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STEERING COMMITTEE FOR HUMAN RIGHTS IN THE FIELDS OF BIOMEDICINE AND HEALTH (CDBIO)

Developments in the field of bioethics in the case law of the European Court of Human Rights (ECHR)

Document prepared by the Secretariat
based on the terms of the official documents published by the ECHR

Paragraphs in blue indicate unofficial translations, made using automatic translation software.

Contents

Mental Health

Mehenni (ADDA) v. Switzerland
(Application no. 40516/19)
Judgment
9 April 2024

The case concerns a detention order made against the applicant after he had served his prison sentence. The applicant complain is grounded on Article 5 § 1 of the Convention and Article 4 of Protocol No. 7, alleging that there is no causal link between the initial judgment of 2011 and the committal order made in 2018 and that he was not placed in an appropriate institution and that the courts relied on an expert opinion that was too old.

According to a first report, the applicant was suffering from paranoid schizophrenia and there was a risk that he would commit further acts of violence. A second psychiatric stated that the applicant suffered from a severe dissocial personality disorder and presented a high risk of reoffending. On 4 July 2017, the public prosecutor's office applied for a review of the judgment against the applicant with a view to a change of penalty within the meaning of Article 65 § 2 of the Criminal Code and he kept detained for security reasons because of the review proceedings then in progress.

The applicant's internment had been ordered more than seven years after his initial conviction in 2011 and after he had completed his sentence and the judgment ordering the internment had not been based on a review of the applicant's guilt. The procedure appears to have consisted in imposing an additional penalty designed to protect society from offences for which the applicant had already been convicted, and the Court decided that the applicant's detention was not justified under Article 5 § 1 (a) of the Convention.

It is not disputed that the applicant did not receive any therapeutic treatment in the pre-trial detention facility, and the Government have not provided any explanation or justification for this. Regarding the second facility, the Government did not allege that the prison provided specific medical and therapeutic care for persons suffering from mental disorders nor did it maintain that the applicant was the subject of an individualised treatment plan which took account of the specific features of his mental state with a view to preparing him for possible future reintegration. The applicant's detention therefore amounted to a violation of Article 5 § 1 of the Convention. Additionally, there was a violation of Article 4 of Protocol No. 7 to the Convention as it imposed in breach of the ne bis in idem principle.

The Judgment is available only in French. No Press Release available.

V.I. v. The Republic of Moldova

(Application no. 38963/18)

Judgment

26 March 2024

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

The Court found that the authorities had failed to investigate the circumstances in which V.I. had been placed in the psychiatric hospital, and whether the relevant legal safeguards relating to involuntary placement and psychiatric treatment had been respected, and whether there had been any justification for in-patient treatment in the first place. They had not tried to clarify what impact the treatment with neuroleptics and anti-psychotics had had on him, nor whether that treatment had been warranted from a medical point of view or whether it had simply been used as chemical restraint. Moreover, the investigation had not factored in the applicant's vulnerability, his age or the disability aspects of his complaints.

The Court found in particular that the existing Moldovan legal framework fell short of the State's duty ("positive obligation") to establish and apply effectively a system providing protection to intellectually disabled persons in general, and to children without parental care in particular, against serious breaches of their integrity. The Court decreed that it fell upon the Republic of Moldova to take general measures to resolve the problems at the root of the violations found and to prevent similar violations from taking place in the future. There was a violation of Article 3 as concerned the lack of an effective investigation and as regards V.I.'s involuntary placement and treatment in a psychiatric hospital.

Giuseppe Giorgio v. Italy

(Application no. 24499/21)

Decision

21 March 2024

The applicant's raised complaints under Articles 3 and 8 of the Convention concerning the incompatibility of his state of mental health with detention and the psychiatric care provided in prison were communicated to the Italian Government.

The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by this complaint. They recognized that the applicant was subjected to the conventional violations as they claim, according to the

principles expressed by the Court of Human Rights in this context and offered the sum of 12.500 euros to the Applicant to cover any non-pecuniary damage, and the sum of 2.000 euros to cover any costs and expenses, plus any tax that may be chargeable to the Applicant on these amounts. It further requested the Court to strike out the application in accordance with Article 37 of the Convention. The applicant was sent the terms of the Government's unilateral declaration, however he asked the Court to pursue the examination of the case arguing, in particular, that the declaration did not constitute a sufficient acknowledgment of the violation and that the amount of compensation was insufficient.

Noting that the admissions contained in the Government's declaration, which encompass all the applicant's claims, as well as the amount of compensation proposed, which – taking into account the evidence provided by the parties on the applicant's state of health and on the care provided to him in prison – is consistent with the amounts awarded in similar cases, the Court considers that it is no longer justified to continue the examination of the application and is satisfied that respect for human rights as defined in the Convention and the Protocols.

No Press Release available.

Liibaan Cali Ahmad v. Denmark

(Application no. 5712/24)
Pending Case
Communicated 18 March 2024

By a High Court judgment the applicant, who suffers from schizophrenia, was sentenced to placement in a high security psychiatric facility.

While awaiting admission to that facility, he was placed in a psychiatric hospital where, for nearly an year, he was locked up in his patient room. The applicant appealed against that measure to the Psychiatric Patients' Complaints Board, which dismissed his case. Relying on Articles 3, 5 and 8 of the Convention, the applicant brought compensation proceedings before the courts. By a judgment the High Court found the confinement lawful. Upon appeal, the Supreme Court found that, although the measure lacked authority under the Mental Health Act, it did not contravene the said provisions of the Convention.

No Press Release available.

V v. The Czech Republic

(Application no. 26074/18)
Judgment
7 March 2024

The case concerns the death of the applicant's 30-year-old brother in a psychiatric hospital after being tasered by the police and given a tranquiliser by a nurse. Hospital staff

had called the police on 6 November 2015 when the applicant's brother, hospitalised since the day before, had become very agitated and had attacked an orderly. He had been receiving treatment for paranoid schizophrenia since 2005 and the cause of death was later established as cardiac arrhythmia.

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant alleges that the police's intervention had been neither necessary nor proportionate, arguing that there were no rules for the use of force against persons with mental disorders and that police officers lacked training on how to use a taser in such situations. She also complains that the authorities failed to carry out an adequate investigation into the incident: in particular the interaction between repeated tasering and heavy medication was not a line of enquiry.

The case revealed a number of shortcomings as to the manner in which the hospital and the police had dealt with the situation. Firstly, as a long-term outpatient it could have been reasonably foreseen that P.Z. could become psychotic or violent on his admission. Secondly, although the medical staff had decided to call in the police, they had apparently not informed the officers of P.Z.'s condition and of the health risks associated with it, nor of his state of agitation. Thirdly, the officers had attempted to restrain him by placing him in the prone position which could lead to positional asphyxia because of pressure exerted on the neck, and which also made it impossible to observe whether the person concerned was breathing. Fourthly, placing P.Z. in the prone position had lowered the risk of his escaping or posing a further direct threat to the lives of those present, which raised the question whether his subsequent tasing had been absolutely necessary.

The Court concluded that as a result of the combined actions of a number of people the State had failed in its positive obligation to provide P.Z. with adequate care and preserve his life.

No Press Release available.

C.I.T. and C.S.T. v. Romania

(Application no. 9665/23)

Pending Case

Communicated 22 February 2024

The application concerns the State's positive obligations to protect the applicants, mother (the first applicant) and son (the second applicant), from the alleged domestic violence (physical towards the mother and physical and psychological towards the child), perpetrated by the mother's former partner.

The first applicant lodged a request for a protection order on her behalf and on behalf of her son explaining that the former partner, who had not seen the child for four years, had come to the opening of the school year celebrations, had taken the second applicant in his arms and then hit the first applicant on her head and ear. On the following days had allegedly followed the second applicant, had tried to initiate contact and grab him by force despite him being almost a stranger to the child. She also asserted that he had been violent towards her

before, although the criminal complaint she had lodged against him concerning that incident had been dismissed for lack of public interest in pursuing the prosecution. The first applicant requested that the child undergo a psychological assessment and presented a psychological report at her request, whereby the psychologist had observed that the second applicant had developed fear and emotional instability because of the father's attitude towards him and had recommended counselling for the child.

The District Court dismissed the request for a protection order considering normal for a non-custodian parent to be insistent that he sees his child at school. That decision was upheld by a final decision by the County Court. Relying on Articles 3, 6 and 8 of the Convention, the applicants complained about the authorities' response to the threat of domestic violence.

No Press Release available.

N.M. and Others v. Georgia

(Application no. 16764/23)

Pending Case

Communicated 20 February 2024

The application concerns various complaints raised under Articles 3 and 8 of the Convention relating to the applicants' allegations of ill-treatment and abuse in a closed-type boarding school run by the Georgian Orthodox Church in Ninotsminda ("Ninotsminda Boarding School"). On various dates four separate sets of criminal proceedings were initiated into the allegations of child abuse including sexual violence in the Ninotsminda Boarding School. The applicants' allegations have been investigated and according to the case file, the applicants were refused victim status. Their various procedural requests concerning, among others, the requalification of the alleged criminal offence from Article 126 (violence) to Article 1441 (torture) and 1443 (inhuman or degrading treatment) were also dismissed.

The applicants, who were all minors at the material time, allege under Article 3 of the Convention that they were repeatedly subjected to various forms of inhuman and degrading treatment and punishment, including corporal punishment, sleep and food deprivation, and verbal and psychological abuse. The State failed to put in place and apply an effective and adequate legal framework to protect their rights and the relevant authorities have failed to conduct an effective investigation into their allegations. They also allege a violation of Article 8 of the Convention on account of the conditions in which they were living and studying in the school.

No Press Release available.

X v. Greece

(Application no. 38588/21)

Judgment

13 February 2024

The case concerned the applicant's allegations that the Greek authorities had not carried out an effective investigation into her accusation that she was raped by a hotel bartender in September 2019 when she was 18 years old and on holiday with her mother. She claimed that the authorities had breached their duty to provide effective legal protection and to protect her as a victim of gender-based violence.

Although the Court was satisfied that Greece had an adequate legal and regulatory framework to deal with the case, it found that the authorities had not applied it in practice as they had not carried out an effective investigation. The authorities should have been mindful of the alleged victim's rights and avoided secondary victimisation. The intimate nature of the subject matter, the applicant's young age and the fact that she claimed to have been raped while on holiday in a foreign country called for a sensitive approach on the part of the authorities.

The Court, without expressing an opinion as to the guilt of the accused, found that the authorities had not given enough careful scrutiny to the case to have properly fulfilled their duties ("positive obligations") under the Convention. The investigating authorities had not taken measures to prevent her from being traumatised further and had not taken her needs sufficiently into account. They had not informed her of her rights as a victim, such as her right to legal assistance, her right to receive information and to object to the interpretation. Furthermore, they had not taken adequate measures to mitigate what was clearly a distressing experience for her, such as her interactions with the police, the medical examination, and being brought face-to-face with the accused at the hospital and during the identification procedure. Moreover, neither the prosecution nor the court had analysed the circumstances of the case from the perspective of gender-based violence. They had failed to establish all the circumstances and to take account of the particular psychological factors in alleged rape cases. Therefore, there was a breach of article 8.

Franco Piantanida v. Italy

(Application no. 27844/23)

Pending Case

Communicated 9 February 2024

The application concerns the detention of the applicant in a prison, who suffers from schizophrenia as well as substance abuse. The applicant had a judge ordering his placement in a specialised structure (Residence for Execution of Security Measures – "REMS") for three years. However, as there was no available place in REMS and while awaiting his transfer to such a facility, the applicant was kept in custody at a prison. Upon request of the prison authorities the judge confirmed the applicant's continued stay in prison. After a Court applied an interim measure "to place the applicant with no further delay in a REMS or elsewhere where

adequate treatment can be provided for his psychiatric condition", the applicant needed to wait one month to be transferred.

The applicant complains under Articles 3, 5 §§ 1 and 5, and 6 § 1 of the Convention of the unlawfulness of his prolonged detention, of the conditions of his detention deemed inadequate for his mental health in the absence of specific treatment, of the absence of domestic remedies and of the non-enforcement of the domestic court's decision ordering his placement in a specialised structure.

No Press Release available.

Piotr Pędrak v. Poland

(Application no. 32654/18)

Pending Case

Communicated 9 February 2024

The case concerns the applicant's placement in a mental hospital against his will as he was refused the possibility to leave a mental hospital to which he had been admitted with his consent two days earlier.

The applicant complains that the proceedings by which the lawfulness of his detention was examined were unfair because a) the expert appointed by the first instance court to assess the necessity of his continuing placement in the hospital was that hospital's employee and subordinate to the doctor who had decided on his placement; b) the expert's opinion was not served on him and he could not therefore comment on its content; c) neither him nor his lawyer could attend the hearing of the first instance court; d) he was not informed of his rights in good time, in particular of the right to have an attorney; e) his attorney was not allowed to attend the meeting during which he was examined by the expert appointed by the second instance court and f) the second instance court copied the expert's opinion into the judgment and presented it as its own conclusions. He relies on Article 6 of the Convention.

No Press Release available.

M.P. v. Lithuania

(Application no. 59063/21)

Judgment

6 February 2024

The case concerns the applicant's pre-trial detention, his involuntary psychiatric hospitalisation and his allegations of ill-treatment while in detention.

