportionate.

In *R.R. v. Poland*, following an ultrasound scan performed during her eighteenth week of pregnancy, the applicant was informed of a possible foetal malformation. She immediately expressed her wish to have an abortion if the diagnosis was confirmed through amniocentesis. However, it was not until the twenty-third week of pregnancy, after a series of doctors had repeatedly refused to refer her, that the examination took place. By the time, two weeks later, the applicant received the results confirming that the foetus was suffering from Turner Syndrome it was too late for her to have a legal abortion.

Finding a violation of Article 3 of the Convention, the Court noted that the domestic legislation unequivocally imposed an obligation on the State in cases of suspicion of genetic disorder or developmental problems to ensure unimpeded access to prenatal information and testing. It also imposed a general obligation on doctors to give patients all necessary information on their cases and afforded patients the right to comprehensive information on their health. Despite this, as a result of temporising by the health professionals, the applicant had had to endure six weeks of uncertainty concerning the health of her foetus and by the time she obtained the results of the tests it was too late for her to make an informed decision on whether to have an abortion.

E. Informed consent

Another bioethics issue – informed consent – has also been the subject of several cases examined by the Court.

The case of *Glass v. the United Kingdom* concerned the administration of diamorphine to a severely mentally and physically disabled boy in defiance of his mother's objections. The Court did not consider that the UK regulatory framework for resolving conflicts over proposed medical treatment of a child was inconsistent as regards the question of consent with the standards laid down in the Council of Europe's Convention on Human Rights and Biomedicine. What was at stake was whether the decision to administer the diamorphine should have been referred to the competent court given that the mother had not given her free, express and informed consent. The Court found that the decision of the authorities to override the applicant's objection to the proposed treatment had, in the absence of authorisation by a court, resulted in a breach of Article 8 of the Convention.

The issue of informed consent was one of the key elements in cases concerning the forced sterilisation of Roma women in Slovakia. In *V.C. v. Slovakia* a Roma woman was sterilised during delivery in a public hospital. Her delivery record contained a request for sterilisation along with her signature, but she claimed that she had not understood the term "sterilisation", and that she had signed the request while in labour and after being told by the hospital staff that if she became pregnant again either she or her baby might die.

For the Court, sterilisation without the consent of a mentally competent adult patient constituted a major interference with a person's reproductive health status and bore upon many aspects of personal integrity; as such, it was incompatible with the requirement of respect for human freedom and dignity. Moreover, generally recognised international standards laid down that sterilisation may

be carried out only subject to prior informed consent, save for exceptional emergency situations⁶. There had been no medical emergency in the applicant's case involving imminent risk of irreparable damage to her life. Since she was a mentally competent adult, her informed consent had been a prerequisite for such a procedure, even assuming it had been medically "necessary". Asking for the applicant's consent while in labour clearly did not permit her to take a decision of her own free will, after consideration of all the implications or consultation with her partner. The paternalistic manner in which the hospital staff had acted had left the applicant with no option but to consent. Consequently, the sterilisation procedure, including the manner in which the applicant was required to agree to it, had subjected her to treatment contrary to Article 3 of the Convention.

In *M.A.K. and R.K. v. the United Kingdom* a nine-year-old girl was taken to see a paediatrician by her father for what appeared to be bruising on her legs. She was admitted to hospital for examination and the father left instructions that no further medical tests were to be carried out until his wife, the girl's mother, arrived and gave the necessary consent. On the mother's arrival an hour later, she discovered that blood samples and photographs of the girl's legs had nonetheless been taken. She was subsequently informed by the paediatrician that there was evidence of sexual abuse and the father was not allowed to visit his daughter at all that day. The girl was ultimately diagnosed with a rare skin disease and discharged from hospital.

The Court observed that domestic law and practice clearly required the consent of persons exercising parental responsibility before any medical intervention could take place. The parents had given express instructions that no further tests were to be carried out until the mother's arrival. The only possible justification for the decision to proceed with the blood test and photographs was that they were required as a matter of urgency. However, there was no evidence to suggest that the girl's condition was critical, or that she was in any pain or discomfort. Nor had there been any reason to believe that the mother would have withheld consent and, even if she had, the hospital could have sought a court order authorising the tests. The Court therefore concluded that the interference with the girl's private life was not in accordance with domestic law, in breach of Article 8. Moreover, in the absence of any legal basis for the initial decision to prevent the father from visiting his daughter on the night of her admission to hospital, there had been a violation of both applicants' rights to respect for their family life.

F. End-of-life situations

The Court examined the question of assisted suicide for the first time in *Pretty v. the United Kingdom* where the applicant was dying of an incurable degenerative disease. She complained to the Court about the authorities' refusal to give an advance undertaking not to prosecute her husband if he assisted her to commit suicide, she being unable to do so by herself. The Court concluded that there had been no violation of Article 2. The right to life could not, without a distortion of language, be interpreted as conferring the diametrically opposite right to die. No positive obligation arose under Article 3 to require an undertaking not to prosecute the applicant's husband or to provide a lawful opportunity for any other form of assisted suicide. Lastly, the blanket ban on assisted suicide was not disproportionate under Article 8 of the Convention.

The Court has also examined cases concerning access to lethal substances in order to end one's life.

The case of *Haas v. Switzerland* raised the issue of a refusal to provide medication necessary for the suicide of a person suffering from a mental illness. The Court observed the lack of a European consensus on the decriminalisation of assisted suicide. The vast majority of member States appeared to place more weight on the protection of life than on the right to end it and the States consequently enjoyed a wide margin of appreciation in this area. Further, as regards the question whether the

⁶. See, for example, the [Council of Europe Convention on Human Rights and Biomedicine](#), the [World Health Organisation's Declaration on the Promotion of Patients' Rights in Europe](#) and [General Recommendation No. 24 of the UN Committee on the Elimination of Discrimination against Women \(CEDAW\)](#).

applicant had had effective access to a medical assessment that might have allowed him to obtain the desired substance, the Court was not persuaded that he had been unable to find a specialist willing to assist him. Even assuming that States had a positive obligation under Article 8 to take measures to facilitate suicide with dignity, the respondent State had not failed to comply with that obligation in the applicant's case.

In *Koch v. Germany* the German courts refused to examine the merits of an application by a man whose wife had just committed suicide in Switzerland after having unsuccessfully attempted to obtain authorisation to purchase a lethal substance in Germany. The Court held that the domestic courts' refusal to examine the merits of the case had not pursued any legitimate aim and had thus violated the applicant's procedural rights under Article 8. Having regard to that finding, the principle of subsidiarity and the considerable margin of appreciation afforded to States in such matters, it was not necessary to examine the substantive limb of the applicant's complaint.

