October 2022
This Factsheet does not bind the Court and is not exhaustive

Health

See also the factsheets on "COVID-19 health crisis", "Detention and mental health", "Elderly people and the ECHR", "End of life and the ECHR", "Hunger strikes in detention", "Persons with disabilities and the ECHR", "Prisoners' health-related rights" and "Reproductive rights".

Access to experimental treatment or drug

Hristozov and Others v. Bulgaria

13 November 2012

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

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

Durisotto v. Italy

6 May 2014 (decision on the admissibility)

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

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

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

Access to personal medical records

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

28 April 2009

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

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

Alleged failure to provide adequate medical care

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

17 July 2014 (Grand Chamber)

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

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

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

Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, finding that the violations of the Convention in Valentin Câmpeanu's case reflected a wider problem, the Court recommended Romania to take the necessary general measures to ensure that mentally disabled persons in a comparable situation were provided with independent representation enabling them to have complaints relating to their health and treatment examined before an independent body.

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

Clinical trial of new medicine

Traskunova v. Russia[1]

30 August 2022[2]

This case concerned the death of the applicant's daughter while she was participating in the clinical trial of a new drug for schizophrenia, namely asenapine. The ensuing inquiry revealed that her daughter had slipped into a coma and died because of heart disease which had gone undetected and which had been aggravated by the experimental drug. The applicant unsuccessfully attempted to have disciplinary proceedings instituted against those responsible and to bring criminal proceedings into the death. She argued that her daughter's doctors had put her life at risk by failing to carry out comprehensive medical check-ups prior to admitting her to the trials, to then monitor her condition, and to discontinue the trials as soon as side effects had appeared.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention in the present case, finding that the respondent State has failed to comply with its substantive and procedural obligations under Article 2. In particular, the Court noted that the State had not ensured an effective implementation and functioning of the legal framework with a view to protecting the right to life of the applicant's daughter – a mentally ill and thus vulnerable individual – in the context of clinical trials of experimental medicinal products, and it had not provided an adequate judicial response to the applicant in that connection.

Complaint about amount of damages awarded for harm caused to one's health

Otgon v. the Republic of Moldova

25 October 2016

This case concerned the applicant's complaint about the amount of damages (the equivalent of 648 euros) awarded to her by the courts after she drank infested tap water. As a result, she had spent two weeks in hospital with dysentery.

The Court held that there had been a **violation of Article 8** (right to respect of private life) of the Convention, finding that even though the domestic courts had established responsibility and awarded compensation in the proceedings brought against the State-owned local utilities provider, the sum awarded was insufficient for the degree of harm that had been caused to the applicant's health.

Compulsory childhood vaccination

Vavřička and Others v. Czech Republic

8 April 2021 (Grand Chamber)

This case concerned the Czech legislation on compulsory vaccination[3] and its consequences for the applicants who refused to comply with it. The first applicant had been fined for failure to comply with the vaccination duty in relation to his two children. The other applicants had all been denied admission to nursery school for the same reason. The applicants all alleged, in particular, that the various consequences for them of non-compliance with the statutory duty of vaccination had been incompatible with their right to respect for their private life.

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1. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").
2. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights.
3. In the Czech Republic there is a general legal duty to vaccinate children against nine diseases that are well known to medical science. Compliance with the duty cannot be physically enforced. Parents who fail to comply, without good reason, can be fined. Non-vaccinated children are not accepted in nursery schools (an exception is made for those who cannot be vaccinated for health reasons).

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention in the present case, finding that the measures complained of by the applicants, assessed in the context of the national system, had been in a reasonable relationship of proportionality to the legitimate aims pursued by the respondent State (to protect against diseases which could pose a serious risk to health) through the vaccination duty. The Court clarified that, ultimately, the issue to be determined was not whether a different, less prescriptive policy might have been adopted, as had been done in some other European States. Rather, it was whether, in striking the particular balance that they did, the Czech authorities had exceeded their wide margin of appreciation in this area. The Court concluded that the impugned measures could be regarded as being "necessary in a democratic society". The Court noted, in particular, that in the Czech Republic the vaccination duty was strongly supported by the relevant medical authorities. It could be said to represent the national authorities' answer to the pressing social need to protect individual and public health against the diseases in question and to guard against any downward trend in the rate of vaccination among children. The judgment also emphasised that in all decisions concerning children, their best interests must be of paramount importance. With regard to immunisation, the objective had to be that every child was protected against serious diseases, through vaccination or by virtue of herd immunity. The Czech health policy could therefore be said to be consistent with the best interests of the children who were its focus. The Court further noted that the vaccination duty concerned nine diseases against which vaccination was considered effective and safe by the scientific community, as was the tenth vaccination, which was given to children with particular health indications.

Compulsory health insurance

De Kok v. the Netherlands

26 April 2022 (decision on the admissibility)

The applicant complained about the obligation to buy basic health insurance in the Netherlands and the consequences of his not having done so. He stated in particular that he would prefer to pay only for homeopathic remedies rather than sharing the collective burden of conventional medical treatment covered by the basic insurance. He complained that he had been forced to take out basic health insurance contrary to his beliefs, with an opt-out only for those with conscientious objections to all forms of insurance, which had not been his case. He also submitted that the obligation had interfered with his right to use his money as he saw fit.