The applicant complained under Article 5 § 1 of the Convention that his involuntary psychiatric hospitalisation had not been justified by his mental condition after 16 March 2021. He also complained under the same provision that his pre-trial detention had been unlawful because the facility had not been suitable for his mental condition. Lastly, he complained under Article 3 of the Convention that he had been ill-treated while in detention.

The Court agrees that the applicant was established to be “of unsound mind” for the purposes of Article 5 § 1 (e) at the time of the Regional Court’s decision. The necessity of the applicant’s hospitalisation was reviewed on 6 September 2021 on the basis of a fresh expert assessment of his mental condition, that is less than six months after the final court decision ordering his hospitalisation to continue. The applicants did not ask to carry out a review sooner neither provided the Court wit information capable of indicating that the improvement of his mental condition had occurred significantly earlier. The Court is satisfied that until that date the applicant’s hospitalisation was justified by his mental condition.

On 6 September 2021 the District Court ended the applicant’s involuntary hospitalisation, endorsing the finding made on 12 August 2021 by a commission of psychiatric experts that the applicant’s condition had improved sufficiently for him to follow outpatient psychiatric treatment. However, the applicant remained in hospital for another fifteen days with no explanation. Although the Court reiterates that some delay in implementing a decision to release a detainee is understandable, and often inevitable, national authorities must attempt to keep this to a minimum, not verified in the present case. The applicant’s involuntary hospitalisation from 6 to 21 September 2021 constitutes a violation of Article 5 § 1 of the Convention. The applicant also complained under Article 3 of the Convention that he had been ill-treated however this complaint must be rejected for failure to exhaust domestic remedies.

No Press Release available.

T.A. v. Armenia

(Application no. 2648/22)
Judgment
6 February 2024

The case concerns the applicant’s placement in a psychiatric institution for compulsory treatment. The applicant filed a false crime report, opening criminal proceedings where a forensic psychological and psychiatric examination concluded that the applicant suffered from “organic delusional disorder”, was mentally ill and needed compulsory treatment in a psychiatric institution. The applicant complains that her compulsory confinement in a psychiatric institution did not comply with the requirements of Article 5 § 1 (e) of the Convention.

The Court reiterated that an individual cannot be deprived of his liberty as being of “unsound mind” unless: firstly, he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder.

The Court noted that neither the report of the joint forensic psychological and psychiatric examination nor the decision of the Regional Court provided reasons as to why the applicant’s condition was considered of a kind or degree warranting compulsory confinement. The detention of an individual is such a serious measure that it is only justified where other, less

severe measures have been considered and found to be insufficient to safeguard the individual or public interest, something that has not been done by the Regional Court.

The Court considers that the authorities should have taken a more cautious approach, compulsory psychiatric hospitalisation often entails measures interfering with a person's private life and physical integrity, including medical interventions in defiance of the subject's will, such as forced administration of medication. Since there had been no allegation about the applicant's imminent dangerousness to others, the domestic authorities should have given a more in-depth consideration of the measure by analysing the true health benefits of the applicant's treatment or the risks in the case of the absence of such treatment without imposing a disproportionate burden on the person concerned. The applicant's confinement in the psychiatric institution did not meet the requirements of 5 § 1 (e) of the Convention.

No Press Release available.

Pintus v. Italy

(Application no. 35943/18)
Judgment
1 February 2024

The case concerns the fact that the applicant was kept for some eight months under the ordinary prison regime, despite the state of his mental health.

Relying on Article 2 of the Convention, the applicant complains that by keeping him in ordinary detention, despite the incompatibility of such detention with his mental-health condition, the prison authorities had put him at real and immediate risk of suicide. Relying on Article 3,he submits that by being held in ordinary detention, against the advice of medical specialists, he was prevented from receiving suitable therapeutic treatment for his mental health, which allegedly deteriorated as a result. The Court however found no violation of Article 2 neither of Article 3.

Benjamin Antonio Moreno Silva v. Spain

(Application no 25893/23)
Pending Case
Communicated 15 January 2024

The application concerned the applicant's admission to a psychiatric hospital without his consent, following a request for transfer from the emergency department of the general hospital. The decision to admit him to psychiatric care was signed at 1:21 a.m. by the doctor in charge at the psychiatric hospital. It stated, among other things: "(i) The applicant repeatedly asks to contact his lawyer; (ii) Main diagnosis: psychotic symptoms to be determined; (iii) Treatment: confinement for [physical] restraint and administration of pharmacological treatment".

The Madrid Court of First Instance no. 30 confirmed the forced hospitalisation after hearing the claimant via the zoom computer application. Two documents attest to the course of the hearing: the first is entitled "Personal examination by the magistrate", with a typed section: "...he is informed that he may be heard in the presence of a legal representative" and a handwritten section: "The patient states that he has problems at work, that he does not trust the director, that things are not going well"; the second is entitled "Minutes of the hearing and forensic doctor's diagnosis". The diagnosis reads: "Psychotic symptoms to be determined. Need for internment to establish diagnosis and determine treatment". The claimant was not assisted by a legal representative.

The claimant tried to contact a lawyer twice: by email on the afternoon of 14 May 2021 and after the psychiatric hospital had received the committal decision from the judge of first instance on 19 May 2021. The lawyer did not have access to this decision until 25 May 2021.

The applicant argued under Article 5 of the Convention that the legal conditions of his forced placement in a psychiatric hospital and his right to be assisted by a legal representative when he was heard by the judge had not been respected.

The Pending Case is available only in French. No Press Release available.

Tsyoge Fon Manteyfel v. Ukraine

(Application no. 29804/16)

Judgment

11 January 2024

The application, lodged under Articles 5, 34 and 38 of the Convention, concerns the compulsory psychiatric treatment of the applicant, who suffers from paranoid schizophrenia, following a court order in criminal proceedings against her on a charge of murder.

The applicant was detained in various psychiatric hospitals under different supervision regimes for seven years, period in which the courts periodically reviewed her detention, on the basis of the hospitals' submissions, and extended the duration of her compulsory inpatient treatment. The latest order for the applicant's continued compulsory inpatient treatment was issued by the Samarskyy District Court of Dnipropetrovsk on 19 August 2016 and, according to the applicant, expired on 19 February 2017.However, the applicant was discharged from hospital only on 14 November 2017.

The applicant complained that her confinement after 19 February 2017 had been unlawful and that throughout her psychiatric detention, she had not had the right under domestic law to challenge its lawfulness, request her release or receive compensation. She relied on Article 5 §§ 1, 4 and 5 and Article 46 of the Convention, stating that the issue disclosed structural and systemic deficiencies in the domestic legal system, although the Court found only Article 5 relevant to be examined.

The Court notes that the national courts found the applicant's involuntary hospitalisation after 19 February 2017 to have been unlawful and awarded her UAH 30,000, which at the material time corresponded to 1,000 euros (EUR), in compensation, a sum lower than the

awards the Court generally makes in comparable cases. Although the applicant did not challenge the amount of the award by means of an appeal on points of law, in the absence of evidence that the award has been paid to the applicant, the Court considers that the applicant can still claim to be a victim and accordingly considered there has been a violation of Article 5 § 1 of the Convention.

No Press Release available.

Miranda Magro v. Portugal

(Application no. 30138/21)
Judgment
9 January 2024

The case concerned Mr Miranda Magro's preventative detention, ordered by the courts following a finding in 2019 that he was not criminally responsible for a number of alleged offences owing to his mental disorder for assorted alleged offences, as he was diagnosed with paranoid schizophrenia in 2002.

The Criminal Court ordered his preventative detention for a maximum of three years in a psychiatric facility, suspending that order on the condition that he undergo the necessary psychiatric treatment. As the applicant missed some appointments or had not seen a specialist when at the appointments, the Criminal Court concluded that he had broken the terms of the suspension of his preventative detention, and ordered his confinement. In April of that year owing to a shortage of space at the Júlio de Matos Hospital in Lisbon, he was placed in the psychiatric unit of the Caxias Prison Hospital to await admission outside the prison system. As regards conditions and care in the Caxias Prison Hospital, the applicant submitted that he had not received the medical treatment required by his mental health condition but had instead been treated with excessive medication which had long-lasting effects.

The Government had failed to provide any evidence of an individual treatment plan for Mr Miranda Magro and failed to refute his consistent allegations as regards the level of care received. The nature of his condition had rendered him more vulnerable than the average detainee and his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear. The failure of the authorities to provide him with appropriate assistance and care had unnecessarily exposed him to a risk to his health and had to have resulted in stress and anxiety. Therefore, the Court therefore concluded that there had been a violation of Article 3.

Caxias Prison Hospital, where Mr Miranda Magro had been held for about six months, was not part of the healthcare system and the care, beyond basic care, and the environment had not been appropriate for Mr Miranda Magro's situation. There had therefore been a violation of Article 5 § 1 of the Convention. The Court held under Article 46 (binding force and execution of judgments) that the violations were not attributable solely to Mr Miranda Magro's personal circumstances but were the result of a structural problem. It urged the Portuguese State to ensure appropriate living conditions and suitable and individualised treatment to mentally ill individuals.

Gianluca Loprete v. Italy

(Application no 28046/23)

Pending Case

Communicated 9 January 2024

The application concerned the applicant's continued detention in ordinary prison despite, in particular, a court decision ordering his placement in a residence for the execution of security measures. The applicant suffers from a premorbid schizoid personality disorder associated with obsessive and narcissistic traits.

On 28 October 2022, the expert appointed by the investigating judge issued a report in which he established that the applicant was in a condition of infirmity that excluded him from criminal responsibility and provided as only measure compatible with his state of health the placement in a REMS. On 21 June 2023, relying on the conclusions of the expert report, the Monza court revoked the applicant's pre-trial detention and ordered that he be placed in a REMS, but postponed enforcement pending the availability of a place in the facility. On 14 September 2023, the Ministry of Justice informed the applicant's representative of his placement in the Calice Cornovaglio REMS.

Under Articles 3, 5 §§ 1 and 5, and under Article 13 in conjunction with Article 3 of the Convention, the applicant complained of the inadequacy and inappropriateness of the medical treatment he had received during his ordinary detention; of his continued ordinary detention, which he considered to be unlawful; of the lack of an effective remedy to complain about the lack of adequate therapeutic care; and; of the absence of any means of obtaining redress for the violation of Article 5 § 1 of the Convention.

The Pending Case is available only in French. No Press Release available.

Genci Meshau v. Italy

(Application no. 27850/23)

Pending Case

Communicated 9 January 2024

The application concerns the detention in a prison for 8 months of the applicant, who suffers from a psychiatric disorder (schizoaffective disorder) as well as substance abuse. The District Court revoked the pretrial detention measure against the applicant and ordered his placement in a specialised based on the court-ordered psychiatric expertise. The criminal proceedings (*non luogo a procedere*) against the applicant by reason of insanity were discontinue 4 months later and the placement in a REMS was required for two years. The Court indicated to the respondent Government “to place the applicant with no further delay in a REMS or elsewhere where adequate treatment can be provided for his psychiatric condition”. However, the placement took 8 months to happened.

The applicant complains under Article 3, Article 5 §§ 1 and 5, and Article 6 § 1 of the Convention of the unlawfulness of his detention, of the conditions of his detention deemed inadequate for his mental health in the absence of specific treatment, of the absence of domestic remedies and of the non-enforcement of the domestic courts’ decisions ordering his

placement in a specialised structure. Relying on Article 34 of the Convention, the applicant further complains about the delayed compliance with the measure indicated by the Court under Rule 39 of the Rules of the Court.

It is question if, in light of the applicant's psychiatric disorder, was the applicant's detention in prison compatible with his state of health and if the applicant receive adequate medical treatment during his detention in prison.

No Press Release available.

L.M. v. Italy

(Application no. 22198/20)
Decision
14 December 2023

The applicant's complaints under Article 3 of the Convention concerning the alleged incompatibility of the applicant's psychiatric disorder with detention in prison and the failure to put in place adequate measures in light of the applicant's deaf-mutism were communicated to the Italian Government.

The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by these complaints. They further requested the Court to strike out the application in accordance with Article 37 of the Convention recognizing that the Applicant was subjected to the conventional violations as he claims, according to the principles expressed by the Court of Human Rights in this context and offering the sum of EUR 10.000,00 to the Applicant as compensation for non-material damage and the sum of EUR 2.000,00 for legal fees and costs.

The Court has established clear and extensive case-law concerning complaints relating to medical care in prison. It noted that the Government's declaration, which encompass all the applicant's claims, as well as the amount of compensation proposed, is consistent with the amounts awarded in similar cases. The Court considered that it is no longer justified to continue the examination of the application according to article 37.

No Press Release available.

A.T. v. Norway

(Application no. 56132/21)
Decision
12 December 2023

The application concerns proceedings in which a care order in respect of the applicant's child, X, was issued. Relying on Article 8 of the Convention, the applicant submitted, firstly, that the time taken by the Board to process the case had not been in accordance with the expediency requirements set out in domestic law. She submitted, secondly, that the relapse

in X's development had not been due to deficiencies in her provision of emotional care and that the threshold applied for the issuance of a care order had been too low.

The Court finds that the care order which was issued in respect of X entailed an interference with the applicant's right to respect for her family life for the purposes of Article 8 § 1 of the Convention. The interference was in accordance with domestic law and pursued the legitimate aim of protecting X's "rights" and her "health". It was also "necessary" within the meaning of Article 8 § 2 of the Convention as in the light of the entirety of the case, the reasons adduced to justify the measures in question were relevant and sufficient and the parents have been adequately involved in the decision-making process seen as a whole.