Finally, in *Lambert and Others v. France* the applicants complained against the judgment of the *Conseil d'État* authorising the withdrawal of the artificial nutrition and hydration of their son and brother. The Court firstly observed that, in the absence of a consensus among the Council of Europe member States as regards withdrawal of life-sustaining treatment, in end-of-life issues the States were afforded a margin of appreciation. Notwithstanding extremely complex medical, legal and ethical matters raised in the case, it had been primarily for the domestic authorities to verify whether the decision to withdraw treatment had been compatible with the domestic legislation and the Convention, and to establish the patient's wishes in accordance with national law. The Court's role consisted in examining the State's compliance with its positive obligations flowing from Article 2 of the Convention. The Court found the legislative framework laid down by domestic law, as interpreted by the *Conseil d'État*, and the decision-making process, which had been conducted in meticulous fashion, to be compatible with the requirements of Article 2. The case had been the subject of an in-depth examination in the course of which all points of view could be expressed and in which all aspects had been carefully considered, in the light of both a detailed expert medical report and general observations from the highest-ranking medical and ethical bodies. It therefore concluded that the implementation of the impugned judgment of the *Conseil d'État* would not violate the applicants' Article 2 rights.

IV. HEALTH OF DETAINEES

A. Introduction

Detainees are in a special situation because of their dependence on the authorities when it comes to their living conditions, including access to medical care. In addition, the fact that they are deprived of their liberty means that any acts and omissions of the authorities are likely to have a greater impact on their psychological well-being.

The State must ensure that detainees are held in conditions which are compatible with respect for human dignity, that the manner and method of execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured through, among other things, requisite medical assistance (*Kudła v. Poland*, § 94). The national authorities must ensure that diagnosis and care in detention facilities, including prison and psychiatric hospitals, are prompt and accurate, and that, where necessitated by the nature of a medical condition, supervision is regular and involves a comprehensive therapeutic strategy aimed at ensuring the detainee's recovery or at least preventing deterioration of his or her condition (*Pitalev v. Russia*, § 54). In order to determine whether these requirements have been met the Court will thoroughly examine, in the light of the applicant's allegations, whether the authorities have followed

the medical advice and recommendations (*Vladimir Vasilyev v. Russia*, § 59; *Centre of Legal Resources on behalf of Valentin Câmpeanu v. Romania*).

B. Obligation to provide appropriate medical care

(1) Lack of appropriate medical care in custody

A lack of appropriate medical care for persons in detention can engage the State's responsibility under Article 3 of the Convention. However, in order to reach the threshold of that Article, any ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the sex, age and state of health of the victim (*Kudła v. Poland*, § 91).

In *Vasyukov v. Russia* the Court found that a delay in correctly diagnosing a detainee's tuberculosis had amounted to inhuman and degrading treatment within the meaning of Article 3. In *Paladi v. Moldova* it found a violation of Article 3 on account of the lack of proper medical assistance and the abrupt interruption of neurological treatment that was being administered to a remand detainee. It also found that the respondent State had failed to comply with an interim measure indicated by the Court under Rule 39 of the Rules of Court which had included clear instructions to the authorities to refrain from transferring the applicant from the neurological centre.

In *Amirov v. Russia* the applicant was a paraplegic wheelchair-bound detainee suffering from a long list of illnesses. The authorities had denied him access to medical experts of his choice and failed to organise an expert medical examination in disregard of the interim measure indicated by the Court. Moreover, they failed to demonstrate that the applicant had been receiving effective medical treatment for his illnesses, which led the Court to conclude to a violation of Article 3 of the Convention. At the same time, it indicated to the Respondent State under Article 46 of the Convention to admit the applicant to a specialised medical facility where he would be provided with adequate medical treatment and to regularly re-examine his situation, including with the assistance of independent medical experts.

In the case of *McGlinchey and Others v. the United Kingdom* a close relative of the applicants died in prison as a consequence of severe heroin withdrawal symptoms. She had suffered serious weight loss and dehydration as a result of a week of largely uncontrolled vomiting and inability to eat or hold down liquids. Having observed several failings by the prison authorities in the provision of adequate medical care, the Court found a violation of Article 3.

When a lack of appropriate medical care results in a detainee's death, it may also raise an issue under the substantive and/or procedural limb of Article 2 of the Convention.

In *Jasinskis v. Latvia* the applicant's deaf and mute son suffered head injuries prior to being arrested by the police and placed in a police cell to sober up. The police did not have him medically examined when they took him into custody, in breach of the [European Committee for the Prevention of Torture \(CPT\) standards](#). Furthermore, because of his sensory disability, the applicant's son had no means of communicating with the prison guards. He died in his cell the next day as a result of the injury to his head. The Court found that by not seeking a medical opinion or calling an ambulance for almost seven hours the police had failed to fulfil their duty to safeguard his life. Moreover, the investigation into the events surrounding the death had failed to meet the procedural requirements of Article 2.

In *Dzieciak v. Poland* a detainee suffering from a serious heart disease died after almost four years in pre-trial detention. The Court found that numerous failings on the part of the authorities – such as keeping the applicant in a detention facility without a hospital wing, cancelling his bypass surgery on three occasions and prolonging his detention despite medical opinion to the contrary – constituted a breach of the substantive limb of Article 2. Furthermore, the investigation into the applicant's death had lasted more than two years and been discontinued by the prosecutor without consideration of

the concerns that had been raised by medical experts over the decisions to postpone the applicant's surgery on three occasions. More importantly, the incomplete and inadequate character of the investigation was highlighted by the fact that the exact course of events directly preceding the applicant's death had never been established. The authorities had thus failed to carry out a thorough and effective investigation into the allegation that the applicant's death was caused by ineffective medical care during his pre-trial detention.

In another case the Court examined medical care in the context of long-term illness. In *Salakhov and Islyamova v. Ukraine* the first applicant, who was HIV positive, was placed in pre-trial detention where his health sharply deteriorated. A specialist diagnosed him with pneumonia and candidosis and concluded that the HIV infection was at the fourth clinical stage, but that there was no urgent need for hospitalisation. The Court issued an interim measure under Rule 39 of its Rules requiring the first applicant's immediate transfer to hospital for treatment. However, he was only transferred three days later and was kept under constant guard by police officers while allegedly still handcuffed to his bed. He was ultimately sentenced to the payment of a fine but remained in detention for two weeks after the verdict as a preventive measure, despite his critical condition. He died two weeks after his release. The Court found that there had been violations of Article 3 in respect of the inadequate medical assistance provided in the detention facilities and hospital and of his handcuffing in the hospital. It also found violations of Article 2 in respect of the authorities' failure to protect his life and to conduct an effective investigation into the circumstances of his death. Lastly, it found a violation of Article 3 in respect of the mental suffering endured by the second applicant, the first applicant's mother.