The Court declared **inadmissible**, as being manifestly ill-founded, the applicant's complaint under **Article 8** (right to respect for private life) of the Convention. It considered in particular that, in so far as that provision was applicable – and thus proceeding on the basis that it should be assumed that both the obligation for the applicant to take out basic health insurance and the taking out of such insurance on his behalf constituted an interference with his right to private life – the decision in question was grounded in law and served the legitimate aim of ensuring access to adequate medical facilities and to prevent people from being uninsured so as to ensure the protection of health and the protection of the rights of others. The Court found that the obligation was the Netherlands' answer to the pressing social need of ensuring affordable healthcare via collective solidarity, and noted the wide discretion ("margin of appreciation") States had in that area. It further noted that the applicant had been neither denied nor forced to have any treatment, and could have opted for supplementary health insurance that covered homeopathic remedies. The Court also declared **inadmissible**, as being manifestly ill-founded, the applicant's complaint under **Article 9** (freedom of conscience) of the Convention, finding that that complain had not been of sufficient cogency, seriousness, cohesion and importance to fall within the scope of Article 9. Lastly, the Court declared **inadmissible** the applicant's complaint under **Article 1** (protection of property) **of Protocol No. 1** to the Convention. It considered

that given the solidarity principle, the cost of the health insurance premium in question, the possibility to buy supplementary health insurance to cover homeopathic medicine, and the possibility for individuals with a modest income to apply for financial support (*zorgtoeslag*), the interference in question had been proportionate to the legitimate aim pursued.

Confidentiality of personal information concerning health

Panteleyenko v. Ukraine

29 June 2006

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

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

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

10 October 2006

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

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

Armonas v. Lithuania and Biriuk v. Lithuania

25 November 2008

In January 2001, Lithuania's biggest daily newspaper published an article on its front page concerning an AIDS threat in a remote part of Lithuania. In particular, medical staff from an AIDS centre and an hospital were cited as having confirmed that the applicants were HIV positive. The second applicant, described as "notoriously promiscuous", was also said to have had two illegitimate children with the first applicant. The applicants complained in particular that, even though the domestic courts had held that their right to privacy had been seriously violated, they had been awarded derisory damages.

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

Avilkina and Others v. Russia[4]

6 June 2013

The applicants were a religious organisation, the Administrative Centre of Jehovah's Witnesses in Russia, and three Jehovah's Witnesses. They complained in particular about the disclosure of their medical files to the Russian prosecution authorities following their refusal to have blood transfusions during their stay in public hospitals. In connection with an inquiry into the lawfulness of the applicant organisation's activities, the prosecuting authorities had instructed all St. Petersburg hospitals to report refusals of blood transfusions by Jehovah's Witnesses.

The Court declared the application **inadmissible** (incompatible *ratione personae*) as regards the applicant religious organisation, and as regards one of the three other applicants, as no disclosure of her medical files had actually taken place, and this was not in dispute by the parties. The Court further held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention as concerned the two other applicants. It notably found that there had been no pressing social need to disclose confidential medical information on them. Furthermore, the means employed by the prosecutor in conducting the inquiry, involving disclosure of confidential information without any prior warning or opportunity to object, need not have been so oppressive for the applicants. Therefore the authorities had made no effort to strike a fair balance between, on the one hand, the applicants' right to respect for their private life and, on the other, the prosecutor's aim of protecting public health.

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

29 April 2014

The applicant alleged that the collection of her personal medical data by a State agency without her consent had violated her right to respect for her private life.

The Court recalled the importance of the protection of medical data to a person's enjoyment of the right to respect for private life. It held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention in the applicant's case, finding that the applicable law had failed to indicate with sufficient clarity the scope of discretion conferred on competent authorities and the manner of its exercise.

See also: **Radu v. the Republic of Moldova**, judgment of 15 April 2014; **Y.Y. v. Russia (no. 40378/06)**, judgment of 23 February 2016[5].

Konovalova v. Russia[6]

9 October 2014

The applicant complained about the unauthorised presence of medical students during the birth of her child, alleging that she had not given written consent to being observed and had been barely conscious when told of such arrangements.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found in particular that the relevant national legislation at the time of the birth of the applicant's baby – 1999 – did not contain any safeguards to protect patients' privacy rights. This serious shortcoming had been exacerbated by the hospital's procedure for obtaining consent from patients to take part in the clinical teaching programme during their treatment. In particular, the hospital's booklet notifying the applicant of her possible involvement in the teaching programme had been vague and the matter had in general been presented to her in such a way as to suggest that she had no other choice.

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

P.T. v. the Republic of Moldova (no. 1122/12)

26 May 2020

This case concerned disclosure of the applicant's HIV positive status in a certificate exempting him from military service. The applicant complained that he had had to show the certificate when renewing his identification papers in 2011 and in certain other situations, such as whenever he applied for a new job.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the disclosure of being HIV positive in the military service exemption certificate had breached the applicant's privacy rights. It noted in particular that the Moldovan Government had not specified which "legitimate aim" of Article 8 of the Convention had been pursued by revealing the applicant's illness. Moreover, they had not explained why it had been necessary to include sensitive information about the applicant in a certificate which could be requested in a variety of situations where his medical condition had been of no apparent relevance. In the applicant's case, the Court considered that such a serious interference with his rights had been disproportionate.