Both the Board and the District Court examined X's care needs in detail and the applicant's ability to meet those needs, including whether sufficient competence could be attained by the use of assistance measures. In this connection it was found that X, while in the applicant's care, had had a relapse in her development, that she was restless and nervous, struggled socially, and gave little eye contact. Her hygiene was not taken care of, she had recurring infectious diseases, and 40% absence from kindergarten. The Court does not, in the present case, find any grounds for setting aside the considerations made by the authorities as to the facts, including the expert psychologist's description of the relapse in X's development. In the Court's assessment, the domestic authorities explained why a care order was necessary in a manner that included both relevant and sufficient reasons.

No Press Release available.

Stefania Albertani v. Italy

(Application no. 15994/20)

Pending Case

Communicated 27 November 2023

The application concerns the continued detention in prison of the applicant, who suffers from a complex psychiatric disorder and has been sentenced to 20 years' imprisonment and 3 years' placement under a security measure.

The applicant, initially placed in a psychiatric hospital on the basis of the security measure, subsequently remained in that facility pursuant to a decision which found that her state of mental health was incompatible with detention within the meaning of Article 148 of the Italian Criminal Code. Following the closing of psychiatric hospitals, the applicant was transferred to a prison, where she remained notwithstanding the above-mentioned decision and subsequent medical reports indicating the incompatibility of her state of mental health with detention in prison.

Relying on Articles 3, 5 § 1, 5 § 4 and 13 of the Convention, the applicant complains of the unlawfulness of her prolonged detention, the conditions of her detention deemed inadequate for her mental health in the absence of specific treatment and of the lack of domestic remedies. The applicant further argues that the lack of adequate psychiatric facilities and, as a consequence, the continued detention of convicted persons whose detention has been suspended pursuant to Article 148 CC constitutes a systemic problem.

No Press Release available.

Liiban Abdirisaak Ahmadi Ahmadi v. Denmark

(Application no. 34608/23)
Decision
4 April 2023

By a High Court judgment the applicant, who suffers from schizophrenia, was placed in a high security psychiatric facility. For several months he was locked up in his patient room in that facility. The applicant appealed against that measure to the Psychiatric Patients' Complaints Board, which found against him.

Relying on Articles 3 and 5 of the Convention, the applicant brought compensation proceedings before the courts. The High Court found the confinement lawful, except for a period of one month. It is questioned if the confinement of the applicant in a locked patient room in a high security psychiatric facility constitutes a breach of Articles 3 or 5 of the Convention.

The Court received the friendly-settlement declarations, signed by the parties, under which the applicant agreed to waive any further claims against Denmark in respect of the facts giving rise to this application, subject to an undertaking by the Government to pay him the amounts detailed in the appended table. These amounts will be converted into the currency of the respondent State at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the Court's decision.

The Court was satisfied that the settlement is based on respect for human rights as defined in the Convention and the Protocols thereto, finds no reasons to justify a continued examination of the application and decided to be appropriate to strike the case out of the list.

No Press Release available.

Biological Identity

Mitrevska v. North Macedonia

(Application no. 20949/21)
Judgment
14 May 2024

The case concerned access to information about an adoption. The applicant, adopted as a child, wanted to know more about her biological family, including their medical history. She argued that she had been diagnosed with depressive anxiety disorder and speech problems and, to see whether the condition was hereditary, her doctors had requested information on her family's medical history. She also argued that the information was

necessary “to establish a picture of her history, development and early childhood”. Both the social services and the Commission subsequently told her that it was impossible to share information on completed adoptions such as hers as they were categorised as an official secret under section 123-a of the Family Act.

The Court acknowledged the sensitivity and of the issue at hand and did not underestimate the impact that disclosure of information on an adoption could have on all those concerned. However, it found that the authorities had refused Ms Mitrevska’s request for information about her origins by merely relying on the relevant national law, which categorises all adoptions as an “official secret”, without balancing the competing interests at stake or without providing possibility to obtain non-identifying information on a person’s biological origins, adoption or childhood.

The balancing exercise should have involved weighing up the interest of the adopted child to know information of central importance to his or her personal life against the general interest, namely the expectation of biological mothers that information about them would not be disclosed. The court found that have been a violation of Article 8.

Moldovan v. Ukraine

(Application no. 62020/14)
Judgment
14 March 2024

The applicant, Oleksandr Volodymyrovych Moldovan, is a Ukrainian national who was born in 1993. Mr Moldovan was born out of wedlock. The person who he considered to be his father died in 2012. The case concerns the rejection of Mr Moldovan’s civil action for judicial recognition of paternity.

The courts dismissed his application essentially because he had failed to prove that his mother and late putative father had ever cohabited or that the latter had ever recognised his paternity in any way.

Relying on Article 8 (right to respect for private and family life) of the European Convention, Mr Moldovan complains that the courts refused to take into account DNA evidence, insisting instead on applying outdated legislation requiring proof of cohabitation and other “social” circumstances.

Vagdalt v. Hungary

(Application no. 9525/19)
Judgment
7 March 2024

The case concerns the applicant’s inability to be recognised as the father of his daughter. The mother’s husband was registered as the child’s father, but a DNA test revealed that the applicant was the biological father of the child. The national authorities found that

proceedings with a view to settling the child's family status were in the child's best interest, but none were concluded due to mistakes made by the domestic authorities. Subsequently, any paternity challenge became time barred, depriving the applicant of any possibility to establish a legal relationship with his daughter.

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, the applicant complains that he was not able to have his paternity recognised because the national authorities had been inefficient in conducting the proceedings.

Georgios Vassiliou v. Romania

(Application no. 57929/19)
Pending Case
Communicated 15 February 2024

The application concerns proceedings to having an adoption declared null and void and to having his paternity recognised. For several years the applicant had not known about the existence of his daughter who had been conceived when both parents were underaged, had been abandoned at birth by her mother, and adopted by the foster parents 3 years after. The adoptive parents had allowed him and the biological mother to meet his daughter on a few occasions, but afterward they opposed contact. He also argued that, in breach of their legal obligations, the domestic authorities (child protection authority and courts) had consented to his daughter's adoption without ensuring first that efforts be made in order to identify the child's biological parents.

In their submissions, the adoptive parents and the child opposed the applicant's requests, and the action was dismissed, on the grounds that the adoption had complied with the formal requirements. The applicant complains, under Articles 6 § 1 and 8 of the Convention, about the conduct of the domestic proceedings at stake and that he is currently unable to obtain recognition of his paternity and to maintain contact with his daughter.

No Press Release available.

Miroslav Pokorný v. Czech Republic

(Application no. 40034/20)
Pending Case
Communicated 12 February 2024

The application concerns the dismissal of the applicant's action for disavowal of paternity of two children. After having divorced the mother and found by means of a DNA test that he was not the children's biological father, the applicant lodged in 2018 an action for disavowal of paternity even after the applicable time-limit of six years had elapsed, provided that the child's interest or considerations of public order so require. Two levels of courts dismissed the applicant's action, emphasising that he had cared for the children for many years, that the mother did not want to designate the biological father and that the children still considered him

as their father, and given the economic aspect given that the mother had to care for two other children (of the applicant), one of whom was disabled. The courts thus considered that it was in the best interest of the children not to disavow the applicant's paternity. The Supreme Court also dismissed the applicant's appeal on points of law and the Constitutional Court dismissed his constitutional appeal for being manifestly ill-founded.

Relying on Articles 6 and 8 of the Convention, the applicant complains about a wrong assessment by the courts of the interests at stake, claiming that the children's interests not to have a person who is not their biological father registered in their birth certificate were disrespected and that the mother's immoral conduct had not been considered.

It is questioned if the refusal of the courts to disavow the applicant's paternity, despite the existence of DNA evidence to the contrary, violates his right to respect for his private and family life and Article 8 of the Convention.

No Press Release available.

Cherrier v. France

(Application no 18843/20)

Judgment

30 January 2024

The case concerned the refusal by the National Council for Access to Information about Personal Origins to inform the applicant, who was born to anonymous parents, of the identity of her biological mother. Relying on Article 8 the applicant complained that the CNAOP had refused to disclose her biological mother's identity, submitting that it had thereby infringed her right of access to information about her origins.

The applicant was adopted in 1952, a few months after her birth, and only learned of that fact upon the death of her second adoptive parent in 2008. That same year the applicant contacted the CNAOP to find out why she was relinquished for adoption and who her biological parents were. She also submitted several questions about her mother's nationality, her family's medical history and whether she had any biological siblings. The CNAOP looked into the matter and found information on the applicant's biological mother and biological father, on the applicant's adoption order and the reasons behind the adoption. The CNAOP tracked down the mother who stated that she wished to keep her identity secret.

The Court held that the refusal in issue had amounted to an interference with the applicant's right to respect for her private life under Article 8 of the Convention but that it was in accordance with the law and pursued the aim of protecting the biological mother's rights and interests. Having pointed out the conflict between the applicant's rights and interests and those of her biological mother, the Court saw no reason to review its 2003 assessment of the balance between the rights and interests at stake in anonymous birth cases.

After noting that the applicant's case had been heard before the domestic courts, where she had been able to present her arguments as part of adversarial proceedings, the

Court found that the State had not overstepped its margin of appreciation and that the fair balance between the applicant's right to find out her origins and her biological mother's rights and interests with respect to remaining anonymous had not been upset. It followed that there had been no violation of Article 8.

Deyan Ruskov Asenov and Ivan Dechev Kolev v. Bulgaria

(Application 5377/17 and 9377/17)
Decision
16 January 2024

The applications concerned the refusal of the domestic courts to award the applicants' compensation for the non-pecuniary damage that they had suffered following the death of children of whom they claimed to be the parents. The applicants claimed a breach of their right to respect for private and family life as protected by Article 8 of the Convention.

The Decision is available only in French. No Press Release available.

Maria Borges Coutinho Vilaça de Sousa v. Portugal

Application no. 53442/20
Decision
28 November 2023

The applicant was born on 9 November 1979 and registered as the daughter of M.C. (her mother) and N.S (father). Thirty years later, the applicant allegedly found out about the possibility that M.M., who had passed away in October 1979, had been her biological father.

In 2016 the applicant instituted an action for the recognition of paternity before the Family Court against M.M.'s descendants that held that the applicant's action was belated pursuant to Article 1817 of the Civil Code, which establishes a 10-year time-limit from the coming of age, or a 3-year time-limit from the moment the applicant found out about the alleged paternity, to institute an action for the recognition of paternity. Relying on Article 8 of the Convention, the applicant complains that the dismissal of the paternity proceedings brought by her was in breach of that Article.

The Court has held on previous occasions that the circumstances of birth form part of private life, guaranteed by Article 8 of the Convention and that everyone should be able to establish details of their identity as individual human beings. This includes obtaining the information needed to uncover the truth concerning important aspects of one's personal identity, such as the identity of one's parents. Nevertheless, the Court has held that the introduction of a time-limit for instituting paternity proceedings can be justified by the desire to ensure legal certainty and thus is not *per se* incompatible with the Convention and the time-limit provided for by Portuguese law is not a rigid one and that is not incompatible with the Constitution.

The Court notes that the applicant had reached the age of 36 by the time she instituted a civil claim for the recognition of paternity against the heirs of M.M., who had passed away in October 1979, and this was 7 years after allegedly finding out about the possibility of M.M. being her biological father. The applicant has thus demonstrated a lack of diligence in instituting such proceedings, by taking many years after finding out as an adult about the possibility of M.M. being her biological father to seek to have her paternity legally established. The Court also observes that the applicant did not demonstrate that there were circumstances which prevented her from acting sooner. Therefore, it did not affect the substance of the right to respect for private and family life enshrined in Article 8 of the Convention.

No Press Release available.

Marina Khutsishvili v. Georgia

(Application no. 49873/22)

Pending Case

Communicated 20 November 2024

The application concerns the alleged unlawfulness of the applicant's involuntary confinement in a psychiatric hospital. The Tbilisi Court of Appeal declared the initial decision on her confinement unlawful and ordered the applicant's immediate discharge. She did not, however, receive any compensation as the civil courts conducted their own assessment of the circumstances of the confinement and refused her claim.

The applicant alleges that her confinement and forced psychiatric treatment in a psychiatric hospital caused her severe mental suffering amounting to inhuman and degrading treatment in violation of Article 3 of the Convention taken separately or in conjunction with Article 14. She further complains under Article 5 of the Convention taken separately or in conjunction with Article 14 about the unlawful character and unjustified nature of her compulsory detention and about the inability to obtain compensation. The applicant also complains under Article 8 of the Convention, alleging that her experience of involuntary confinement and treatment breached her physical and psychological integrity.

It is questioned if the applicant deprived of her liberty in breach of Article 5 § 1 of the Convention. In particular, if was her detention in the psychiatric hospital ordered "in accordance with a procedure prescribed by law" and if there has been a violation of the applicant's right to respect for her private life, contrary to Article 8 of the Convention, on account of her involuntary placement and treatment in a psychiatric hospital.

No Press Release available.