The case of *Centre of Legal Resources on behalf of Valentin Câmpeanu v. Romania* concerned a young Roma man suffering from severe mental disabilities and HIV infection who had spent his entire life in State care. On reaching adulthood he was eventually placed in a psychiatric hospital which had no facilities to treat HIV and where conditions were known to be appalling, without adequate staff, medication, heating or food. The Grand Chamber found a violation of Article 2 of the Convention on the grounds that the authorities had unreasonably put his life in danger by placing him in the hospital, notwithstanding his heightened state of vulnerability while the medical staff had failed to provide appropriate care and treatment.

When dealing with prisoners suffering from HIV the Court has frequently relied on the [World Health Organisation guidelines "Antiretroviral therapy for HIV infection in adults and adolescents: recommendations for a public health approach"](#) (*Kozhokar v. Russia*; *Fedosejevs v. Latvia*).

Not only has the Court examined whether medical care delivered to detainees is appropriate but it has also looked at the conditions in which it is provided. In *Szuluk v. the United Kingdom* the Court dealt for the first time with the issue of medical confidentiality in prison. A prisoner who had undergone brain surgery discovered that his correspondence with the specialist supervising his hospital treatment had been monitored by a prison medical officer. The Court found a violation of his right to respect for his correspondence under Article 8 of the Convention.

(2) Continued detention despite health condition

The Convention does not impose a general obligation to release detainees on health grounds or to place them in a civil hospital in order to receive particular treatment.

In *Papon v. France* the Court found that, although the applicant was over 90 years old and had health problems, his situation had not attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

However, in *Gülay Çetin v. Turkey* when examining the situation of a detainee suffering from terminal cancer, the Court found that the procedure applied in her case had placed formalities above humanitarian considerations, thus preventing her from spending her final days in dignity. Her detention without access to the protection system available in theory had undermined her dignity

and caused her hardship exceeding the inevitable level of suffering associated with deprivation of liberty and with cancer treatment. There had therefore been a violation of Article 3.

(3) Force-feeding

The Court has also had to examine the issue of force-feeding of detainees on hunger strike. A measure of therapeutic necessity under established principles of medicine cannot in principle be regarded as inhuman and degrading. The same can be said of force-feeding for the purposes of saving the life of a detainee who consciously refuses to take food. The Convention organs must nevertheless satisfy themselves that the medical necessity has been convincingly shown to exist and that the procedural guarantees for the decision to force-feed are complied with. Moreover, the manner in which the detainee is subjected to force-feeding during the hunger-strike must not exceed the minimum level of severity required for a breach of Article 3.

In *Nevmerzhitsky v. Ukraine* the Court found that it had not been demonstrated that there had been a “medical necessity” to force-feed the applicant. It could therefore only be assumed that the force-feeding was arbitrary and that the authorities had not acted in the applicant’s best interests. While the authorities had complied with the manner of force-feeding prescribed by the relevant domestic legislation, the restraints applied – handcuffs, a mouth-widener, a special tube inserted into the food channel – combined with the use of force, and despite the applicant’s resistance, had constituted treatment so severe as to amount to torture, contrary to Article 3.

In *Ciorap v. Moldova* the applicant had commenced a hunger strike in protest at his conditions of imprisonment. The Court found that his repeated force-feeding had not been prompted by valid medical reasons but rather with the aim of forcing him to stop his protest. It had been performed in a manner which had unnecessarily exposed him to great physical pain and humiliation, amounting to torture.

In *Rappaz v. Switzerland* the applicant began a hunger strike the day he started serving his prison sentence. Arguing that his health was deteriorating, he applied for release but the Federal Court rejected his application, finding that force-feeding was a viable alternative in his case. Some months later the applicant ended his hunger strike without having been force-fed. In declaring his application inadmissible as being manifestly ill-founded, the Court noted that, although the regulations governing the situation of prisoners on hunger strike did not lay down specific provisions concerning force-feeding, the decisions ordering the doctor treating the applicant to begin force-feeding were based on a court judgment which had examined the issue in depth and established principles which henceforth represented the state of Swiss law in this sphere. The national authorities had thus duly examined and dealt with the situation and their intention to protect the applicant’s life was not open to doubt.

(4) Forced administration of substances

The Court has also had to examine a situation where other substances were forcibly administered to persons in places of detention by the authorities.

In *Jalloh v. Germany* the applicant was forcibly administered an emetic in order to cause him to regurgitate a small bag of drugs he had swallowed just before he was arrested. The Court observed that the Convention did not, in principle, prohibit recourse to a forcible medical intervention that would assist in the investigation of an offence. However, any interference with a person’s physical integrity carried out with the aim of obtaining evidence had to be the subject of rigorous scrutiny. In the applicant’s case the forcible administration of emetics did not appear to have been indispensable and the manner in which it was executed was brutal. Such treatment was found to be inhuman and degrading, in breach of Article 3 of the Convention.

In *Bogumil v. Portugal* the applicant had swallowed a small bag of cocaine, which was then surgically removed. In finding no breach of Article 3, the Court observed that the operation had been required

by medical necessity as the applicant risked dying from intoxication and had not been carried out for the purpose of collecting evidence. Indeed, the applicant had been convicted on the basis of other pieces of evidence.

(5) *Preventive measures*

States may also be under a positive obligation to prevent the spreading of contagious disease. For example, after finding a structural problem of inadequate medical care in Georgian prisons, the Court required the Georgian authorities to take the necessary legislative and administrative measures to prevent the spreading of contagious diseases, such as tuberculosis and hepatitis, in the prisons, to introduce a screening system for prisoners upon admission and to guarantee prompt and effective treatment (*Poghosyan v. Georgia* and *Ghavitadze v. Georgia*).

In *Shelley v. the United Kingdom* a prisoner complained about a decision to provide disinfecting tablets instead of needle-exchange programmes as he was concerned that it failed to sufficiently address the risks caused by the sharing of infected needles. The Court found that there was no authority in the case-law that placed any obligation under Article 8 on a Contracting State to pursue any particular preventive health policy. While it was not excluded that a positive obligation might arise to eradicate or prevent the spread of a particular disease or infection, the Court was not persuaded that any potential threat to health that fell short of the standards of Articles 2 or 3 would necessarily impose a duty on the State to take specific preventive steps. Matters of health-care policy, in particular as regards general preventive measures, in principle fell within the margin of appreciation of the domestic authorities. Giving due leeway to decisions about resources and priorities and to a legitimate policy to try to reduce drug use in prisons, and noting that some preventive steps had been taken and that the authorities were monitoring developments elsewhere, the Court concluded that there had been no violation of the applicant's right to respect of his private life.