See also, among others:

Mockutė v. Lithuania

27 February 2018

Disciplinary proceedings against health professionals

Diennet v. France

26 September 1995

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

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

Defalque v. Belgium

20 April 2006

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

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

Gubler v. France

27 July 2006

This case concerned disciplinary proceedings conducted by the National Council of the *Ordre des médecins* (Medical Council) against the applicant, who was the private physician to President François Mitterrand, for having disclosed information covered by professional confidentiality, issued spurious medical certificates and damaged the reputation of the profession. The applicant was subsequently struck off the register. He alleged in particular that the National Council of the Ordre had not been independent

and impartial. He claimed that it had been both judge and party in his case, since it had been the complainant at first instance and it had then acted as an appeal body, meaning that it had been required, as a disciplinary body, to rule on its own complaint.
The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention. The Court noted in particular that the ordinary members of the disciplinary section had withdrawn from the sitting at which the National Council of the Ordre had decided to bring a complaint against the applicant before the Council had even considered the appropriateness of beginning such proceedings. This showed that the members of the disciplinary section, especially those who had been members of the composition that ruled on the complaint brought against the applicant, had not been involved in the National Council's decision to lodge that complaint.

Discrimination on ground of health

Kiyutin v. Russia[7]

10 March 2011

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

Novruk and Others v. Russia[8]

16 March 2016

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

See also: **Ibrogimov v. Russia**, judgment (Committee) of 15 May 2018.

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

Deportation of seriously ill persons

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

2 May 1997

The applicant, originally from St Kitts (in the Caribbean), was arrested for cocaine possession upon his arrival in the United Kingdom and was sentenced to six years' imprisonment. It was discovered that he suffered from AIDS. Before his release, an order was made for his deportation to St Kitts. He claimed that his deportation would reduce his life expectancy as no treatment of the kind he had been receiving in the United Kingdom was available in St Kitts.

The Court emphasised that aliens who had served their prison sentences and were subject to expulsion could not, in principle, claim any entitlement to remain in the territory of a Convention State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison. However, the circumstances of the applicant's case were rather exceptional. As his illness had been very advanced and he was dependent on the treatment he had been receiving, there was a serious danger that the adverse living conditions in St Kitts would reduce his life expectancy and subject him to acute suffering. His **deportation would** therefore **be in breach of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

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

27 May 2008 (Grand Chamber)

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

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

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

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

19 March 2015 (Grand Chamber)

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

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

considerations weighing in favour of regularising the applicant's residence status and that of her children.

Paposhvili v. Belgium

13 December 2016 (Grand Chamber)

This case concerned an order for the applicant's deportation to Georgia, issued together with a ban on re-entering Belgium. The applicant, who suffered from a number of serious medical conditions, including chronic lymphocytic leukaemia and tuberculosis, alleged in particular that substantial grounds had been shown for believing that if he had been expelled to Georgia he would have faced a real risk there of inhuman and degrading treatment and of a premature death. He also complained that his removal to Georgia, ordered together with a ten-year ban on re-entering Belgium, would have resulted in his separation from his family, who had been granted leave to remain in Belgium and constituted his sole source of moral support. The applicant died in June 2016. His wife and her three children subsequently pursued his case before the Court.

The Court held that **there would have been a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **if the applicant had been removed** to Georgia without the Belgian authorities having assessed the risk faced by him in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, **and a violation of Article 8** (right to respect for private and family life) of the Convention if he had been removed to Georgia without the Belgian authorities having assessed the impact of removal on his right to respect for his family life in view of his state of health. The Court noted in particular that the medical situation of the applicant, who had been suffering from a very serious illness and whose condition had been life-threatening, had not been examined by the Belgian authorities in the context of his requests for regularisation of his residence status. Likewise, the authorities had not examined the degree to which the applicant had been dependent on his family as a result of the deterioration of his state of health. The Court found that in the absence of any assessment by the domestic authorities of the risk facing the applicant, in the light of the information concerning his state of health and the existence of appropriate treatment in Georgia, the information available to those authorities had been insufficient for them to conclude that the applicant, if returned to Georgia, would not have run a real and concrete risk of treatment contrary to Article 3 of the Convention. The Court also found that it had been up to the national authorities to conduct an assessment of the impact of removal on the applicant's family life in the light of his state of health. In order to comply with Article 8 of the Convention the authorities would have been required to examine whether, in the light of the applicant's specific situation at the time of removal, the family could reasonably have been expected to follow him to Georgia or, if not, whether observance of the applicant's right to respect for his family life required that he be granted leave to remain in Belgium for the time he had left to live.

Savran v. Denmark

7 December 2021 (Grand Chamber)

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

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It considered in particular that it had not been demonstrated that the applicant's expulsion to Turkey had exposed him to a "serious, rapid and irreversible decline in his state of health resulting in intense suffering", let alone to a "significant reduction in life expectancy". Indeed, the risk posed by the reduction in treatment seemed to apply mainly to others rather than to the applicant himself. The Court held, however, that there had been a **violation of Article 8** (right to

respect for private life) of the Convention, finding that, overall, the domestic authorities had failed to take account of the individual circumstances of the applicant and to balance the issues at stake, and that the effective permanent re-entry ban had been disproportionate. In particular, whilst the applicant's criminal offence – violent in nature – had undoubtedly been a serious one, no account had been taken of the fact that at the time he had committed the crime he had been, very likely, suffering from a mental disorder, with physically aggressive behaviour one of its symptoms, and that, owing to that mental illness, he had been ultimately exempt from any punishment but instead had been committed to psychiatric care. In the Court's view, these facts had limited the extent to which the respondent State could legitimately rely on the seriousness of the criminal offence to justify his expulsion.

Exposure to environmental hazards[9]

Roche v. the United Kingdom

19 October 2005 (Grand Chamber)

The applicant, who was born in 1938 and has been registered as a person with disabilities since 1992, was suffering from health problems as a result of his exposure to toxic chemicals during tests carried out on him in the early 1960s while he was serving in the British army. He complained that he had not had access to all relevant and appropriate information that would have allowed him to assess any risk to which he had been exposed during his participation in those tests.