Biological Data

O.G. and others v. Greece

(Applications no. 71555/12 and 48256/13)

Judgment

23 January 2024

The case concerned the publication, by decision of the domestic authorities, of medical data concerning women who had been diagnosed as HIV-positive and were suspected of working as prostitutes, as well as the media coverage of this incident. It also concerned the circumstances in which they were required to undergo a blood test. The applicants relied on Article 8 of the Convention, complaining about the dissemination of sensitive personal and medical data. Ten applicants also alleged that their consent had not been sought prior to the blood tests.

The applicants are eleven Greek nationals, ten of them were women who had been diagnosed as HIV-positive and one applicant was the sister of an HIV-positive woman. In the context of a police operation in the centre of Athens, ten applicants were arrested by the police. According to the Government, the arrested women had, through their conduct, aroused police suspicion that they were engaged in prostitution without the relevant permit and special legally required health pass. They were required to undergo an identity check, medical screening for sexually transmitted diseases and blood tests which confirmed that they were HIV-positive. The prosecutor subsequently ordered that their names and photographs be made public, together with the reasons why criminal proceedings had been brought against them, and a reference to their HIV-positive status. The dissemination of their personal data received extensive media coverage for several days and the applicant whose sister had been arrested was alerted that her name and photograph had been broadcast on the main evening television news programme instead of those of her sister.

The Court held that there was a violation of Article 8 with regard to two applicants, on account of the publication of data concerning them and of the blood tests they had been required to undertake as the blood samples imposed on two applicants had amounted to an interference with their private life. This had not been in accordance with the law given that the provisions of domestic law in issue ought to have been foreseeable with regard to their effects for the applicants. In particular, none of the provisions cited by the Government had been capable of justifying a medical intervention, whether carried out by police officers or doctors, such as that imposed on the applicants concerned.

The publication of the four applicants' data had amounted to a disproportionate interference with their right to respect for private life. These applicants' names and photographs and the information that they were HIV-positive, had been downloaded to the police department's website and broadcast by the media, and the prosecutor had not attempted to establish whether other measures, capable of ensuring less media exposure of the applicants, could have been taken in their cases.

Andrée Jelk-Peila v. Switzerland

(Application n. 57596/21)
Pending case
Communicated 17 April 2024

The application concerns the measures taken by the Swiss authorities to combat Covid-19. The applicant is a member of the "Climate Strike" collective. In March 2020, the Federal Council adopted Ordinance 2 COVID-19 in order to stem the spread of the coronavirus in Switzerland. This was based on Article 7 of the Epidemics Act, which states that "[i]f an extraordinary situation so requires, the Federal Council may order the necessary measures for all or part of the country". The Ordinance was amended several times, before being repealed on 22 June 2020.

On 5 May 2020, the applicant applied for a demonstration permit for an action planned for 15 May 2020 from 11.45am to 12.30pm (including set-up and dispersal). The rally was expected to involve between 28 and 32 people, including extras, journalists, spokespersons, and a photographer. No public invitation was planned and the rally was static, with no route planned. Participants were required to wear masks and stand two metres apart. The aim was to produce images for publication on social networks to compensate for the postponement of the climate strike originally scheduled for 15 May 2020.

By decision of 11 May 2020, the Department of Security, Employment and Health of the canton of Geneva (DSES) rejected the request and issued a ban on the demonstration, considering that the public interest linked to the health emergency was overriding.

The applicant alleged that there had been a violation of her right to peaceful assembly guaranteed by Article 11 of the Convention. In particular, she contended that section 7 of the Epidemics Act did not constitute a sufficient legal basis for adopting Order 2 COVID-19 and thereby prohibiting the demonstrations. It also argued that it was not proportionate to prohibit the requested demonstration, which was planned to last 45 minutes, in the open air, while respecting distances and wearing of masks. In addition, it argued the fact that could face criminal penalties ranging from a fine to three years' imprisonment if failling to comply with the DSES's decision.

The Pending Case is available only in French. No Press Release available.

Sunay Fahri Yakub v. Bulgaria

(Application no. 33718/21)
Pending Case
Communicated 7 March 2024

The applicant, a Bulgarian national, tested positive for SARS-CoV-2, and the local health inspectorate placed him in mandatory isolation in his home. On the day after he had been

placed in isolation, the applicant submitted, by email, a request to the regional electoral commission to vote in the parliamentary elections (due to be held the following day) by way of a mobile ballot box. He pointed out that he had been placed in mandatory isolation. However, he was informed that it could not include him in the list of people voting by way of a mobile ballot box, as the time-limit for that had already expired.

Relying on Article 3 of Protocol No. 1, and in the alternative on Article 8 of the Convention, the applicant complains that he was deprived of the possibility to vote in the parliamentary elections owing to the inadequate organisation of those elections during the Covid-19 pandemic.

No Press Release available.

Simon Pascal Mangold v. Switzerland

(Application no. 46807/21)

Pending Case

Communicated 30 January 2024

The application concerns the applicant's detention for reasons of public safety during the period between 20 January 2021 and 18 April 2021 which had been ordered on the basis of provisions from the Code of Criminal Procedure governing pre-trial detention, applied by analogy, pending a court ruling on a request for an extension of the institutional therapeutic measure imposed on the applicant several years earlier.

No Press Release available.

Danijel Grgičin v. Croatia and Liam Grgičin v. Croatia

(Applications nos. 6749/22 and 7154/22)

Decision

12 December 2023

Under Article 3 of the Convention, the applications concern the allegedly disproportionate use of force during the arrest of the first applicant, who had refused to wear a protective mask on public transportation in the framework of COVID-19 protective measures, and the treatment of the second applicant who had witnessed the scene. The second applicant is his son who was two and a half years old at the time.

The Court notes that the first applicant had disobeyed a police officer's clear order to disembark the train, which had resulted in about 30 minutes delay, due to his refusal to put on a protective mask. He was then informed that force would be used against him, minor offence proceedings against him started and the first applicant again refused to disembark the train. The use of force by the police had complied with domestic law in the circumstances. The force used had been made strictly necessary by the first applicant's own conduct, and neither excessive nor disproportionate.

Regarding the second applicant the Court has previously found that the possible presence of children, whose young age makes them psychologically vulnerable, at the scene of an arrest is a factor to be taken into consideration in planning and carrying out this kind of operation. However, the present case did not concern a planned operation in which the authorities would have been able to prepare ahead but a spontaneous police intervention brought about by the child's father's refusal to obey the law and a lawful police order.

Moreover, it cannot be said that in the present case the police officers completely ignored the second applicant's presence at the scene. The police officers exchanged with the first applicant for over ten minutes and warned him about the fact that they may need to use force in front of his child. After their intervention, one of the police officers took the second applicant in his arms and immediately brought him next to his father as soon as the situation had calmed down. Also in the police station, the second applicant always stayed close to his father, playing and riding his bicycle in the police station's yard. It was also the first applicant who had requested that social services not be called. However, bearing in mind the relatively short duration of the situation the Court is satisfied that his treatment by the authorities had not been such as to reach the threshold of Article 3 of the Convention.

No Press Release available.

Silviu-Dorin Şchiopu v. Romania

(Application no. 11040/22)

Decision

28 November 2023

This application concerns the obligation imposed on catering establishments, during the period when a state of alert was declared in Romania due to the Covid-19 pandemic, to keep a register of customers' personal data. Invoking Article 8 of the Convention, the applicant complained that his right to respect for private life had been infringed by the fact that access to public catering establishments was conditional on the entry of personal data in the register kept by those establishments. More specifically, this obligation was not laid down by law but by an order, representing an abuse of executive power. He added that, even supposing that the interference was provided for by law, the law did not provide any guarantees against the risk of abuse, particularly as regards the storage and destruction of personal data recorded in customer booking registers.

Article 34 of the Convention does not authorise complaints in abstracto of violations of the Convention the applicant cannot complain about a provision of domestic law, a national practice or a public act simply because it appears to be in breach of the Convention, the applicant has to be able to claim to be a victim.

The measure complained of by the applicant in the present case fell within a particular context, having been imposed in the context of the state of alert introduced in Romania. The provisions challenged by the applicant were aimed generally at all catering establishments and could affect the entire population seeking access to their premises. The applicant did not argue that he was in the habit of frequenting catering establishments or that for various

reasons he was led to go to such establishments and that his personal data had been collected.

With regard to the applicant's allegations concerning the quality of the law, the Court notes that the applicant did not raise that argument before the national courts. The applicant's complaint did not satisfy the admissibility criteria laid down in Articles 34 and 35 of the Convention.

The Decision is available only in French. No Press Release available.

Szivárvány Misszió Alapítvány v. Hungary

(Application no. 32272/21)

Pending Case

Communicated 27 November 2023

The application concerns the right to demonstration during the Covid-19 pandemic. On 10 November 2020 the Hungarian Government adopted Decree no. 484/2020. (XI. 10.) setting out the specific measures introduced to prevent and fight the spread of the corona virus. Those measures included a ban on all public assemblies. The ban, due to its numerous prolongations, was in effect until 14 June 2021.

The applicant, which is a foundation promoting equality for LGBTI persons, notified the police that on 10 December 2020 it was planning to hold a demonstration near the building of Parliament to protest against recent legislative changes curtailing the rights of LGBTI persons. A maximum of 30 participants were to sit in cars wearing masks and express their dissent with the use of signs and honking.

The police prohibited the demonstration on the ground of the ban in force. On 15 December 2020 the *Kúria* rejected the applicant's request to quash the administrative decision and to refer the case to the Constitutional Court to review the ban's constitutionality. It found that the decision, which was based on the legal provision prohibiting assemblies during the state of emergency in place, were lawful and that this general prohibition precluded the police from considering the particular circumstances of the individual case. The applicant's constitutional complaint was to no avail. The Constitutional Court held that as the exercise of freedom of assembly posed a high risk to the spread of the pandemic, a temporary ban on it could be considered a necessary restriction (decision no. 23/2021. (VII. 13.) AB). In view of the particular time of the planned demonstration, that is, at the height of a new wave of the pandemic it did not find the general ban on assemblies to be unconstitutional.

The applicant complains under Article 11 of the Convention that the blanket Governmental ban on public assemblies and the ensuing domestic decisions prohibiting its planned demonstration to take place constituted an unnecessary and disproportionate interference with its right to freedom of assembly.

No Press Release available.

Galatasaray Sportif Sınai ve Ticari Yatırımlar Anonim Şirketi v.Turkey

(Application no. 59957/21)

Pending Case

Communicated 21 November 2023

The application concerns the independence and impartiality of the Arbitration Committee of the Turkish Football Federation which dismissed a claim brought by the applicant company, a professional football club in the top Turkish professional league. In the proceedings before the Arbitration Committee the applicant company challenged a monetary fine on it by the Disciplinary Committee on account of non-observance of Covid-19 measures (such as admitting more spectators than allowed, and violation of mask rules by those spectators) in a match that took place in the applicant company's stadium. The Arbitration Committee dismissed the applicant company's claim.

Relying on the findings of the Court, the applicant company complains under Article 6 § 1 of the Convention that their dispute was not decided by an independent and impartial tribunal. Under the same provision, they further complain that the Arbitration Committee failed to respond to their arguments relating to the determination and proportionality of the amount of the fine.

No Press Release available.

Riela v. Italy

(Application no. 17378/20)

Judgment

9 November 2023

The application concerns the applicant's continued detention in prison despite his multiple diseases and the risk of contracting COVID-19, as well as the medical care provided to him during detention. The applicant, aged 67, is serving a life sentence and suffers from several diseases, including a severe obstructive sleep apnoea syndrome, obesity, type 2 diabetes and hypertensive cardiopathy.

More than once the applicant asked to either suspend the execution of his prison sentence or replace it with detention under house arrest as his state of health was incompatible with detention and with the medical care provided. The applicant also filed an urgent on the basis of the risks posed by COVID-19 to which no information has been provided on the outcome. The applicant complained, under Articles 2 and 3 of the Convention, that he was not receiving adequate treatment for his diseases and had been exposed to a significant risk to his life and health, in particular with regard to COVID-19 and to the delays in carrying out specialist examinations and providing him with a functioning CPAP device. He further complained of the lack of a prompt and independent medical assessment.

Regarding the risks related to COVID-19, the Court observes that the Italian authorities adopted urgent measures for the reduction of the prison population and specific preventive

measures for prisons, such as a quarantine period for new arrivals, the isolation of symptomatic prisoners, the provision of protective equipment to prison personnel and the provision of masks and sanitising gel to prisoners. As to the applicant's specific situation, the Court notes that, due to his vulnerable health situation, the applicant was placed in a single cell, he has not been infected and the COVID-19 vaccination was made available to him.

Regarding the quality of care provided, the applicant complained of certain delays in providing treatment and performing surgery and, in particular, of the failure to provide him with a CPAP machine in a timely manner and with certain examinations and treatment, in particular endoscopic examinations for his polyposis and surgery on a fistula (see paragraphs 8 and 16 above). The treatment concerned numerous diseases and of a certain severity, reason why the Court does not share the Government's view that they and considers that the applicant did not receive timely and adequate medical care whilst in detention, constituting it a violation of Article 3 of the Convention.

No Press Release available.