In *Florea v. Romania* the Court found that there was no consensus among the member States of the Council of Europe with regard to protection against passive smoking in prisons. However, the applicant had had to tolerate his fellow prisoners' smoking even in the prison infirmary and prison hospital, against his doctor's advice. That situation, combined with deplorable conditions of hygiene and lack of space, had exceeded the threshold of severity required for a violation of Article 3.

C. Other health-related issues in the context of detention

Situations in which the responsibility of the State would normally not be engaged may result in positive obligations when a person is deprived of his or her liberty and hence comes within the direct control of State authorities.

In *Xiros v. Greece* the Court found that a refusal to suspend the execution of the applicant's prison sentence in order to allow him to undergo specialist hospital treatment for his eyesight had amounted to a violation of Article 3. In *V.D. v. Romania* a violation of Article 3 was found because of a refusal to provide dentures to an impoverished prisoner with no teeth and serious health problems. In *Vladimir Vasilyev v. Russia* the Court found that a failure to provide a prisoner with adequate orthopaedic footwear had caused him distress and hardship amounting to degrading treatment. In the same vein, failure to provide a detainee with defective eyesight with glasses was found to amount to degrading treatment in *Slyusarev v. Russia*. In *Kupczak v. Poland* a paraplegic detainee who had not been provided with adequate medication for chronic back pain for about two years was found to have suffered inhuman and degrading treatment, contrary to Article 3.

D. Detainees with physical disabilities

(1) Inadequate conditions of detention

Where persons with disabilities are detained, the authorities must take care to provide conditions that meet any special needs resulting from the disability (*Price v. the United Kingdom*).

In *D.G. v. Poland* the Court found the conditions of detention of a paraplegic prisoner, who was confined to a wheelchair and suffered from incontinence, to have been inadequate: he did not have daily access to the shower rooms and could not reach the toilets without help from other inmates. In contrast, in *Zarzycki v. Poland* the Court found that the authorities had provided the applicant, a prisoner amputated at both elbows, with the regular and adequate assistance his special needs warranted. In these circumstances, it considered that even though his disability made him more vulnerable to the hardships of detention, his treatment had not reached the threshold of severity required to constitute degrading treatment within the meaning of Article 3 of the Convention⁷.

In *Arutyunyan v. Russia* a wheelchair-bound prisoner was required to use four flights of stairs in order to receive life-supporting medical treatment and whenever he needed to visit the medical unit, see his lawyer, undergo clinical testing or attend court hearings. The Court found this to be incompatible with Article 3.

State obligations do not only arise on imprisonment. Due consideration also has to be paid to health issues as soon as a person is taken into police custody. In *Jasinskis v. Latvia* the Court found a violation of Article 2 in respect of the death of a deaf and mute man as a result of inadequate medical treatment when he was in police custody. The man had no means of communicating with the police officers since none of them appeared to understand sign language and the notepad he normally used to communicate had been taken from him. In *Z.H. v. Hungary* the authorities' failure to obtain adequate assistance to inform a disabled person with severe communication difficulties of the reasons for his arrest was found to be contrary to Article 3.

(2) Dependence on fellow inmates

In *Farbtuhs v. Latvia* the applicant, a prisoner suffering from a physical disability, was assisted during working hours by the prison medical staff and outside working hours by other inmates on a voluntary basis. The Court expressed concern about the appropriateness of such a practice, which left the bulk of responsibility for a man with such a severe disability in the hands of unqualified prisoners, even if only for a limited period.

In *Semikhvostov v. Russia* the Court went further and found that the State's obligation to ensure adequate conditions of detention included making provision for the special needs of prisoners with physical disabilities. The State could not absolve itself from that obligation by shifting the responsibility on to other inmates. By appointing fellow inmates to care for the applicant the State had not taken the necessary steps to remove the environmental and attitudinal barriers which had seriously impeded his ability to participate in daily activities with the general prison population which, in turn, had precluded his integration and stigmatised him even further.

⁷ For a similar conclusion, see *Ürfi Çetinkaya v. Turkey* (dec.), no. 19866/04, 23 July 2013.

E. Detention and mental health related issues

(1) Medical care in prison for the mentally ill

Like prisoners with physical disabilities, detainees suffering from mental illness may require special medical care and treatment if their deprivation of liberty is to be compatible with Article 3.

In *Dybeku v. Albania* the Court stated that the mentally ill were in a position of particular vulnerability and that clear issues of respect for their fundamental human dignity arose whenever they were detained by the authorities. The fact that the Albanian Government had admitted that a prisoner suffering from paranoid schizophrenia had been treated like all other inmates, notwithstanding his condition, showed a failure to comply with [Recommendation Rec\(2006\)2 of the Committee of Ministers to member states on the European Prison Rules](#). Taking note of the CPT's findings in its reports concerning the detention conditions of prisoners with mental disabilities in Albanian prisons, the Court required the respondent State under Article 46 of the Convention to take urgent measures to secure appropriate conditions of detention, and in particular adequate medical treatment, for prisoners requiring special care on account of their state of health.

Obligations under Article 3 can go so far as to impose an obligation on the State to transfer mentally ill prisoners to special facilities. In *Sławomir Musiał v. Poland* the applicant, who was suffering from epilepsy, schizophrenia and other mental disorders, was detained in various remand centres without psychiatric facilities. The Court found that the generally poor conditions in which he was held were not appropriate for ordinary prisoners, let alone for someone with a history of mental disorder and in need of specialised treatment, who was more susceptible to a feeling of inferiority and powerlessness.

In *Claes v. Belgium* the applicant, who had an intellectual disability, was held continuously in the psychiatric wing of a prison from 1994 onwards after committing a series of sexual assaults. Apart from access to the prison psychiatrist or psychologist, no specific treatment or medical supervision had ever been prescribed for him. Having examined the domestic system as a whole, the Court concluded that the applicant's situation in reality stemmed from a structural problem. The support provided to persons detained in prison psychiatric wings was inadequate and placing them in facilities outside prison often proved impossible either because of the shortage of places or because the relevant legislation did not allow the mental-health authorities to order placement in external facilities. The applicant's continued detention in the psychiatric wing without appropriate medical care and over a significant period, without any realistic prospect of change, therefore constituted particularly acute hardship and amounted to degrading treatment contrary to Article 3.

Suicidal tendencies should call for specific attention when dealing with mentally ill detainees. Article 2 may in certain well-defined circumstances imply a positive obligation on the authorities to take preventive operational measures to protect one individual from another or, in particular circumstances, from himself (see *Keenan v. United Kingdom*).