The Court found a **violation of Article 8** (right to private and family life) of the Convention, because a procedure had not been available to the applicant making it possible to obtain information about the risks related to his participation in the tests organised by the army.

Vilnes and Others v. Norway

5 December 2013

This case concerned former complaints by divers that they are disabled as a result of diving in the North Sea for oil companies during the pioneer period of oil exploration (from 1965 to 1990). All the applicants complained that Norway had failed to take appropriate steps to protect deep sea divers' health and lives when working in the North Sea and, as concerned three of the applicants, at testing facilities. They all also alleged that the State had failed to provide them with adequate information about the risks involved in both deep sea diving and test diving.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, on account of the failure of the Norwegian authorities to ensure that the applicants received essential information enabling them to assess the risks to their health and lives resulting from the use of rapid decompression tables. It further held that there had been **no violation of Article 2** (right to life) or **Article 8** of the Convention as regards the remainder of the applicants' complaints about the authorities' failure to prevent their health and lives from being put in jeopardy, and that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

This case complements the Court's case-law on access to information under Articles 2 and 8 of the Convention, notably in so far as it establishes an obligation on the authorities to ensure that employees receive essential information enabling them to assess occupational risks to their health and safety.

Brincat and Others v. Malta

24 July 2014

This case concerned ship-yard repair workers who were exposed to asbestos for a number of decades beginning in the 1950s to the early 2000s which led to them

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

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

Food safety

S.A. Bio d'Ardennes v. Belgium

12 November 2019

The case concerned the Belgian authorities' refusal to compensate the applicant company for the compulsory slaughter of 253 head of cattle infected with brucellosis. the applicant company alleged that the refusal to award it compensation for the slaughter of its cattle had constituted a disproportionate interference with its right to the enjoyment of its possessions.
The Court held that there had been **no violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention. The Court found, among other things, that the applicant company had been refused compensation because of numerous breaches of animal health regulations; this had been provided for under domestic law. It further observed that the national authorities had a degree of discretion when it came to protecting public health and food safety in their territory and determining the penalties for breaches of the health regulations, depending on the risks arising from the failure to comply and the nature of the animal diseases which the regulations were designed to eradicate. Hence, in view of the importance for States of preventing such diseases and of the margin of appreciation left to them in that regard, the Court held that the applicant company had not had to bear an individual and excessive burden as a result of the refusal to grant it compensation for the slaughter of its cattle..

Forcible medical intervention or treatment

Jalloh v. Germany

11 July 2006 (Grand Chamber)

This case concerned the forcible administration of emetics to a drug-trafficker in order to recover a plastic bag he had swallowed containing drugs. The drugs were subsequently used as evidence in the criminal proceedings against him. The applicant claimed in particular that he had been subjected to inhuman and degrading treatment as a result of having been forcibly administered the emetics in question.
The Court reiterated that the Convention did not, in principle, prohibit recourse to a forcible medical intervention that would assist in the investigation of an offence. However, any interference with a person's physical integrity carried out with the aim of obtaining evidence had to be the subject of rigorous scrutiny. In the present case, the Court held that the applicant had been subjected to inhuman and degrading **treatment contrary to Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that the German authorities had forced him to regurgitate, not for therapeutic reasons, but in order to retrieve evidence they could

equally have obtained by less intrusive methods. Not only had the manner in which the impugned measure was carried out been liable to arouse in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him, but the procedure had furthermore entailed risks to the applicant's health, not least because of the failure to obtain a proper anamnesis beforehand. Although this had not been the intention, the measure had also been implemented in a way which had caused the applicant both physical pain and mental suffering.

Bogumil v. Portugal

7 October 2008

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

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

Dvořáček v. the Czech Republic

6 November 2014

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

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

R.S. v. Hungary (no. 65290/14)

2 July 2019

This case concerned the applicant being forced by the police to take a urine test via a catheter on suspicion of his being under the influence of alcohol or drugs while driving. He complained that the forcible taking of a urine sample from him had constituted inhuman and degrading treatment and a serious intrusion into his physical integrity.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the authorities had subjected the

applicant to a serious interference with his physical and mental integrity, against his will, without it even having been necessary seeing as a blood test had also been carried out to find out whether he had been intoxicated.

Medical negligence and liability of health professionals

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

Šilih v. Slovenia

9 April 2009 (Grand Chamber)

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

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

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

Codarcea v. Romania

2 June 2009

The applicant complained in particular about the length of criminal proceedings that she had initiated as a civil party against a doctor on account of the adverse consequences of a series of operations she had undergone in 1996. She further alleged that the proceedings in which she had sought to establish the liability of the doctor who had carried out an operation resulting in facial paralysis and rolling-out of the eye-lid, and also that of the hospital which employed him, had been ineffective.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention on account of the applicant's inability to obtain the compensation awarded to her by a court decision for the consequences of the medical negligence of which she had been a victim. Further, while acknowledging the complexity of the medical issues with which the domestic courts had been faced, the Court considered that the period of nine years, six months and 23 days which had elapsed between when the applicant had instituted proceedings as a civil party seeking damages, and when the Court of Appeal had given the final decision in the case, had been excessively long and had therefore resulted in a **breach of Article 6** (right to a fair trial within a reasonable time) of the Convention.

See also: **S.B. v. Romania (no. 24453/04)**, judgment of 23 September 2014.