Medical ethics

Anton Levon v. Lithuania
(Application no. 27121/23)
Pending case
Communicated 21 February 2024

The application concerns an investigation into the circumstances of the applicant's father's death at the hospital. The applicant's father felt unwell and, after arriving by ambulance to the hospital, which arrived 25 minutes after the call, died there on the day after. A few months after the applicant lodged a complaint with the Commission for Determining the Damage Caused to Patients' Health alleging that the medical care which had been provided to his father at the ambulance and at the hospital had been inadequate and had led to his death. The Commission concluded that the medical care had been adequate however, the applicant lodged a claim with the courts seeking compensation from the State. This claim was dismissed as there were no grounds to depart from the conclusions reached by the Commission.

The applicant appealed and claimed that the Commission's decision contained contradictions, that some of the documents provided by the hospital had been illegible, and that certain medical services had been provided to the applicant's father on the day after his death, demonstrating that the hospital had falsified the medical records and that the remaining documents could not be considered reliable either. The Court of Appeal dismissed the appeal and refused to order a forensic examination. The Supreme Court also refused to accept the case for examination as raising no new important legal issues.

Following a request by the Šalčininkai police in the context of an opened criminal proceedings the State Accreditation Service for Healthcare Activities inspected the healthcare services provided to the applicant's father at the ambulance, concluding its compliance with relevant legal requirements, and at the hospital, finding that the hospital had breached several

legal requirements. There were recommended exams not followed, the description of the patient's condition and medical history by the hospital was lacking in detail and he had not been resuscitated in accordance with the relevant requirements – the doctor who had been on duty had tried to resuscitate him herself, instead of calling a specialist. The applicant complains that the courts in the civil proceedings failed to examine the case in an objective and thorough manner, raising these complaints under Article 6 § 1 and Article 13 of the Convention.

No Press Release available.

HIV

Claudiu-Alexandru Șuteu v. Romania
(Application 10370/17)
Pending Case
Communicated 15 February 2024

The application concerns the detention of the applicant, who is HIV-positive, in areas intended for sick prisoners and in poor conditions. He alleged that he had been detained in an isolated section of the prison, in conditions worse than those of non-HIV-positive prisoners (being allowed to leave his cell for only two hours a day, not being allowed to work or receive rewards, not being able to attend vocational training courses or take part in sport, because of his HIV status). It was also mention the objective conditions of detention (he refers in particular overcrowding cells, poor-quality food, lack of furniture, exposure to light at night, lack of ventilation and water, and the presence of rats). The applicant relies on Articles 3 and 14 of the Convention.

It is question whether there is a violation is of Article 3, taken alone or in conjunction with Article 14 of the Convention, to inhuman or degrading treatment, due to his segregation in a specific sector of the prison.

The Pending Case is available only in French. No Press Release available.

Climate Change and Implications on Health

Carême v. France
(Application no. 7189/21)
Decision
9 April 2024

The case concerned the complaint of the applicant, former resident and mayor of the Grande-Synthe municipality, that France had taken insufficient steps to prevent climate

change and that this failure entailed a violation of his right to life and his right to respect for his private and family life and his home.

Having regard to the fact that the applicant had no relevant links with Grande-Synthe and that, moreover, he did not currently live in France, the Court considered that for the purposes of any potentially relevant aspect of Article 2 (right to life) or Article 8 (right to respect for private and family life or home) he could not claim to have victim status under Article 34 of the Convention, and that was true irrespective of the status he invoked, namely that of a citizen or former resident of Grande-Synthe.

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

(Application no. 53600/20)
Judgment
9 April 2024

The case concerned a complaint by four women and a Swiss association, Verein KlimaSeniorinnen Schweiz, whose members are all older women concerned about the consequences of global warming on their living conditions and health. They consider that the Swiss authorities are not taking sufficient action, despite their duties under the Convention, to mitigate the effects of climate change. The Court found that Article 8 of the Convention encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life.

However, it held that the four individual applicants did not fulfil the victim-status criteria under Article 34 of the Convention and declared their complaints inadmissible. The applicant association, in contrast, had the right (*locus standi*) to bring a complaint regarding the threats arising from climate change in the respondent State on behalf of those individuals who could arguably claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being and quality of life as protected under the Convention.

The Court found that the Swiss Confederation had failed to comply with its duties ("positive obligations") under the Convention concerning climate change. There had been critical gaps in the process of putting in place the relevant domestic regulatory framework, including a failure by the Swiss authorities to quantify, through a carbon budget or otherwise, national greenhouse gas (GHG) emissions limitations. Switzerland had also failed to meet its past GHG emission reduction targets. While recognising that national authorities enjoy wide discretion in relation to implementation of legislation and measures, the Court held, on the basis of the material before it, that the Swiss authorities had not acted in time and in an appropriate way to devise, develop and implement relevant legislation and measures in this case.

In addition, the Court found that Article 6 § 1 of the Convention applied to the applicant association's complaint concerning effective implementation of the mitigation measures under existing domestic law. The Court held that the Swiss courts had not provided convincing reasons as to why they had considered it unnecessary to examine the merits of the applicant association's complaints. They had failed to take into consideration the compelling scientific evidence concerning climate change and had not taken the complaints seriously.

Duarte Agostinho and Others v. Portugal and 32 Others

(Application no. 39371/20)

Decision

9 April 2024

The applicants, six young Portuguese nationals, complained of the existing, and serious future, impacts of climate change. They submitted that Portugal was already experiencing a range of climate-change impacts, including increase in mean temperatures and extreme heat, which was a major driver of wildfires. They relied on various Convention Articles, international instruments such as the 2015 Paris Agreement and the UN Convention on the Rights of the Child, and general reports and expert findings concerning the harm caused by climate change.

In the applicants' view, Portugal and the 32 other respondent States bore responsibility for the situation in issue. They submitted that they were currently exposed to a risk of harm from climate change, and that the risk was set to increase significantly over the course of their lifetimes. They argued that their generation was particularly affected by climate change and that, given their ages, the interference with their rights was more marked than in the case of previous generations. They also claimed Portugal was one of the most affected countries.

As concerned the extraterritorial jurisdiction of the respondent States other than Portugal, the Court found that there were no grounds in the Convention for the extension, by way of judicial interpretation, of their extraterritorial jurisdiction in the manner requested by the applicants.

It followed that territorial jurisdiction was established in respect of Portugal, whereas no jurisdiction could be established as regards the other respondent States. The applicants' complaint against the other respondent States had therefore to be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention. Having regard to the fact that the applicants had not pursued any legal avenue in Portugal concerning their complaints, the applicants' complaint against Portugal was also inadmissible for non-exhaustion of domestic remedies.

Medical Access

Susin Yaramuş et Abdullah Yaramuş v. Turkey

(Application no 41852/23)

Pending Case

Communicated 11 March 2024

The application concerns the death of the applicants' child, who was born on 10 August 2015 and died on 6 September 2015 during the events in Cizre. Between 10 and 19 August 2015, self-governance was proclaimed in nineteen towns in Turkey, the vast majority of which are in the south-east of the country.

In September 2015, a continuous curfew was imposed in the city of Cizre. It was in these circumstances that on 4 September 2015, at around 9 p.m., as the applicants were sitting in the garden, a device exploded near their house.

Susin Yaramuş was holding her baby in her arms. In the rush to get back inside the house, she lost her balance and fell violently on top of the child. The child died on 6 September 2015. According to the applicants, his death was the result of a failure to provide emergency medical care, as the deceased had not received appropriate treatment even though he was clearly in a critical condition.

The applicants alleged that the circumstances of the case gave rise to a violation of Article 2 of the Convention, both in its substantive and procedural aspects, and of Article 6 of the Convention (allegation of inadequacy of the investigation conducted by the public prosecutor).

The Pending Case is available only in French. No Press Release available.

M.A. and Others v. Greece

(Application no. 16865/20)

Decision

15 February 2024

The applicants' complaints under Articles 3 and/or 8 of the Convention concerning the applicants' living conditions and medical treatment, as well as under Article 13 taken in conjunction with Article 3 of the Convention concerning the alleged deficiencies of the identification and asylum procedure, were communicated to the Greek Government.

On 10 September 2021 the applicants informed the Registry that they did not wish to pursue further with their application.

No Press Release available.

Access to healthcare in detention

Marian Bălui v. Romania

(Application no 55814/22)

Pending Case

30 January 2024

The application concerned the circumstances in which the prison authorities had dealt with the applicant's medical condition, in particular his need for dentures.

The applicant, who had been detained since 2002, most recently in Mărgineni prison, complained that he had not received the necessary medical care during his detention. He lodged complaints with the judge responsible for supervising the execution of prison sentences, which were partially upheld. By judgment of 31 August 2022, the judge ruled that the applicant should receive dental treatment, including dentures. This judgment became final and was upheld by the judgment of the Craiova Court of First Instance of 3 November 2022, which was finalised on 2 December 2022. At the time the application was lodged, the applicant had not received the dental treatment indicated by the doctors and ordered by the judge. Relying on Articles 2 and 3 of the Convention, the applicant complained that the authorities had failed to comply with the above-mentioned judgment in his favour.

The Pending Case is available only in French. No Press Release available.

Radchenko and Abramov v. Ukraine

(Applications nos. 5312/20 and 22627/20)

Judgment

18 January 2024

The applicants complained principally that they were not afforded adequate medical treatment in detention. They relied on Article 3 of the Convention. The Court notes that the applicants suffered from serious medical conditions, which affected their everyday functioning. Therefore, they could have experienced considerable anxiety as to whether the medical care provided to them was adequate.

Although recognizing that the “adequacy” of medical assistance remains the most difficult element to determine, the court has clarified in this context that the authorities must ensure that diagnosis and care are prompt and accurate and that – where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee’s health problems or preventing their aggravation. The Court also stresses that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population although not meaning that each detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities.

The Court has already found a violation, considering that in the instant case, and in respect with the case law on the matter, the applicants did not receive comprehensive and adequate medical care whilst in detention. The complaints were therefore admissible and disclose a breach of Article 3 of the Convention.

No Press Release available.

Libri v. Italy

(Application no. 45097/20)
Judgment
11 January 2024

The application concerns the alleged incompatibility of the applicant's state of health with detention in prison and the alleged failure to provide him with adequate medical treatment. The applicant was sentenced to life imprisonment, however, he suffers from several health problems including a severe osteoporosis with multiple vertebral collapses and fibromyalgia, being recognized as 100% disabled.

The applicant argued that he could not be adequately treated in prison and should therefore be transferred to a healthcare facility. He complained, in particular, of the delays in providing physiotherapy, orthopaedic devices and certain examinations, as well as of the placement in an unsuitable cell. The Court took into account: (a) the prisoner's condition and the effect on the latter of the manner of his or her imprisonment, (b) the quality of care provided, and (c) whether or not the applicant should continue to be detained in view of his or her state of health.

The Court considered that the applicant's conditions were not so severe as to impose his liberation. Nevertheless, in respect of the quality of care provided, the Court notes that the prison doctors, the court-appointed experts and the domestic courts identified several delays and shortcomings in the applicant's treatment.

The applicant needed regular physiotherapy, including both functional rehabilitation to be carried out in prison and intensive rehabilitation treatment to be carried out in external facilities and the physiotherapy cycles were sporadic and the applicant never had access to intensive rehabilitation treatment. The Court considers that these considerations suffice to conclude that the applicant did not receive adequate care while in prison, breaching Article 3 of the Convention.

No Press Release available.

Mykhaylo Igorovych Byelyayev v. Ukraine

(Application no. 34040/23)
Pending Case
Communicated 9 January 2024

The application concerns allegedly inadequate medical treatment in detention. Specifically, the applicant, a life prisoner, complains of the extraction of his three teeth on 10 January 2021, performed by the chief of the medical unit in the absence of a dentist who could have allegedly cured them.

According to the applicant, on 14 July 2023 the Konotop Local Court of Sumy Region by its final decision dismissed the applicant's complaint regarding this incident. It is questioned if the applicant received adequate medical treatment in detention, in compliance with Article 3 of the Convention.

No Press Release available.

Necdet Köstek v. Turkey

(Application no 9912/23)
Pending Case
Communicated 8 January 2024

The application concerned the lack of medical care that the applicant faced at Silivri Remand Prison, where he was. The applicant had a chronic renal failure. Although a kidney donor had been found, he had not been transferred to hospital so that his kidney could be transplanted.

Invoking Article 3 of the Convention, the applicant alleged that his health had been endangered by the refusal of the Silivri prison authorities to transfer him to hospital for a kidney transplant. Invoking Article 6 of the Convention, the applicant complained that the proceedings had been unfair because there had been no hearing before the execution judge or the Silivri Assize Court and because the public prosecutor's opinion had not been communicated.

The Pending Case is available only in French. No Press Release available.

Giuseppe Avignone v. Italy

(Application no. 1017/21)
Judgment
14 December 2023

The applicant's complaints under Articles 3 and 8 of the Convention concerning the alleged lack of medical treatment in prison were communicated to the Italian Government.

The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by these complaints. Noting the admissions contained in the Government's declaration as well as the amount of compensation proposed

– which, taking into account the evidence provided by both parties on the applicant's state of health and on the medical care provided to him, appears to be consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

In the light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

No Press Release available.

Angelo Muraca v. Italy

(Application no. 38750/20)

Decision

28 November 2023

The application concerns the alleged failure to provide the applicant with adequate medical treatment in prison, in particular the repair of his dental implant, in breach of Article 3 of the Convention.