In *Renolde v. France* the Court found that although the authorities had known from the moment a prisoner had made a first suicide attempt that he was suffering from acute psychotic disorders capable of resulting in self-harm, they had not complied with their positive obligations to protect his right to life. Having failed to order a suitable placement for him, they should at the very least have provided medical treatment corresponding to the seriousness of his condition and made sure he was taking his daily medication. Finally, giving him the maximum penalty of 45 days' detention in a punishment cell had isolated him and deprived him of visits and all activities, thereby aggravating the risk of suicide.

In *De Donder and De Clippel v. Belgium* the applicants' son was convicted and sentenced to a special regime as he was undergoing psychiatric treatment. He was subsequently transferred to the ordinary section of the prison and even spent several days in a punishment cell. He subsequently committed suicide. The Court found that by holding him in the ordinary section of the prison in breach of domestic law, the authorities had contributed to the risk of his committing suicide. Accordingly, there had been a violation of the substantive aspect of Article 2.

(2) Forced confinement of persons with mental illnesses

Article 5 § 1 (e) of the Convention provides:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: [...] (e) the lawful detention [...] of persons of unsound mind”.

In *Stanev v. Bulgaria* the Court outlined three minimum conditions for lawful detention on the basis of unsoundness of mind under Article 5 § 1 (e):

- (1) the person concerned must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical evidence;
- (2) the mental disorder must be of a kind or degree that warrants compulsory confinement; and
- (3) the validity of continued confinement must depend upon the persistence of such a disorder.

In *D.D. v. Lithuania* the applicant, who suffered from schizophrenia, was placed in a home for people with learning disabilities on the grounds that she was unable to care for herself. When assessing whether she had been deprived of her liberty, the Court took into account the fact that the home had exercised complete and effective control over her through medication and by supervising her treatment, care, residence and movement for over seven years. Despite the fact that she no longer had legal capacity, she was still able to express an opinion on her situation and had unequivocally objected to her stay in the home throughout, having requested her discharge on several occasions. Article 5 § 1 (e) was therefore applicable. However, the Court went on to find that her deprivation of liberty was lawful and necessary and therefore found no violation of Article 5 § 1 (e).

In *X v. Finland* the Court found that while there had been no problem with the applicant’s initial involuntary confinement in a mental institution, the safeguards against arbitrariness as regards the need for her continued confinement had been inadequate. In particular, there had been no independent psychiatric opinion, as the two doctors who had decided to prolong her stay were from the hospital where she was confined. In addition, the applicant had no standing under domestic law to seek a review of the need for her continued confinement, as a review could only take place at the initiative of the domestic authorities. In addition to a breach of Article 5, the Court also found a violation of the applicant’s right to respect for her private life under Article 8 because of the forced administration of medication during her confinement.

V. HEALTH AND IMMIGRATION

The Convention does not guarantee the right to any particular standard of medical service or the right to access to medical treatment in any particular country (*Wasilewski v. Poland*).

A. Availability of treatment in country of destination

In relation to migration, issues have primarily arisen under the Convention where healthcare needs have been invoked as a shield against expulsion. The Court has held that in extreme cases, this may engage Article 3.

In *D. v. the United Kingdom* the Court found that the proposed removal of an alien dying of AIDS to his country of origin (St Kitts), where he had no accommodation, family, moral or financial support

and no access to adequate medical treatment, would constitute a violation of Article 3. However, in *N. v. the United Kingdom* it found that the expulsion of an HIV patient to Uganda, where her access to appropriate medical treatment was uncertain, would not amount to a violation of that provision. Similarly, in *Bensaid v. the United Kingdom* it held that the expulsion of a schizophrenic would not constitute a violation of either Article 3 or Article 8, despite the alleged risk of deterioration due to a lack of adequate care in the country of destination.

Nevertheless, domestic courts are always under an obligation to carefully assess the alleged risk of ill-treatment in deportation cases. In *Yoh-Ekale Mwanje v. Belgium* the applicant was at an advanced stage of HIV infection. However, the medical officer who reported on her case only provided information of a general nature regarding the availability of medication in her country of origin, without conducting the specific medical examination that would have enabled him to determine what kind of treatment she required. In these circumstances, the Court considered that the Belgian authorities had not effected a careful and thorough examination of her individual situation before concluding that no risk would arise under Article 3 if she were deported. Thus, although holding that the applicant's deportation would not amount to a violation of Article 3, it nonetheless found a violation of Article 13 on account of the lack of an effective remedy.

In *Aswat v. the United Kingdom* the Court was called upon to examine the conditions of detention in the country of destination of a mentally-ill detainee who was about to be extradited to the United States, where he was liable to serve his prison sentence in a super-max prison. Although the Court found that the extradition of other suspected terrorists would not violate Article 3 (*Babar Ahmad and Others v. the United Kingdom*), it held that there was a real risk in the applicant's case that his extradition to another country and to a different, potentially more hostile, prison environment would result in a significant deterioration in his mental and physical health, which would be capable of reaching the Article 3 threshold.

B. Refusal to deliver a residence permit because of medical condition

In *Kiyutin v. Russia* an Uzbek national married to a Russian national and father of their child, requested a residence permit from the Russian authorities. His request was refused on the grounds that he had tested positive for HIV. The Court noted that residence restrictions on people living with HIV could not be justified by reference to public-health concerns. It stressed the particular vulnerability of persons infected with HIV and accepted that the disease could amount to a form of disability. The blanket provision of domestic law that required HIV-positive non-nationals to be deported left no room for an individualised assessment based on the facts of a particular case and was not objectively justified. The applicant had thus been a victim of discrimination on account of his health status, in breach of Article 14 read in conjunction with Article 8.

C. Detention

Article 5 § 1 (f) of the Convention provides:

“Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

The detention of migrants suffering from illness raises similar issues to the detention of sick persons generally. However, the special situation of migrants, including the legal grounds for their detention, may raise particular questions.

In *Yoh-Ekale Mwanje v. Belgium* the Court found that the detention of an alien at an advanced stage of HIV infection was not linked to the aim of securing her removal from the country and was therefore in breach of Article 5 § 1 (f). The authorities had not considered a less drastic measure, such as granting temporary leave to remain, in order to safeguard the public interest while at the same time avoiding having to keep her in detention for a further seven weeks when her health was deteriorating.

VI. HEALTH AND THE ENVIRONMENT

A. Introduction

There is no explicit right in the Convention to a clean and quiet environment. However, where an individual is directly and seriously affected by an environmental hazard, an issue may arise under Articles 2, 3 or 8 of the Convention (*Hatton and Others v. the United Kingdom*).