G.N. and Others v. Italy

1 December 2009[10]

This case concerned the infection of the applicants or their relatives with human immunodeficiency virus (HIV) or hepatitis C. The persons concerned suffered from a hereditary disorder (thalassaemia) and were infected following blood transfusions carried out by the State health service. The applicants complained in particular that the

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

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

Eugenia Lazăr v. Romania

16 February 2010

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

See also: **Mihu v. Romania**, judgment of 1 March 2016.

Oyal v. Turkey

23 March 2010

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

Reynolds v. the United Kingdom

13 March 2012

This case concerned the death of the applicant's son, a psychiatric patient diagnosed with schizophrenia, in 2005 following his fall from the sixth floor of a public care unit. The applicant complained that no effective mechanism had been available to her whereby civil liability could be determined for the alleged negligent care of her son and by which she could have obtained compensation for her loss.

The Court held that there had been a **violation of Article 13** (right to an effective remedy) **in conjunction with Article 2** (right to life) of the Convention. It noted in particular that it was not until February 2012 that the UK Supreme Court had confirmed in a separate case that an operational duty to protect suicide-risk patients could arise as regards voluntary psychiatric patients such as the applicant's son, and that parents would be entitled to non-pecuniary damage following the loss of a child in such a situation. However, prior to that date the applicant had not had any remedy available in respect of her non-pecuniary loss.

Mehmet Şentürk and Bekir Şentürk v. Turkey

9 April 2013

This case concerned the death of a pregnant woman following a series of misjudgments by medical staff at different hospitals and the subsequent failure to provide her with emergency medical treatment when her condition was known to be critical. The applicants, her husband and her son, alleged in particular that the right to life of their wife and mother and the child she had been carrying had been infringed as a result of the negligence of the medical staff involved.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention. It found in particular that the deceased had been the victim of blatant shortcomings on the part of the hospital authorities and had been denied the possibility of access to appropriate emergency treatment, in violation of the substantive aspect of Article 2. In view of its findings concerning deficiencies in the criminal proceedings, the Court also found a violation of the procedural aspect of Article 2.

See also: **Elena Cojocaru v. Romania**, judgment of 22 March 2016.

Gray v. Germany

22 May 2014

This case concerned the death of a patient in his home in the United Kingdom as a result of medical malpractice by a German doctor, who had been recruited by a private agency to work for the British National Health Service. The patient's sons complained that the authorities in Germany, where the doctor was tried and convicted of having caused the death by negligence, had not provided for an effective investigation into their father's death.

The Court held that there had been **no violation of Article 2** (right to life) of the Convention, finding that the criminal proceedings in Germany against the doctor responsible for the applicants' father's death had been adequate. It accepted in particular that the German trial court had sufficient evidence available to it for the doctor's conviction by penal order without having held a hearing. Moreover, the applicants had been sufficiently informed of the proceedings in Germany, and the German authorities had been justified in not extraditing the doctor to the United Kingdom in view of the proceedings before the German courts.

Asiye Genç v. Turkey

27 January 2015

This case concerned a prematurely born baby's death in an ambulance, a few hours after birth, following the baby's transfer between hospitals without being admitted for treatment. The applicant complained in particular about alleged deficiencies in the investigation into her son's death.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention. It considered, firstly, that the Turkish State had not sufficiently ensured the

proper organisation and functioning of the public hospital service, or its health protection system. The child died because it had not been offered any treatment. Such a situation, the Court observed, constituted a denial of medical care such as to put a person's life in danger. Secondly, the Court considered that the Turkish judicial system's response to the tragedy had not been appropriate for the purposes of shedding light on the exact circumstances of the child's death. The Court therefore found that it could be considered that Turkey had failed in its obligations under Article 2 of the Convention in respect of the child, who had died a few hours after birth.

Altuğ and Others v. Turkey

30 June 2015

This case concerned the death of a relative of the applicants at the age of 74 as the result of a violent allergic reaction to a penicillin derivative administered by intravenous injection in a private hospital. The applicants alleged in particular that the medical team had not complied with their legal obligations to conduct an anamnesis (questioning of patients or their relatives on their medical history and possible allergies), to inform the patient of the possibility of an allergic reaction and to obtain their consent to administration of the drug.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention. It pointed out in particular that it was not its role to speculate on the possible responsibility of the medical team in question in the applicants' mother's/grandmother's death. It considered, nevertheless, that the authorities had failed to ensure appropriate implementation of the relevant legislative and statutory framework geared to protecting patients' right to life. Indeed, neither the medical experts, who considered that the death had been a question of therapeutic contingency, nor the Turkish courts had addressed the possibility that the medical team had infringed the current legal provisions (obligation to question patients or their families on their medical record, to inform them of the possibility of an allergic reaction and to obtain their consent to the administration of the drug in question).

Vasileva v. Bulgaria

17 mars 2016

This case concerned a claim for damages by a patient against a surgeon and hospital following an operation. Various expert medical reports were produced in the proceedings. After examining the reports, the domestic courts found no evidence of negligence by the surgeon. The applicant complained in particular of a lack of impartiality on the part of the medical experts in the malpractice proceedings.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that it could not be said that the authorities had not provided the applicant an effective procedure enabling her to obtain compensation for the medical malpractice to which she alleged to have fallen victim.