The applicant's dental implant got partially detached and posteriorly broken, affecting his mastication. The applicant made several attempts to address the situation, he requested an authorisation to be examined by a dentist of his choice although the second declared not having the necessary tools and information to repair the dental implant, asked for a temporary transfer to Catanzaro Prison in order to be closer to the private dental clinic where his implant had been installed which had been refused, made a request to the local public health administration asking if , they could repair his implant which had a negative answer.

The Court has reiterated that medical treatment provided within prison facilities must be at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. The applicant complained of the authorities' failure to repair his dental implant, the Government argued that such treatment fell outside the essential care that the State undertakes to provide to the population as a whole, reason why the court does not consider that the Government were under an obligation to provide the applicant with the repair of his dental implant free of charge.

If the applicant was prevented from accessing the required dental care at his own expense, there was a law providing for the possibility for detainees to ask for an authorisation to undergo medical examination and treatment at their own expense and by a professional of their choice. The applicant availed himself of that possibility in March 2019 and, shortly after, his request was granted and he was examined by a dentist. It also emerges from the documents that he was transferred to Catanzaro Prison, where he is currently undergoing dental treatment and the applicant did not argue that there were any further delays or shortcoming on the part of domestic authorities. Lastly, the Court notes that in Melfi Prison the applicant had access to basic dental care, was given suitable food as soon as the necessity and he did not argue that he was in pain or that his health deteriorated due to the broken dental implant. In these circumstances, there is insufficient evidence that the temporary unavailability of repairing the

dental implant resulted in suffering attracting applicability of Article 3 of the Convention and the Court concludes that the application is manifestly ill-founded.

No Press Release available.

Walter Di Lonardo v. Italy

(Application no. 15049/23)

Pending Case

Communicated 27 November 2023

The application concerns the medical care provided to the applicant's brother, L.D.L., during his imprisonment until the date of his death on 13 February 2017. L.D.L. suffered from a number of diseases including HIV, liver cirrhosis, hepatitis C and chronic renal failure and had been implanted with prosthetic heart valves. Following a criminal conviction, he had been imprisoned from 26 July 2014 until 9 August 2016, when he was granted house detention on health grounds. The house detention was revoked and L.D.L. entered the Verbania Prison. On 11 February 2017 L.D.L. was transferred to the Turin Prison, where he died two days later from a cardiogenic shock associated with endocarditis.

On 6 July 2017 the applicant filed a criminal complaint, asking for an investigation into the circumstances of his brother's death. The public prosecutor at the Verbania District Court, who initially conducted the investigation, appointed a medical expert. Since the expert excluded any negligent conduct on the part of the prison doctors, on 19 November 2018 the prosecutor asked for the discontinuance of the proceedings; this request was communicated to the applicant on 20 May 2020.

However, considering that the investigation had not been sufficiently thorough, the public prosecutor at the Turin Court of Appeal took charge of the investigation and appointed a new expert. According to the expert report of 6 October 2021, the prison doctors had underestimated L.D.L.'s conditions and had not ordered the necessary examinations and treatment; nevertheless, due to the severity of L.D.L.'s conditions, even with a correct treatment he would most likely have died. Based on these considerations, on 11 March 2022 the Turin preliminary investigation judge ordered the discontinuance of the proceedings.

The applicant complains, under Articles 2 and 3 of the Convention, that his brother did not receive adequate medical care for his diseases and that there was no effective investigation into his treatment and death. He further complains under Article 6 § 1 of the Convention of the excessive duration of the criminal investigation.

No Press Release available.

Sadio v. Italy

(Application no. 3571/17)

Judgment

16 November 2023

The case concerns the poor conditions of the applicant's accommodations in the reception centre in Cona (Venice). The applicant reached the coast of Sicily on a makeshift vesse and stayed in to the Cona reception centre for several months.

The applicant complained that his reception conditions in Cona had been poor. He alleged that the centre had been overcrowded and that there had been a lack of basic facilities, such as proper heating and hot water, and a lack of access to medical care. The applicant also complained that there had been a lack of psychological and legal assistance and an insufficient number of staff members and interpreters.

The Court considered that, having regard to the length and the conditions of his accommodations in the Cona adult reception centre, the applicant was subjected to inhuman and degrading treatment and that there has been a breach of Article 3 of the Convention.

No Press Release available.

Shchurko and Otryshko v. Ukraine

(Applications nos. 29857/19 and 3529/21)

Judgment

16 November 2023

The applicants complained principally that they were not afforded adequate medical treatment in detention, relying on article 3. The Court notes that the applicants suffered from serious medical conditions, as indicated in the appended table, which affected their everyday functioning. Therefore, they could have experienced considerable anxiety as to whether the medical care provided to them was adequate.

Although reiterating that the "adequacy" of medical assistance remains the most difficult element to determine the Court stresses that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Having examined all the material submitted to it, the Court has identified the shortcomings in the applicants' medical treatment it declares the applications admissible and that it discloses a breach of Article 3 of the Convention.

No Press Release available.

Joseph Recco v. France
(Application no 26410/23)
Pending Case
Communicated 6 November 2024

The case concerned the compatibility of the applicant's state of health, aged eighty-nine and suffering from several pathologies (coronary artery disease, skin lesions, ENT, rheumatic and urological pathologies) with detention (article 3 of the Convention). The applicant was sentenced to life imprisonment for violence against a magistrate or civil servant resulting in death (death of a maritime guard on 28 October 1960).

Invoking Article 3 of the Convention, the applicant argued that his continued detention exposed him to inhuman and degrading treatment, due to his advanced age and state of health.

The Pending Case is available only in French. No Press Release available.

Access to healthcare and migration

Iboko Lokila v. France
(Application no 54507/21)
Judgment
18 April 2024

The application concerned the forced removal of the applicant, a national of the Democratic Republic of Congo (DRC) suffering from several somatic pathologies to the DRC. The applicant claimed that there was a risk of a violation of Article 3 of the Convention if the deportation order were enforced, since in DRC he would run the risk of being subjected to inhuman and degrading treatment and of being exposed to a premature death due to the unavailability of the medical treatment and care he needed. He suffers from a number of chronic conditions, including high blood pressure, heart rhythm disorders, type 2 diabetes and hepatitis B.

According to the OFII doctor's opinion of 1 November 2021 the applicant's state of health required medical treatment and failure to provide could result in exceptionally serious consequences. In view of the care available and the characteristics of the healthcare system in the country of origin, it was mentioned that adequate medical care could not be effectively provided. Stating that his state of health did not allow him to travel safely to his country of origin, the opinion ruled against the applicant's removal to his country of origin. The Court also noted that the applicant had produced evidence to support the OFII doctor's assessment that the medication required for his medical condition was not available in the DRC. In those circumstances, the Court considers that the applicant has adduced sufficient evidence to show that there are substantial grounds for believing that, if the expulsion order were enforced, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the

Convention. The threshold of seriousness for Article 3 of the Convention to be applied has been reached in the present case.

The Court considers that it is not apparent from the material in the case file, in particular from the documents produced before it, that the Government dispelled the doubts raised by the OFII doctor's opinion. The domestic authorities failed to fulfil their obligation to put in place adequate procedures enabling them to carry out a full and ex nunc examination of the risks incurred by the applicant in the event of his return to the DRC. The Court holds that there has been a violation of the procedural aspect of Article 3 of the Convention.

The Judgment is available only in French. No Press Release available.

A.K. v. France

(Application no 46033/21)

Judgment

18 April 2024

The application concerns the forced removal of the applicant, a Guinean national suffering from mental illness to the Republic of Guinea. The applicant claims that there is a risk of a violation of Article 3 of the Convention if the order is enforced. The applicant submits, firstly, that the care required for the treatment of his condition is unavailable in the Republic of Guinea and, secondly, that a cessation of care would result in a serious, rapid and irreversible decline in his state of health or a significant reduction in his life expectancy.

The Court notes that the reports and studies produced by the applicant, while agreeing that the Guinean health system is deficient overall and that mental health care is limited, do not refer specifically to the pathology from which the applicant suffers. The Court notes that these documents emphasise that the provision of psychiatric care is essentially concentrated in Conakry, where the applicant had set the centre of his interests before his departure. Although some documents referred to the direct consequences of the cessation of treatment for the applicant's state of health, they did not point to the irreversible nature of those consequences or to the significant reduction in his life expectancy. The Court further notes that the documents produced by the Government tend to show that the medical treatment required for the applicant's condition was available in the Republic of Guinea.

The Court also notes that the applicant's current mental state does no longer present any psychiatric danger to others and that the risk of suicide is low. The Court concluded that the threshold required for applying Article 3 of the Convention had not been met.

The Judgment is available only in French. No Press Release available.

B.D. v. France

(Application no 55989/20)

Judgment

18 April 2024

The application concerns the forced removal of the applicant, a Guinean national suffering from schizophrenia, to the Republic of Guinea. The applicant claims that there is a risk of a violation of Article 3 of the Convention if the removal order is enforced. The applicant submits, first, that the care required for the treatment of his condition is unavailable in the Republic of Guinea and, second, that a cessation of care would result in a serious, rapid and irreversible decline in his state of health or a significant reduction in his life expectancy.

The Court notes that the medical documents produced by the applicant do not provide any useful support for his assertions as to the unavailability in the Republic of Guinea of the treatment required by his illness. The Court also notes that the documents produced by the Government tend to show that the medical treatment as these are the country files for the Republic of Guinea. The Court also notes that the medical documents produced by the applicant, while agreeing that there would be serious consequences for his health if care were to be discontinued, do not expressly refer to the irreversible nature of the deterioration in his mental health or to the significant reduction in his life expectancy if medical care were not provided, but merely refer to a loss of opportunity for better mental health. In this respect, although the applicant had presented a suicidal risk in the past, none of the medical certificates produced supported the actuality of this risk.

The Court concluded that the threshold of seriousness required for Article 3 of the Convention to be applicable had not been met.

The Judgment is available only in French. No Press Release available.

S.N. v. France

(Application no 14997/19)

Judgment

18 April 2024

The application concerns the forced removal of the applicant, a Senegalese national suffering from schizophrenia, to Senegal.

The applicant submits, firstly, that the care required for the treatment of his condition is unavailable in Senegal and, secondly, that a cessation of care would result in a serious, rapid and irreversible decline in his state of health or a significant reduction in his life expectancy. The Court notes, firstly, that the medical documents produced by the applicant do not provide any useful support for his claim that the treatment required for his illness was not available in Senegal. The Court also notes that the medical documents produced by the applicant, which refer to the exceptionally serious consequences of discontinuing treatment, do not clearly state whether the deterioration in his mental health would be irreversible if medical care were not provided.

The Court further notes that the documents produced by the Government support that assessment and tend to demonstrate the availability, in Senegal, of the medical treatment required by the applicant's condition The Court concluded that the threshold of seriousness required for Article 3 of the Convention to be applicable had not been met.

The Judgment is available only in French. No Press Release available.

Abdalah Bargo Gazati v. Belgium

(Application no 30190/18)
Decision
25 January 2024

The application concerns a Sudanese national, residing illegally in Belgium, who, by decision of the Foreigners' Office of 10 September 2017 (order to leave the country and remain in a specific place with a view to his removal), was placed in the 127bis detention centre. Under Article 5 § 1 f) of the Convention, the applicant complained that he had been detained in conditions inappropriate to his state of mental health.

The medical service at the detention centre took charge of the applicant, who was given medication and psychological counselling as soon as he arrived. On 13 September 2017, the centre's doctor declared that he was fit to remain at the centre but not to fly due to medical problems. On 26 October 2017, the same doctor considered that the applicant was no longer fit to remain in the centre and recommended that he be transferred to an open centre or specialised institution. The Belgian authorities had contacted the Sudanese diplomatic authorities with a view to obtaining a travel document and on the 30 October 2017, the applicant was moved to the Merksplas detention centre, where he received more intensive psychological support. On 31 October 2017, the doctor at the centre declared him fit for detention but recommended that he not be removed until the next medical assessment. This took place on 9 November 2017 and the applicant was declared fit to travel and return to his country of origin if his specific needs were taken into account.

In the present case, the Court notes that the detention measures at issue fell within the grounds enumerated in Article 5 § 1 (f) of the Convention. The Court points out in this regard that the lodging of an application for international protection does not, of itself, render the administrative detention of an asylum-seeker incompatible with Article 5 § 1 (f). The detention orders had a legal basis in domestic law and complied with the substantive and formal rules of domestic law, which is not disputed before it.

Since the Belgian authorities were unaware of these circumstances when the applicant was placed in detention on 11 September 2017, the Court considers that the Belgian authorities cannot be criticised for failing to take them into account when the decision was taken to detain him in the 127bis detention centre in Steenokkerzeel with a view to his removal from Belgian territory. The fact that the Belgian authorities had not followed the recommendation made on 30 October 2017 to transfer the applicant to an open centre could not suffice to conclude that the Belgian authorities had failed to act. The detention measure

was appropriate to his state of mental health. The complaints do not satisfy the admissibility criteria laid down in Articles 34 and 35 of the Convention and do not disclose any appearance of a violation.

The Judgment is available only in French. No Press Release available.

J.N. v. Sweden

(Application no. 34474/20)

Decision

14 December 2023

The case concerns the applicant's deportation to the Philippines. The applicant is a 13-year-old boy who is to be deported together with his father, also a Philippine national. The applicant suffers from, *inter alia*, hydrocephalus and an arachnoid cyst in his brain and since he arrived in Sweden in 2015 he has been hospitalised on several occasions. In June 2020 he underwent emergency surgery to replace the shunt and one year later he underwent additional surgery to reposition the shunt on account of malfunction.