The majority of cases relating to health and the environment have been examined by the Court under Article 8. An arguable claim may arise under that provision where an environmental hazard attains a level that results in significant impairment of the ability to enjoy home, private or family life (*López Ostra v. Spain*, § 51). The assessment of that minimum level is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects on the individual's health or quality of life (*Fadeyeva v. Russia*, § 69). Article 8 may apply in environmental cases where pollution is directly caused by the State or where State responsibility arises from a failure to properly regulate private-sector activities. Whether the case is analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights or in terms of interference by a public authority, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention.

Some cases in this area were examined under Article 2 and the positive obligation to take all appropriate steps to safeguard life (*L.C.B. v. the United Kingdom*, § 36). In the context of dangerous activities, special emphasis is placed on regulations geared to the special features of the activity in question, particularly with regard to the level of potential risk to life. The regulations must govern the licensing, setting up, operation, security and supervision of the activities and make it compulsory for all concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks (*Öneryıldız v. Turkey* § 90).

Among the preventive measures particular emphasis has to be placed on the public's right to information, as established in the case-law of the Convention institutions. The regulations must also provide for appropriate procedures, taking into account the technical aspects of the activity in question, for identifying shortcomings in the processes concerned and any errors committed by those responsible at different levels (*Budayeva and Others v. Russia*, § 132). Where the State is required to take positive steps, the choice of means will, in principle, be a matter that falls within its margin of appreciation.

B. Noise

(1) Traffic noise

In the Grand Chamber case of *Hatton and Others v. the United Kingdom* an increase in night flights at Heathrow airport resulted in noise affecting local residents. The Court established that there was an

economic interest in maintaining a full service of night flights, that only a small percentage of people had suffered from the noise, that housing prices had not dropped, and that the applicants could move elsewhere without financial loss. In these circumstances, it found that there had been no violation of Article 8 because the authorities had not overstepped their margin of appreciation.

In *Flamenbaum and Others v. France* the applicants complained about noise caused by the extension of a main runway at an airport and of shortcomings in the related decision-making process. Noting that the domestic courts had recognised the public-interest nature of the project and that the Government had established the region's economic well-being as a legitimate aim, and having regard to the measures taken by the authorities to limit the impact of the noise disturbance on local residents, the Court held that a fair balance had been struck between the competing interests. Moreover, the decision-making process had not been flawed as the applicants had been able to participate in each stage of the procedure and to submit their observations. Accordingly, there had been no violation of Article 8.

Unregulated heavy traffic in the street creating serious noise, vibrations and pollution has also been the subject of complaints before the Court.

In *Deés v. Hungary* the Court held that despite the authorities' efforts to limit and reorganise traffic affecting the street in which the applicant lived, he had suffered direct and serious nuisance as a result of the excessive noise to which he had been exposed over a substantial period. Consequently, the respondent State had failed to discharge its positive obligation to guarantee his right to respect for his home and private life, in violation of Article 8.

In *Grimovskaya v. Ukraine* the applicant complained about the routing of a motorway through her street. The Court found that a fair balance had not been struck, in breach of Article 8, for three reasons: the decision on the route had not been preceded by an adequate environmental feasibility study, there was no reasonable environmental management policy in place, and the applicant was not given a meaningful opportunity to contribute to the decision-making process.

In *Bor v. Hungary* the applicant complained that noise from a nearby railway station made his home virtually uninhabitable. The Court concluded that the State had not discharged its positive obligation to guarantee the applicant's right to respect for his home in that the domestic courts had failed for a period of some 16 years to carry out a proper balancing exercise and reach an enforceable decision that would ensure the applicant did not suffer a disproportionate individual burden.

(2) Other noise

Violations of Article 8 have also been found in relation to persistent noise from a local nightclub which seriously disturbed the applicant's sleep over a prolonged period (*Moreno Gómez v. Spain*), excessive night time noise and disturbance by a bar operating in a part of the house where the applicant lived (*Oluić v. Croatia*) and high noise emissions from an electronic games and computer club operating in flats adjacent to the applicants' home (*Mileva and Others v. Bulgaria*). In each of these cases the respondent State was found to have failed to discharge its positive obligation to guarantee the applicants' right to respect for their home and private life.

In *Zammit Maempel and Others v. Malta* a family complained that their lives and property had been endangered by the authorisation of a fireworks display twice a year near their home. The Court found no violation of Article 8 as there had been only minimal and reversible property damage, there was no risk of personal injury and a certain degree of protection had been provided by the State. It was also relevant that the applicants had been fully aware of the situation when they acquired the property.

C. Pollution

(1) Industrial activities

Where hazardous industrial activities affect the health and well-being of local residents, the Court's case-law imposes positive obligations on the State to protect the health of people living near the centre of the activity, to inform them of the harmful effects of the activity including any risk of accident, and to help them relocate if necessary and possible.

In *López Ostra v. Spain* the applicant complained that gas fumes, smells and contamination from an industrial waste plant near her home had caused health problems for local residents including her daughter, who had suffered from nausea, vomiting and anorexia. The Court found a violation of Article 8 in that the State had not succeeded in striking a fair balance between the interest of the town's economic well-being and the applicant's effective enjoyment of the right to respect for her home and private and family life.

In *Fadeyeva v. Russia* the applicant's home was situated in an area designated a sanitary security zone because of its proximity to a large steel plant whose noise and industrial emissions posed a danger to the health and well-being of people living there. The Court noted that, although the Government had initiated a resettlement programme for people living in the security zone and the applicant had been placed on a housing waiting list, she was not offered any effective solution to help her move away. Furthermore, although the plant was operating in breach of domestic environmental standards, no effective measures appeared to have been taken to reduce the pollution to acceptable levels. Accordingly, there had been a violation of the applicant's rights under Article 8 of the Convention to respect for her private life and home.

Similar consideration were expressed in *Ledyayeva, Dobrokhotova, Zolotareva and Romashina v. Russia*, where the State had failed to take appropriate measures to protect the applicants from a serious environmental hazard by resettling them away from the polluted area and in *Dubetska and Others v. Ukraine*, where the authorities failed to resettle the applicants living some 100 meters from a coal mine or find a different solution to diminish the pollution levels harmful to their health.

(3) Accidents

Industrial accidents may also affect the health of the local population and, in such circumstances, the State will be under a positive obligation to efficiently deal with the consequences of such events.