Aydoğdu v. Turkey

30 August 2016

The applicants, whose daughter was born prematurely and died two days later at the hospital to which she had been transferred for emergency treatment, alleged that the death of their daughter had been caused by professional negligence on the part of the staff of the hospital where she had been treated. They also complained that the criminal proceedings had been unfair.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention under both its substantive and procedural heads. It found in particular that the baby had been the victim of a lack of coordination between health-care professionals, coupled with structural deficiencies in the hospital system, and that she had been denied access to appropriate emergency treatment, in breach of her right to protection of her life. The Court also found that the criminal proceedings had lacked the requisite effectiveness and that the response of the Turkish justice system to the baby's death had not afforded the safeguards inherent in the right to life, noting that as a result

of inadequate expert opinions the authorities had been unable to provide a coherent and scientifically grounded response to the problems arising and to establish any liability. Lastly, on the basis of **Article 46** (binding force and execution of judgments) of the Convention, the Court called upon Turkey to take measures to require independent and impartial administrative and disciplinary investigations to be carried out within its legal system, affording victims an effective opportunity to take part; to ensure that bodies and/or specialists that could be called upon to produce expert opinions had qualifications and skills corresponding fully to the particularities of each case; and to require forensic medical experts to give proper reasons in support of their scientific opinions.

Ioniță v. Romania

10 January 2017

This case concerned the death of the applicants' four-year-old son following an operation. The applicants complained that the authorities had failed to effectively investigate the incident, despite their repeated claims that it had been caused by the negligence of medical staff.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention under its procedural head, finding that there had not been a proper investigation into the death of the applicants' son, for the following reasons in particular. First, the medical authorities had failed to provide an additional forensic report about the incident, even though one was necessary. Furthermore, the authorities had never established whether the supervising nurse had properly carried out her duties, even though these were highly relevant to the alleged cause of death. Moreover, the domestic courts had also found no medical negligence on behalf of the doctors – even though disciplinary tribunals had found that they had failed to obtain the applicants' informed consent for the procedure, and this consent had been required under Romanian law. Finally, the proceedings had taken an unjustifiably long amount of time, given that six and a half years had elapsed between the death of the applicants' son and the final decision in the case.

Erdinç Kurt v. Turkey

6 June 2017

This case concerned two high-risk operations performed on a patient – the applicants' daughter – which left her with severe neurological damage (92% disability). The applicants maintained that the authorities were responsible for the damage in question, and complained of the lack of an effective remedy by which to assert their rights in the civil proceedings. They alleged that they had contested, without success, the relevance and sufficiency of the expert report on which the domestic courts had based their dismissal of the applicants' compensation claim.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the applicants had not received an adequate judicial response that satisfied the requirements inherent in the protection of the right to physical integrity of the patient. It noted in particular that the expert report on which the domestic courts had based their dismissal of the applicants' compensation claims, and which concluded that the doctors had not been at fault, had given insufficient explanations regarding the issue on which it was supposed to provide technical insight (the issue whether the doctors had contributed to the damage). The Court considered that only where it was established that the doctors had carried out the operation in accordance with the rules of medical science, taking due account of the risks involved, could the damage caused be regarded as an unforeseeable consequence of treatment; were it otherwise, surgeons would never be called to account for their actions, since any surgical intervention carried a degree of risk.

Lopes de Sousa Fernandes v. Portugal

19 December 2017 (Grand Chamber)

This case concerned the death of the applicant's husband following nasal polyp surgery and the subsequent procedures opened for various instances of medical negligence.

The applicant alleged that her husband's death had been caused by negligence and carelessness on the part of the medical staff, and that the authorities had not elucidated the precise cause of the deterioration in her husband's health.
The Grand Chamber held that there had been **no violation of the substantive limb of Article 2** (right to life) of the Convention with regard to the applicant's husband's death. It considered in particular that the present case concerned allegations of medical negligence rather than denial of treatment. That being so, Portugal's obligations were limited to the setting-up of an adequate regulatory framework compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives. Having regard to the detailed rules and standards laid down in the domestic law and practice of the Portuguese State in the area under consideration, the Grand Chamber found that the relevant regulatory framework did not disclose any shortcomings with regard to the State's obligation to protect the right to life of the applicant's husband. However, the Grand Chamber held that there had been a **violation of the procedural limb of Article 2**, finding that that the domestic system as a whole, when faced with an arguable complaint by the applicant of medical negligence resulting in the death of her husband, had failed to provide an adequate and timely response regarding the circumstances of the latter's death.

S.A. v. Turkey (no. 62299/09)

16 January 2018 (decision on the admissibility)
This case concerned the applicant's claim that his son had sustained physical harm as a result of an allegedly botched circumcision. The applicant complained that his son had sustained physical harm as a result of complications from surgery.
The Court declared the application **inadmissible** as being manifestly ill-founded, finding that, having regard to the case file, the Turkish courts' decision had been neither arbitrary nor manifestly unreasonable. It noted in particular that the national authorities had opened, of their own motion, an internal administrative investigation for disciplinary purposes and that, in dismissing the claims of the applicant, the domestic authorities had relied on medical assessments. It was not for the Court to call into question the doctors' findings or to speculate as to the nature of the experts' conclusions. Taking the view that it was not appropriate to call into question the facts as established by the national authorities or the conclusions reached by them, the Court also found that the domestic courts' decision to dismiss the applicant's claims had neither been arbitrary nor unreasonable. Lastly, the Court noted that the applicant had not taken any steps to obtain a medical assessment in support of his allegations. Nor had he accepted a second corrective operation as recommended by the doctors.