The applicant complained that his deportation would be in breach of Article 3 of the Convention in view of his medical condition and the lack of access to adequate treatment in the Philippines. He submitted that post-surgery complications were common and that any shunt malfunction would need to be dealt with within a few hours by neurosurgical experts. He claimed that in the Philippines, he would be living several hours away from Manila and would not have sufficiently rapid access to medical care neither economic possibility to live there.

The medical certificates submitted by the applicant demonstrate that he has a vital need for a functioning shunt and that in the event of a shunt malfunction he needs rapid access to neurosurgical expertise, failing which he risks rapid neurological deterioration and a fatal outcome. However, the domestic authorities found, in the light of relevant country-of-origin information, that an extensive range of healthcare was available in the Philippines. Moreover, he was from Santa Rosa, Laguna, close to Manila (approximately 40 kilometres away) and there was no indication that his father could not ensure that his basic material needs would be met in the Philippines. The applicant, for his part, has not substantiated his claims reason why the Court finds that substantial grounds have not been shown for believing that the applicant would face a real risk.

As to the alleged risks faced during the journey to the Philippines, the enforcement procedure in Sweden allows the implementation of a deportation order only if the authority responsible for the deportation considers that the individual's medical condition so permits and that authority is required to ensure that appropriate measures are taken with regard to the individual's particular needs. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's deportation to the Philippines would not be contrary to Article 3.

No Press Release available.

M.B. v. Greece

(Application no. 8389/20)

Judgment

28 November 2023

The application concerns the living conditions of the applicant, a woman who was pregnant at the time of lodging her application with the Court. She arrived in Samos and resided at the Samos Reception and Identification Centre for months.

The applicant submitted, in particular, that upon her arrival she had been about five months pregnant. She alleged that she had been suffering from tuberculosis, gestational diabetes, hypertension and anaemia. The applicant submitted that, because she was 40 years old, had previously given birth to three children, and the baby's large size, her pregnancy was considered high-risk. The applicant had been examined only briefly by the camp doctor and midwife on one occasion prior to being referred to Samos hospital. She visited the hospital two times but had not received followed-up examinations by the hospital gynaecologist because she had been refused access owing to a suspected tuberculosis infection. She had not been provided with the required prenatal healthcare.

The Government argued that the applicant had not submitted any written requests to the competent authorities or domestic courts and had therefore failed to exhaust domestic remedies, to which the court referred that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism.

Although the Court has previously note that the States which form the external borders of the European Union are currently experiencing considerable difficulties in coping with the increasing influx of migrants and asylum-seekers, not underestimating the burden and pressure this situation places on the States concerned, it states the absolute character of the rights secured by Article 3, that cannot absolve a State of its obligations under that provision. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. In these circumstances and having regard to the parties' submissions and all the material in its possession, the Court finds that the situation complained of subjected the applicant to treatment which exceeded the threshold of severity required to engage Article 3 of the Convention. There has been a violation of Article 3.

No Press Release available.

Medical Negligence and Liability

Jasmina Momčilović v. Serbia

(Application no. 44530/18)

Decision

5 March 2024

The application concerns the alleged lack of an effective investigation into the death of the applicant's mother (D.M.) which was allegedly caused by medical negligence. D.M. had

surgery, in a State-run hospital, regarding a tumour which had been previously diagnosed several days after her discharge was again admitted to a hospital because of her worsening health situation, being treated in several medical institutions due to her very poor health ending up passing away 7 months after.

The Court notes that there is nothing in the case file to indicate that the death of D.M. was caused intentionally. Furthermore, there is nothing to substantiate that the State failed in its obligation to put in place an effective regulatory framework, and the applicant's complaint also does not fall under the very exceptional circumstances in which the responsibility of the State may be engaged under the substantive limb of Article 2.

Accordingly, the examination of the circumstances leading to D.M.'s death and the alleged responsibility of the healthcare professionals involved are matters which must be addressed in the context of the adequacy of the mechanisms in place for shedding light on the course of those events. The court notes that Article 2 does not therefore necessarily call for a criminal-law remedy on the facts of the present case. The choice of means for ensuring the positive obligations under Article 2 of the Convention is in principle a matter that falls within the Contracting State's margin of appreciation and for such cases, a civil-law remedy would be better suited when it comes to providing adequate redress.

The domestic legal system therefore offered the applicant the possibility of a civil case which could have adequately addressed her arguments and given an appropriate response. The applicant, however, did not make use of this avenue of redress reason why the Court reject the applicant's complaint under Article 2 of the Convention as manifestly ill-founded.

No Press Release available.

Simon v. Ukraine

(Application no. 41877/21)
Judgment
22 February 2024

The applicant complained principally that he was not afforded adequate medical treatment in detention. The Court notes that the applicant suffered from serious medical conditions which affected his everyday functioning. Therefore, he could have experienced considerable anxiety as to whether the medical care provided to him was adequate.

The Court reiterates that the "adequacy" of medical assistance remains the most difficult element to determine clarifying however in this context that the authorities must ensure that diagnosis and care are prompt and accurate and that – where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee's health problems or preventing their aggravation. Medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population without the need to guaranteed the same level of medical treatment that is available in the best health establishments outside prison.

Having examined all the material submitted to it, the Court has identified already found a violation in respect of issues similar to those in the present case and considers that in the instant case the applicant did not receive comprehensive and adequate medical care whilst in detention. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention.

The applicant also submitted a complaint under Article 13 of the Convention about the lack of an effective remedy in domestic law in respect of inadequate medical treatment in detention facilities (see appended table). This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. Having examined all the material before it, the Court concluded that it discloses a violation of Article 13 of the Convention in the light of its findings in the case set out in the appended table.

No Press Release available.

Lucreţia Gora v. Romania

(Application no. 16792/18)

Decision

30 January 2024

The application concerned the death of the applicant's brother G.M. in the hospital and the investigation into the circumstances of his death. Invoking Article 6 of the Convention, the applicant complained that her brother had been victim of medical negligence and that the national authorities had failed to clarify the circumstances of his death.

The Court decided that no issue arose under the substantive head of Article 2 of the Convention. The applicant's brother was taken into hospital and received medical treatment. Regarding the procedural obligation under Article 2 in the field of health, the respondent State has established an effective and independent judicial system capable, in the event of the death of an individual for whom health professionals, whether in the public or private sector, are responsible, of establishing the cause of death and holding those responsible accountable for their actions. Several legal remedies were available to the applicant under domestic law. The applicant made use of some of these legal remedies but did not bring a separate civil action. Additionally, she did not show that the civil courts were not adequate.

With regard to the main argument, that her brother's death had been caused by a fracture of the cervical spine and that the conditions in which that fracture had occurred and its role in causing the death had not been clarified, were not proved in the criminal proceedings. The courts hearing the proceedings under Law no. 95/2006 took a more nuanced approach and held that the fracture was not the sole or main cause of death because other causes had also played a part, which led appears plausible to the Court. It follows that the application must be rejected as manifestly ill-founded under Article 35 § 4 of the Convention.

The Decision is available only in French. No Press Release available.

Catrinel-Luiza Marinescu v. Romania

(Application no. 34716/18)

Decision

30 January 2024

In September 2009, the applicant, who had been diagnosed with breast cancer in November 2008 and was being treated for it at the Bucharest Institute of Oncology, underwent radiotherapy and then a mastectomy. Relying on Article 6 of the Convention, the applicant complained that the investigation had lasted too long and was not effective. In her observations before the Court, she raised complaints relating in particular to an alleged infringement of her right to her image.

The applicant claimed that: she had not been protected during radiotherapy and had been exposed to excessive radiation, resulting in burns and fibrosis of the tissues; in June 2009, during a puncture for tissue biopsy, the doctor allegedly put his knees on her abdomen, fracturing two of her ribs; the surgery performed in September 2009, far from having a therapeutic purpose, was intended to cover up medical errors committed during the radiotherapy and the puncture; in October 2009, she underwent chemotherapy sessions without knowing that such a procedure was not indicated in the case of rib fractures; she developed various secondary symptoms, including erysipelas; finally, during a subsequent operation, a plastic thread was discovered that had been used to bind the fractured ribs.

The Court examined the application solely in the light of Article 8 of the Convention, which sets out the positive obligations of States in relation to the protection of health. The Court observed that, in cases of simple medical negligence, a civil action is to be preferred and that, in matters involving allegations of medical negligence, an action for damages is in principle the procedure most likely to provide the persons concerned with the most appropriate reparation. The applicant has not shown that all the procedures provided for under domestic law did not enable her case to be dealt properly.

Moreover, as regards the legal remedies pursued by the applicant, the Court notes that the investigating authorities took appropriate steps to establish the factual circumstances and identify those who might have been responsible. In particular, detailed forensic reports were produced and answers were provided to the applicant's factual allegations. The applicant's arguments that her injuries had been caused intentionally had been examined adequately and without arbitrariness. It follows that the application must be dismissed under Article 35 § 4 of the Convention.

The Decision is available only in French. No Press Release available.

Alessandro Pericolo v. Italy

(Application no. 42565/19)

Decision

23 January 2024

The application concerns the issue of whether the domestic legal system’s response to the life-threatening injuries, suffered by the applicant on account of acts of medical negligence ascertained by the competent domestic courts, was appropriate and timely. The

applicant complained of the allegedly insufficient compensation awarded to him by the domestic courts. He relied on the substantive limb of Article 2 of the Convention, Article 6 § 1 of the Convention, the substantive limb of Article 8 of the Convention, and Article 1 of Protocol No. 1 to the Convention. Additionally, he further complained of the inappropriate response of the domestic legal system to the alleged acts of medical negligence, given that the civil proceedings lasted seventeen years. He invoked in this respect the procedural limbs of Article 2 and Article 8 of the Convention.

The applicant had a car accident, suffered multiple fractures, as well as neurological and vascular disfunctions of the lower limbs and was, therefore; repeatedly subjected to surgery at the Udine hospital. The applicant contracted an infection, which was not immediately diagnosed which led to the need of additional surgery and to the amputation of part of his under-knee left leg.

The Court observes that in the civil proceedings instituted by the applicant, several expert assessments were undertaken and led to the finding of medical negligence, as well as to the conclusion that the probability of future risks due to the infection contracted by the applicant was low, basing their conclusions on the cited medical assessments. The Court found no reason to conclude that the domestic courts' assessment was arbitrary or manifestly unreasonable considering the complaint is manifestly ill-founded.

As regards the complaint concerning the allegedly inappropriate response of the domestic legal system due to the unreasonable length of the civil proceedings the Court finds it appropriate to examine the applicant's complaint solely under the procedural limb of Article 2 of the Convention. This procedural obligation is not an obligation of result but of means only. In the present case, the Court considered that the State's response was appropriate, as it led to the proper establishment of the facts and to the award of sufficient redress to the applicant. Although the Court finds regrettable that the proceedings lasted seventeen years, it considers that, in the light of the complexity of the case and given that the proceedings had to be suspended and three expert assessments undertaken, taken alone, may not lead to finding a breach of the procedural obligation of Article 2. The Court concluded that it cannot be said that the legal system, as applied in the present case, had failed to deal adequately with the applicant's case.

No Press Release available.

Mustafa Özcan Çay v. Turkey

(Application no 13383/22)
Pending Case
Communicated 8 January 2024

The application concerned allegations of medical negligence due to the delay in the applicant's medical treatment by the authorities at the Silivri L-type detention centre.

The applicant had a report stating his deteriorating state of health, having the applicant sclerosis and being 80% disable. He could walk with sticks on a flat surface. However, the medical report from the Institute of Forensic Medicine attached to the Minister of Justice

concluded that the claimant's illness did not fall within the scope of Article 104 of the Constitution, which allows a prisoner to be released on the grounds that his state of health is incompatible with his detention. His illness could be treated in detention if he were placed in a rehabilitation centre.

Invoking Article 3 of the Convention, the applicant alleged that the authorities at Silivri Remand Prison, where he was being held, had delayed in providing him with the necessary medical treatment for his multiple sclerosis. In particular, he submitted that the lack of medical care provided until 21 March 2018, led to the deteorization of his state of health.

The Pending Case is available only in French. No Press Release available.

H. v. France

(Application no. 53659/22)

Decision

14 December 2023

The case concerns the alleged inadequacy of the medical care provided to a pregnant woman by a public hospital and its consequences for the child's health the fairness of the compensation proceedings that the mother, father, child and the couple's two other children unsuccessfully brought. The applicants relied on Articles 6 § 1 and 8 of the Convention.

The applicant H was admitted to Amiens University Hospital ("the CHU") with a premature rupture of the membranes. Delivered prematurely by caesarean section five days later, the child was transferred to the neonatal intensive care unit because of respiratory problems and a bacterial infection and four and a half years later diagnosed as a permanent quadriplegic. The expert report identified several faults attributable to the CHU and concluded, in particular, that the care had not been attentive, diligent and in accordance with medical data, that there had been a failure to organise the public hospital service and that these deficiencies were the cause of the harm suffered by the claimants.