In *Guerra and Others v. Italy*, following an accident caused by the malfunctioning of factory equipment, 150 local residents, including the applicants, were admitted to hospital with acute arsenic poisoning. The applicants had waited for a number of years for essential information that would have enabled them to assess the risks they and their families ran by continuing to live in the town, which was particularly exposed in the event of an accident at the factory. The Court found that the State had failed to fulfil its positive obligation to provide the local population with information about the risk factors and how to proceed in the event of an accident. It had thus failed to secure the applicants' right to respect for their private and family life, in breach of Article 8.

In *Tătar v. Romania* a gold mine which used sodium cyanide in its extraction process and was situated near the applicants' home released about 100,000 cubic metres of cyanide-contaminated water into the environment following an accident. The applicants alleged that their son's asthma had deteriorated as a result. Even though the applicants were unable to prove the existence of a causal link between his exposure to sodium cyanide and the son's asthma, the Court found that State authorities had failed in their duty to assess, to a satisfactory degree, the risks the company's activity might entail, and to take suitable measures to protect people's right to private life and home and, more generally, their right to a healthy and safe environment.

In *Öneryıldız v. Turkey* the applicant's dwelling was built without authorisation on land surrounding a rubbish tip. In April 1994 a methane explosion occurred at the tip and the refuse erupting from the

pile of waste engulfed more than ten houses, including the applicant's. The Court noted that the Government had not provided the inhabitants with information about the risks they ran by living there, but went on to find that, even if they had, they remained responsible as they had not taken the necessary practical measures to avoid the risks to life. The regulatory framework in place had proved defective as the tip had been allowed to open and operate without a coherent supervisory system. The town-planning policy had likewise been inadequate and had undoubtedly played a part in the sequence of events leading to the accident. There had thus been a violation of Article 2.

In *Budayeva and Others v. Russia* the first applicant's husband was killed and she and other members of her family were injured in a mudslide. The Court noted that the authorities had failed to implement land-planning and emergency-relief policies in the light of the foreseeable risk of a mudslide with devastating consequences in the area. No funds had been allocated for urgent repairs and essential practical measures to ensure the safety of the local population had been overlooked. Consequently, there had been a violation of Article 2.

In *Kolyadenko and Others v. Russia* a flash flood caused by a State-owned company put at risk the applicants' lives and property. The authorities had been aware that in the event of heavy rain it might be necessary to urgently release water from the reservoir and that this might cause extensive flooding. Despite knowing this, they had neither prevented the area from being inhabited nor taken effective measures to protect it from flooding. The Court concluded that the State had failed in its obligation to protect the applicants' lives and that the judicial response to the events had not secured the full accountability of the officials or authorities in charge, in breach of both the substantive and procedural heads of Article 2.

(4) Waste pollution

The Court has also applied the above principles to cases concerning waste pollution.

In *Giacomelli v. Italy*, which concerned harmful emissions from a "special-waste" treatment plant situated about 30 metres from the applicant's home, the Court noted that the environmental impact study that was required under domestic law before the plant could start to operate, was not carried out until seven years later. Although the domestic courts had ordered the suspension of the plant's operations until its alignment with the environmental regulations, the facility had been not closed. In these circumstances, there had been a violation of Article 8.

In *Brândușe v. Romania* strong smells emanating from a waste tip in the vicinity of the applicant's prison cell affected his quality of life and well-being. The tip had no proper authorisation to operate and studies showed that its activity did not comply with environmental regulations as the pollution levels exceeded the established norms and caused offensive smells. Moreover, the public had not been informed about the resulting risks to the environment and health. The respondent State had thus failed to fulfil its positive obligation under Article 8 of the Convention.

In *Di Sarno and Others v. Italy* the municipality where the applicants lived and worked was affected by a "waste crisis" and had been subject to a state of emergency for about 15 years. Rubbish had piled up in the streets for at least six months. The Court found that the authorities' prolonged failure to ensure proper waste collection, treatment and disposal services in the region had infringed the applicants' right to respect for their private lives and homes, contrary to Article 8.

(5) Nuclear tests

Where a State engages in hazardous activities which might have hidden adverse effects on health, Article 8 requires that an effective and accessible procedure be established enabling persons affected to obtain relevant and appropriate information.

The case of *McGinley & Egan v. the United Kingdom* concerned former servicemen of the British Army, who were present at nuclear tests on Christmas Island in the 1950s. On the facts, the Court

found that the applicants had been given sufficient information as to whether they had been exposed to dangerous levels of radiation during the testing and that the State had therefore fulfilled its positive obligation under Article 8.

L.C.B. v. the United Kingdom concerned the daughter of one of the Christmas Island servicemen. After developing leukaemia she complained of the authorities' failure to take measures to protect her health. The Court observed that it could not be established whether the applicant's father had in fact been exposed to dangerous levels of radiation and the State authorities could have been reasonably confident in the contemporaneous records which indicated that radiation had not reached dangerous levels in areas where ordinary servicemen were stationed. The State had been required to warn the applicant's parents and monitor her health only if it appeared likely that any radiation to which her father had been exposed had created a risk to the applicant's own health. The causal link between the father's possible radiation and the applicant's leukaemia had, therefore, not been established and there had been no breach of Article 2.

In *Roche v. the United Kingdom* the applicant suffered serious health problems owing to exposure to mustard and nerve gas during tests carried out on him in the 1960s while he was serving in the British Army. The Court found that the respondent State had not provided an effective procedure for the applicant to have access to all relevant and appropriate information enabling him to assess any risk to which he had been exposed during his participation in the tests. There had accordingly been a violation of Article 8.

VII. OTHER CASES

A. Health and the workplace

The Court recently delivered two landmark judgments which may perhaps be seen as recognising an emerging category of corporate violations of human rights in respect of which the State's responsibility may be engaged.

In *I.B. v. Greece* the applicant was dismissed from his job at the insistence of colleagues after they learned that he was HIV positive. The Court reiterated that people living with HIV were a vulnerable group with a history of prejudice and stigmatisation and that States should be afforded only a narrow margin of appreciation in choosing measures that could single out this group for differential treatment. The applicant's HIV-positive status had no effect on his ability to carry out his work and the employees' supposed or expressed prejudice could not be used as a pretext for terminating his employment. In such cases, the employer's interests had to be carefully balanced against those of the employee, the weaker party to the contract, especially when he was HIV-positive. However, in its decision dismissing the applicant's claim for unfair dismissal, not only had the Greek Court of Cassation relied on information that was clearly inaccurate, such as the "contagious" nature of the applicant's illness, it had also placed too much weight on the employer's interests in restoring calm within the company and ensuring its smooth operation, without properly weighing up the competing interests. The Court therefore found a violation of Article 14 in conjunction with Article 8 of the Convention.