Mehmet Günay and Güllü Günay v. Turkey

20 February 2018
This case concerned allegations of medical negligence in relation to the death of the applicants' daughter ten days after a hospital operation. The applicants alleged that the domestic proceedings had failed to identify those responsible for their daughter's death and complained about the length of proceedings.
The Court declared **inadmissible**, as being manifestly ill-founded, the applicants' complaint under Article 2 (right to life) of the Convention. It noted in particular that the expert medical assessments and the conclusions of the domestic courts, which had been properly reasoned, had ruled out any medical error or negligence. It also reiterated that it was not its task to question the findings of expert assessments. The Court held, however, that there had been a **violation of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention, finding that a period of some seven years and four months to adjudicate the applicants' claim for compensation did not satisfy the "reasonable length" requirement.

Mehmet Ulusoy and Others v. Turkey

25 June 2019

The applicants, acting on their own behalf and on that of their son who was born in 2001 and has been suffering from a psychomotor impairment and a permanent mental deficiency since birth, attributed their son's permanent and irreversible disability to medical negligence during the prenatal and delivery phases of the mother's pregnancy. They also complained about the lack of an effective investigation into their allegations.

The Court considered the applicants' complaints under Article 8 (right to respect for private life) of the Convention, which covers issues relating to the protection of the moral and physical integrity of individuals in the context of the provision of medical care. It held that there had been a **violation of the procedural limb** (investigation into the allegations of medical negligence) **of Article 8**, finding that no authority had been able to provide a consistent and scientifically based response to the applicants' allegations and complaints or to assess the possible responsibility of the health professionals with full knowledge of the facts. The Court held, however, that there had been **no violation of the substantive limb** (protection of the moral and physical integrity of individuals in the context of the provision of medical care) **of Article 8**, noting in particular that the applicants' complaints broadly concerned an erroneous evaluation of the prenatal risks during the labour and childbirth phases. It considered therefore that the case primarily concerned allegations of simple medical errors or negligence. In that connection, it pointed out that the substantive positive obligations on Turkey were confined to the effective introduction and implementation of a statutory framework capable of protecting patients. It then noted that the statutory framework in force at the material time did not, *per se*, point to any infringement on the part of the State.

Tusă v. Romania

30 August 2022[11]

The applicant in this case had had her left breast removed on the basis of a cancer diagnosis which had turned out to be mistaken. She complained in particular of the consequences of the surgery and of the outcome of the proceedings which she had instituted in the national courts.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that in the applicant's case, the legal machinery in place under Romanian law had not afforded the effectiveness which the Court's case-law required. It observed in particular that the regulatory framework established by the Romanian legislation, with its range of procedural remedies to choose from, could appear to be of benefit to potential litigants. Yet, in the applicant's case, the various proceedings she had instituted had yielded differing results. Moreover, the legal machinery in place under Romanian law had proved sluggish and cumbersome in the applicant's case. It was true that the applicant had elected to pursue all the remedies available to her under the regulatory framework, but she could not be faulted for that. It was, in the Court's view, understandable that she had wished to obtain clarification of the facts concerning her situation and compensation for the harm she believed she had suffered. However, the tort case – the only proceedings in which such compensation might in principle be forthcoming – had remained pending nine years after she had filed it with the courts and 14 years after she had consulted the doctor and had the surgery.

See also, among others:

Eryiğit v. Turkey

10 April 2018

Vlase v. Romania

24 July 2018

[11]. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention.

Bochkareva v. Russia[12]

12 October 2021 (Committee judgment)

Opioid-addiction therapy

Abdyusheva and Others v. Russia[13]

26 November 2019

This case concerned the three applicants' requests to be prescribed replacement therapy for their opioid use. The applicants alleged in particular that the failure to provide them with replacement therapy for their opioid addiction using methadone and buprenorphine had breached their right to respect for their private life.

The Court declared **inadmissible**, as being manifestly ill-founded, the second and third applicants' complaints, finding in particular that they had not demonstrated the need for any medical treatment at all and especially for replacement therapy in order to overcome their opioid addiction. Indeed, according to the medical documents provided by the Russian Government, they were both in a state of remission, and had been for four years and one year respectively. The applicants did not dispute this. The Court further held that there had been **no violation of Article 8** (right to respect for private life) of the Convention in respect of the first applicant. Taking into account, firstly, the public-health risks of replacement therapy and, secondly, the individual situation of the applicant, who was receiving medical assistance, it considered that the Russian authorities had not violated her right to respect for her private life. Lastly, the Court declared inadmissible, as being manifestly ill-founded, the second and third applicants' complaint that the ban on replacement therapy was discriminatory against drug addicts. In this regard, it noted in particular that the substances requested by the applicants as substitutes for opioid products, namely methadone and buprenorphine, were prohibited in Russia to all patients for the purpose of medical treatment. In the present case, the Court considered that, even assuming that the illnesses referred to by the applicants (diabetes, asthma or heart disease) could be compared to opioid addiction, there had been no difference in treatment between them and the patients cited as examples, given that the substances in question were in any event banned.

Organ transplantation

Petrova v. Latvia

24 June 2014

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

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

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

Elberte v. Latvia

13 January 2015

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

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

Polat v. Austria

20 July 2021

The applicant's son was born prematurely and died two days later. He had been diagnosed with a rare disease so the treating doctors decided that a post-mortem examination would be necessary to clarify the diagnosis. The applicant and her husband refused on religious grounds and explained that they wished to bury their son in accordance with Muslim rites, which required the body to remain as unscathed as possible. Despite their objections, the post-mortem was performed and practically all the child's internal organs were removed. The applicant, not having been informed of the extent of the post-mortem, only realised the actual extent during the organised funeral in Turkey which consequently had to be called off. The applicant unsuccessfully brought civil proceedings for damages.