Regarding Article 8 the applicants complained that, in the absence of any recommendation from the French National College of Gynaecologists and Obstetricians or any other authority in cases such as the present one, the State had failed to put in place a sufficient regulatory framework requiring the university hospital to adopt rules to ensure the protection of the applicants' physical integrity. They also complained that the doctors had not performed an emergency caesarean section, even though such an operation was vital. They also allege a breach of the procedural aspect of Article 8.

The Court reiterates that Article 6 does not regulate the admissibility of evidence or its assessment, which is therefore primarily a matter for domestic law and the national courts and concludes that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a). Regarding Article 8 the Court considers that domestic remedies have not been exhausted and the application must be dismissed pursuant to Article 35 § 4 of the Convention.

The Decision is available only in French. No Press Release available.

Alice Alexandra Volintiru v. Italy

(Application 8530/08)

Decision

12 December 2023

On 9 February 2007, the applicant's mother, aged 85, was admitted as an emergency patient to the San Paolo Hospital, a public institution in Milan, because of low blood sugar levels with serious neurological damage, coma, a septic focus in the left lung and blocked diuresis. On 6 March, the doctors decided that she should be discharged from hospital: although the clinical picture was still serious, the patient's condition had improved slightly and now appeared stable. On 10 March 2007, the patient was taken to emergency at Milan's San Giuseppe Hospital in a comatose state and died on 19 March 2007.

The claimant lodged a complaint against the staff of San Paolo Hospital in Milan, claiming that the medical care given to her mother by the medical staff had been inadequate and that the conditions in which the patient had been hospitalised had been one of the causes of the infection that had caused her death. Invoking Articles 2 and 3 of the Convention, the applicant complained of medical negligence in the care of her mother and of the poor conditions in which she had been hospitalised. She also complained that there had been no investigation into the matter.

The Court stated that there is no evidence in the present case of medical negligence that the applicant's mother was in a particularly vulnerable health state when she arrived to the hospital because of her serious state of health and that she stayed at San Paolo Hospital for less than a month. None of the numerous documents provided by the applicant indicated that San Paolo Hospital had suffered from poor hygiene or an abnormal rate of nosocomial infections. As regards the procedural aspect of Article 3, the Court considers that, in the circumstances of the case and in the light of the material in its possession, the authorities were under no positive obligation to carry out an investigation. The Court therefore declares the complaint inadmissible as manifestly unfounded.

The Decision is available only in French. No Press Release available.

Hasan Yilmaz and Barış Yilmaz v. Turkey

(Application no. 1384/18)

Pending Case

Communicated 27 November 2023

The application concerns compensation proceedings brought by the applicants against a State authority and a doctor before the civil courts for medical negligence. The expert report obtained during the domestic proceedings assessed the amount of pecuniary damages suffered by the applicants to be higher than the amounts initially claimed by them. Nevertheless, the applicants were only awarded the initial amount indicated in their petition when they had instituted the proceedings.

The applicants complain that despite the explicit provision in Article 107 of the Code of Civil Procedure providing for claimants to bring proceedings without indicating the definite amount of compensation sought (*belirsiz alacak davası*), the civil court refused to award the additional amount of pecuniary damage indicated in the relevant expert report on the grounds that the ten-year limitation period had expired at the time of submission of the expert report and the applicants' request to amend the compensation amount. The applicants complain that they were denied the right of access to a court in breach of Article 6 § 1 of the Convention.

No Press Release available.

Autonomy and Informed Consent

C.P. v. Spain

(Application no. 50181/22)
Pending Case
Communicated on 18 March 2024

The application concerns the applicant's involuntary admission to hospital to give birth pursuant to a judicial order, despite her wish to give birth at home.

Despite the risk of foetal hypoxia and intrauterine foetal demise due to the prolonged pregnancy, the applicant had expressed her wish to give birth at home, assisted by a midwife. While the applicant was preparing for giving birth at her home, two police officers, together with an ambulance and medical staff, showed up at her home to execute a judicial order. After initial opposition by a midwife present and the applicant's husband, the applicant was ultimately transferred and admitted to the Central University Hospital where the baby was born. The applicant alleges that she was unlawfully deprived of her liberty in violation of Article 5 and that her involuntary admission to hospital for labour induction constituted a breach of her right to private life under Article 8.

No Press Release available.

Gabriel Alaaedin v. Sweden

(Application no. 22463/23)
Pending Case
Communicated 6 November 2024

The case concerns the applicant, who at the time was 18 years old, who was taken into compulsory public care by the Social Council to prevent risks to his health or development. The decision included placement in a special residential home. According to the applicant, the public care order ceased on 12 October 2020.

The public care order was brought before the courts. The applicant argued that it was in violation of Article 5 § 1 of the Convention since the notion of a "minor" in sub-paragraph (d)

could not encompass a person who was 18 years old or older. The courts found against him partly because, according to domestic law (as referred to above), a person over the age of 18 but below the age of 20 could also be taken into compulsory care. The applicant complains that he was deprived of his liberty in breach of Article 5 § 1 of the Convention since sub-paragraph (d) of that provision was not applicable in light of his age.

No Press Release available.

Compulsive Vaccination

Vasile Moraru and Others v. Republic of Moldova

(Application no. 65209/13)
Decision
16 January 2024

The case concerns the alleged violation of the applicants' (two parents and their children) rights under Articles 8 and 14 and Article 2 of Protocol No. 1 to the Convention in relation to the non-admission to nursery school in September 2013 of the children applicants, who had not received a compulsory prophylactic vaccine, in accordance with Law no. 10-XVI allows participation in community groups (*colectivități*) and admission to educational and recreational institutions only for vaccinated children.

The parents refused to vaccinate their children with the compulsory prophylactic vaccine due to an increased health risk stemming from an alleged prior incident in which one of the children had been treated in hospital after a strong adverse reaction to another vaccine. Although established in case-law that compulsory vaccination, as an involuntary medical intervention, represents an interference with the right to respect for private life within the meaning of Article 8 of the Convention, in the present case, the Court notes that, as established by the national Constitutional Court, the domestic law did not introduce an absolute obligation to vaccinate. Thus, parents could decide not to vaccinate their children, but they would have to opt for alternative forms of education and recreation which were reasonably available.

The Court takes note of the assessment and the reasons given by the Moldovan Constitutional Court, in particular those concerning the existence of the pressing social need to protect children's health through vaccination. Noteworthy is the background information at the time. These are matters which are in principle within the margin of appreciation of each State.

On the other hand, the applicants did not complain that the children applicants had any contraindication to vaccination nor they submitted any evidence to corroborate their allegation of a serious adverse reaction from a previous vaccine. In view of the above, the complaint under Article 8 of the Convention must be declared inadmissible as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

No Press Release available.

Surrogacy

S.C. and others v. Switzerland

(Application no. 26848/18)

Decision

28 November 2023

The case concerns, on the one hand, the Swiss authorities' refusal to recognise the parent-child relationship established by a Californian birth certificate between the child C.C., born abroad as a result of surrogate motherhood ("GPA") and her intended father (the recognized biological father). It also concerns the adoption procedure that led to the establishment of the parent-child relationship. The applicant complained under articles 8 and 14 of the Convention were at issue.

Previous to the birth of the third petitioner, the Superior Court of the State of California, County of Solano, decreed that the unborn child, carried by C.S., would have S.C. and V.C. as its legal fathers, the former being the genetic father. The birth certificate for C.C., was drawn up as indicated above and the four applicants asked the administrative authorities of the Canton of Geneva to recognise the Californian judgment establishing the parent-child relationship regarding S.C. and V.C., who only accepted part of the application, the relationship between the child and her genetic father. The rest of the application was rejected as it was manifestly incompatible with Swiss public policy since the applicants had deliberately circumvented the constitutional prohibition on the use of GPA.

Relying on Article 8 of the Convention, alone and in conjunction with Article 14, the applicants considered that the refusal to register V.C. as the father of the third applicant on the ground of the absence of a genetic link, despite the Californian judgment and birth certificate recognising him as such, constituted a breach of their right to respect for their private and family life. They also considered that adoption was not a suitable means of remedying their grievance.

Regarding the complaint under Article 8 of the Convention, the Court refers that there had been interference with the third applicant's right to respect for her private life and with the first three applicants' right to family life. The interference was prescribed by law, pursued the legitimate aims listed in the second paragraph of Article 8, and was "necessary in a democratic society", within the meaning of Article 8 § 2 of the Convention. The choice of means to be used to enable recognition of the parent-child relationship falls within the margin of appreciation of States and recognition may therefore be achieved by means other than transcription of the foreign birth certificate. Adoption of the spouse's child was an effective and sufficiently rapid mechanism. The complaint under Article 8 of the Convention was manifestly ill-founded and regarding the complaint under Article 14 in conjunction with Article 8 of the Convention, the Court decided that the difference in treatment was to enable the best interests of the child.

The Decision is available only in French. No Press Release available.

Abortion

M.L. v. Poland

(Application no. 40119/21)
Judgment
14 December 2024

The case concerns restrictions on abortion rights. The European Court of Human Rights held that there had been a violation of Article 8. The applicant alleged in particular that she had been banned from having access to a legal abortion in the case of foetal abnormalities, following a 2020 Constitutional Court judgment.

She had become pregnant and the foetus was diagnosed with trisomy 21. A scheduled hospital abortion had been cancelled when the legislative amendments resulting from the Constitutional Court ruling had come into force. Unable to have an abortion in Poland, she had ultimately had to travel to a private clinic abroad for the procedure.

The Court found that the legislative amendments in question, which had forced her to travel abroad for an abortion at considerable expense and away from her family support network, had to have had a significant psychological impact on her. Such interference with her rights, and in particular with a medical procedure for which she had qualified and which had already been put in motion, had created a situation which had deprived her of proper safeguards against arbitrariness.

M.B. v. Poland and 926 other applications

(Application no. 3030/21)
Decision
5 December 2024

The case concerns restrictions on abortion on the grounds of foetal abnormalities which were introduced by the Constitutional Court's judgment of 22 October 2020. The applicants submitted that as women of child-bearing age, living in Poland they were affected by these changes to the legislative framework. They did not claim that they had been denied access to legal abortion but complained of the risk of a future violation of Articles 3 and 8 of the Convention since the national law had obliged them to adjust their conduct because they were confronted with a legal obligation to carry pregnancies to term, even if the foetus was damaged or sick.

In that context the Court has already held that while women of child-bearing age in Poland, being exposed to the risk of pregnancy with foetal abnormalities, might be affected by the impugned restrictions on access to therapeutic abortion, in order for an applicant to be able to claim to be a victim in such a situation, she had to produce reasonable and convincing evidence of the likelihood that a violation affecting her personally would occur (ibid, § 78). The Court observes that only in highly exceptional circumstances an applicant might claim to be a victim of a violation of the Convention owing to the risk of a future.

In the present case the applicants used the pre-filled application forms prepared by FEDERA without attaching any documents or medical certificates substantiating their claims and without adduce any evidence as to their state of health or of potentially running a higher risk of foetal malformation. The Court finds that the applicants failed to produce any reasonable and convincing evidence that they were at real risk of being directly affected by the amendments introduced by the Constitutional Court's judgment and they cannot claim to be victims within the meaning of Article 34 of the Convention.

No Press Release available.

Euthanasia

Karsai v. Hungary

(Application no. 32312/23)
Judgment
Hearing 28 November 2023

The case concerns complaints under the Convention raised by the applicant, who suffers from amyotrophic lateral sclerosis (ALS) – a type of motor neurone disease –, in the context of issues related to self-determined death. It is a criminal offence in Hungary to help somebody to end his/her own life, including when that person is of sound mind but has an incurable degenerative disease and does not wish to live any longer.

The applicant is in an advanced stage of amyotrophic lateral sclerosis (ALS), a progressive neurodegenerative disease with no known cure. It consists in the gradual loss of motor neurone function, and hence of the voluntary control of muscles. He is no longer able to walk and take care of himself without assistance. He maintains that within a year from now he will be completely paralysed and will not be able to communicate. He would like to end or at least to shorten that phase of his disease through some form of assisted dying before he reaches a state that he considers to be unbearable. The Court has asked whether the Hungarian legal framework and the way it operates in practice is compatible with Articles 3 (prohibition of inhuman or degrading treatment), 8 (right to respect for private life) and/or 9 (freedom of thought, conscience and religion) of the Convention.

On Monday 27 November 2023, the Court heard evidence, pursuant to Rule A1 § 1 (concerning investigations) of the Annex to the Rules of Court, from two professors, one in his capacity as an expert on palliative care and medical ethics, and the other in her capacity as an expert on bioethics. On 28 November 2023, the Court held a hearing in the case.

Right to Identity

Mirveta Ramadani v. Serbia
(Application no. 32903/22)
Pending Case
Communicated 7 December 2023

The application concerns the refusal of the Serbian authorities to enter the applicant's name into the Birth Register because her mother had no identity document to provide in support of this request and given that such a document was an explicit legal requirement for the entry in question.

The applicant complains under Article 8 of the Convention that she suffered a violation of her private and/or family life as a consequence of the refusal to enter her name into the Birth Register. This refusal created identity problems in her relations with her family members and wider society and deprived her of any legal capacity. The latter also made it impossible for the applicant to enjoy health or social insurance, have any property rights, or be recognised as a Serbian national. The applicant lastly complains under Article 8 of the Convention that the respondent State has a positive obligation to provide for a legal and practical framework which would allow for children to be "registered immediately after birth".

No Press Release available.