In *Vilnes and Others v. Norway* the applicants were former divers who as a consequence of their professional activities suffered damage to their health resulting in disability. The Court noted that there was a strong likelihood that their health had deteriorated as a result of decompression sickness, due to the use of too-rapid decompression tables. Standardised tables, which could suitably be viewed as an essential source of information for divers enabling them to assess the health risks involved, had not been achieved until 1990. Thus, with hindsight at least, it seemed probable that if the authorities had intervened to forestall the use of rapid decompression tables earlier, the risk could have been averted sooner. Diving companies were not under an obligation to produce

decompression tables to obtain authorisation to carry out individual diving operations, but had instead enjoyed wide latitude to opt for tables that offered competitive advantages serving their business interests. There was also no scientific consensus at the time regarding the long-term effects of decompression sickness. In such circumstances, it would have been reasonable for the authorities to take the precaution of ensuring companies observed full transparency and that divers received the information they needed in order to be able to assess the risks and give informed consent. The fact that these steps were not taken meant that the respondent State had not fulfilled its obligation to secure the applicants' right to respect for their private life as guaranteed by Article 8.

In another workplace-related health case, *Brincat and Others v. Malta*, the applicants alleged that they (or their relatives) were constantly and intensively exposed to asbestos particles during their employment in a Government-run ship repair yard restoring machinery insulated with asbestos. This resulted in damage to their health and, in one case, the death of one of the workers from asbestos related cancer. The Court found that the Maltese Government had known or ought to have known of the dangers arising from exposure to asbestos at least from the early 1970s, given the domestic context as well as scientific and medical opinions accessible to the Government at the relevant time. Despite this, the applicants had been left without any adequate safeguards against the dangers of asbestos, either in the form of protection or information about risks, until the early 2000s by which time they had left employment at the ship repair yard. Legislation which had been passed in 1987 had not adequately regulated asbestos-related activity or provided any practical measures to protect employees whose lives may have been endangered. Lastly, no adequate information was in fact provided or made accessible to the applicants during the relevant period of their careers at the shipyard. The Court found violations of Article 2 in respect of the deceased applicant and of Article 8 in respect of the remaining applicants.

B. Protection of medical data

The protection of personal data, including medical information, is a fundamental feature of the right to respect for private life. Medical data are considered sensitive by both the EU Data Protection Directive⁸ and Council of Europe Convention 108⁹ and, as such, are subject to stricter rules of processing.

For its part, the Court has acknowledged that the protection of personal data, including medical information, is of fundamental importance to the enjoyment of the right to respect for his or her private and family life guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. The disclosure of such data may seriously affect a person's private and family life, as well as their social and employment situation, by exposing them to opprobrium and the risk of ostracism. Respecting the confidentiality of health data is crucial not only for the protection of a patient's privacy but also for the maintenance of that person's confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from seeking appropriate treatment, thereby endangering their own health.

In *I. v. Finland* the applicant, an HIV-positive nurse, suspected that unauthorised persons had accessed her medical records. While the strict application of domestic law would have constituted a substantial safeguard in her case, the system at the hospital made it impossible to clarify retroactively the use of patient records or to determine whether information contained on the applicant and her family had been given to or accessed by unauthorised parties. Moreover, at the

⁸. Article 8 (1) of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ 1995 L 281, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>

⁹. Article 6 of the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CETS No. 108, 1981 available at <http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm>

material time the records could also be read by staff not directly involved in her treatment. Although the hospital had subsequently taken *ad hoc* measures to protect the applicant against unauthorised disclosures by restricting access to treating personnel and registering her under a false name and social-security number, this had come too late. What had been required in the applicant's situation was practical and effective protection to exclude any possibility of unauthorised access occurring in the first place. The Court therefore found a violation of Article 8.

In *Avilkina and Others v. Russia* a deputy prosecutor required medical institutions to report all refusals of a blood transfusion by Jehovah's Witnesses. As a result, he was informed of the second applicant's chemotherapy in a public hospital following a non-blood management treatment plan and of the fourth applicant's refusal of the use of foreign blood for surgical treatment. The Court observed that the applicants were not suspects or accused in any criminal proceedings and the prosecutor was merely conducting an investigation into the activities of a religious organisation in response to complaints received by his office. There had consequently been no pressing social need to request the disclosure of the confidential medical information concerning the applicants. In fact, other options had been available to the prosecutor to follow up on the complaints, such as seeking the applicants' consent to disclosure or questioning them about the matter. The Court found a violation of Article 8 of the Convention.

In *Biriuk v. Lithuania* the applicants sued a newspaper for breach of privacy after it published a front-page article quoting hospital staff as saying they were HIV positive. The article went on to give other details about their private life. Although the domestic courts found in the applicants' favour, they were unable to award more than the statutory maximum of EUR 2,900. The Court considered it crucial for domestic law to safeguard patient confidentiality and discourage any disclosures of personal data, especially bearing in mind the negative impact of such disclosures on the willingness of people at risk to take voluntary tests for HIV and seek treatment. In such cases of outrageous abuse of press freedom, the severe statutory limitations on judicial discretion in redressing the damage suffered thereby deterring recurrences had failed to provide the applicants with the protection of privacy they could have legitimately expected. There had thus been a violation of Article 8.

On the other hand, the Court has also acknowledged that the interests of a patient and the community as a whole in protecting the confidentiality of medical data may, in certain situations, be outweighed by the interests of investigating crime or of holding court proceedings in public.

In *Z. v. Finland* the applicant's ex-husband had been convicted of manslaughter for having knowingly exposed his victims to the risk of HIV infection. During the proceedings, despite her disapproval, the applicant's doctor and psychiatrist were called to give evidence about the applicant's medical condition. The national courts ordered that the full judgment, which mentioned the applicant's full name, and the case documents remain confidential for ten years. The Court found that the questioning of the applicant's medical advisers had been justified in the circumstances, since it was crucial in establishing when her former husband had become aware of his HIV infection and whether he was to be tried for manslaughter or a less serious offence. On the other hand, the Court found that a violation of Article 8 would occur if the applicant's medical data were made publicly accessible as early as ten years after her former husband's conviction. Observing that the applicant's medical data had become part of the criminal proceedings against her ex-husband without her consent, the decision to reveal the entire case-file so early on would not be supported by reasons which could be considered sufficient to override her interest in the data remaining confidential for a longer period.

APPENDIX - LIST OF JUDGMENTS AND DECISIONS

The case-law cited in this Guide refers to judgments or decisions delivered by the European Court of Human Rights and to decisions or reports of the European Commission of Human Rights.

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the [HUDOC](http://hudoc.echr.coe.int) database (<<http://hudoc.echr.coe.int>>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments, decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), the Commission (decisions and reports) and the Committee of Ministers (resolutions).

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into nearly thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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