The Court held that there had been a **violation of Article 9** (freedom of thought, conscience and religion) of the Convention, finding that, albeit the wide margin of appreciation afforded to the domestic authorities, in the instant case they had not struck a fair balance between the competing interests at stake by reconciling the requirements of public health to the highest possible degree with the right to respect for private and family life nor had they weighed the applicant's interest in burying her son in accordance with her religious beliefs in the balance. The Court also held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the behaviour of the hospital staff towards the applicant had clearly lacked the diligence and prudence required by the situation. In addition, whereas the expert opinions had unanimously found that the post-mortem had been justified in order to be able to clarify the diagnosis, nothing therein mentioned any necessity to keep the organs for scientific or other reasons for several weeks or months.

Pending application

Sablina and Others v. Russia (no. 4460/16)[14]

Application communicated to the Russian Government on 21 September 2016

The applicants complain in particular that they were denied an opportunity to express their opinion on the extraction of organs from one of their relatives' body. They further submit that Russian laws on organ transplantation are ambiguous and do not provide sufficient protection from arbitrariness.

The Court gave notice of the application to the Russian Government and put questions to the parties under Articles 3 (prohibition of inhuman or degrading treatment), 6 § 1 (right to a fair trial) and 8 (right to respect for private and family life) of the Convention.

Providing medical information to the public

Open Door and Dublin Well Woman v. Ireland

29 October 1992

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

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

Women on Waves and Others v. Portugal

3 February 2009

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

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

Refund of medical expenses

Nitecki v. Poland

21 March 2002 (decision on the admissibility)

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

The Court declared the application **inadmissible** (manifestly ill-founded). While an issue could arise under Article 2 (right to life) of the Convention where it was shown that the authorities of a Contracting State put an individual's life at risk through the denial of

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

health care which they had undertaken to make available to the population generally, it found that that was not the case with the applicant.

Panaitescu v. Romania

10 April 2012

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

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

Surveillance of an insured person by detectives hired by a private insurance company

Mehmedovic v. Switzerland

11 December 2018 (decision on the admissibility)

This case concerned the surveillance of an insured person (the first applicant) and, indirectly, his wife, in public areas by investigators from an insurance company, with a view to ascertaining whether his claim for compensation, lodged following an accident, was justified.

The Court declared the application **inadmissible** as being manifestly ill-founded. In the first place, it noted that the insurance company's investigations, which had been conducted from a public place and were confined to ascertaining the first applicant's mobility, were aimed solely at protecting the insurer's pecuniary rights. In this connection, the Court held that the domestic courts had found that the insurer had an overriding interest that meant that the interference with the applicant's personality rights was lawful. Secondly, the Court noted that the sparse information concerning the second applicant, which had been gathered coincidentally and was of no relevance for the investigation, in no way constituted systematic or permanent gathering of data. In the Court's view, there had therefore been no interference with this applicant's private life.

Therapeutic use of cannabis

A.M. and A.K. v. Hungary (nos. 21320/15 and 35837/15)

4 April 2017 (decision on the admissibility)

The applicants, who both had serious health conditions which they submitted could be alleviated by cannabis-based medication, complained under Article 8 of the Convention that domestic legislation providing a legal avenue for requesting individual permission to import such medication lacked legal certainty[15].

The Court declared the applications **inadmissible** as being manifestly ill-founded, finding that it could not infer that the legislative avenue existing in Hungarian law was inaccessible, not foreseeable in its effects or was formulated in such a way as to create a chilling effect on doctors wishing to prescribe such medication. It noted in particular that the applicants had failed to show that their doctors or any other medical professionals were of the opinion that their respective conditions required or were suitable for treatment with cannabis-based medication. The applicants had also not indicated whether treatment using cannabis-based medication had ever been discussed with their doctors or refused by them. Nor had they provided anything to indicate that either of

[15]. The marketing of cannabis-based medication was not authorised in Hungary and possession and use of cannabis remained illegal. However, under domestic law a person wishing to use a medication which had no marketing authorisation could apply – on the basis of a medical prescription issued by a doctor – for an individual import licence.

them had ever tried to avail themselves of the legal procedure available in Hungary with a view to obtaining such medication lawfully. No evidence had lastly been adduced to show that any doctor in Hungary had ever been prosecuted for prescribing cannabis-based medication or had ever refused to do so for fear of prosecution.

See also: **Á.R. v. Hungary (no. 20440/15)**, judgment (Committee) of 17 October 2017.

Written consent and surgical operation

Reyes Jimenez v. Spain

8 March 2022

This case concerned a severe deterioration in the physical and neurological health of the applicant, who had been a minor at the material time and who was in a state of total dependence and disability following three surgical operations which he underwent to remove a brain tumour. Before the Court the applicant, represented by his father, complained of failings in connection with the written informed consent requirement in respect of one of the said operations.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, on account of the interference with the applicant's private life, finding that the domestic system had provided no appropriate answer to the question whether his parents had indeed given their informed consent to each of the surgical operations, in accordance with domestic law. It concluded in particular that the domestic judgments delivered by the courts and the Murcian Higher Court of Justice, right up to the Spanish Supreme Court, had failed to provide any adequate response to the Spanish legal requirement on obtaining written consent in cases such as the present one. The Court also noted that, while the Convention in no way required such informed consent to be given in writing provided it was unambiguous, Spanish law did indeed require such written consent. In the present case, it considered that the courts had not sufficiently explained why they considered that the failure to obtain such written consent had not infringed the applicant's rights.

Further reading

See in particular:

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

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