

HUMAN RIGHTS AND DRUG POLICIES

International instruments,
case law and reference texts

Council of Europe International Cooperation
Group on Drugs and Addictions

2022 Edition



The opinions expressed in this work are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.

The reproduction of extracts (up to 500 words) is authorised, except for commercial purposes as long as the integrity of the text is preserved, the excerpt is not used out of context, does not provide incomplete information or does not otherwise mislead the reader as to the nature, scope or content of the text. The source text must always be acknowledged as follows “© Council of Europe, 2022”.

All other requests concerning the reproduction/translation of all or part of the document, should be addressed to the Directorate of Communications, Council of Europe (F-67075 Strasbourg Cedex or publishing@coe.int).

All other correspondence concerning this document should be addressed to the Pompidou Group, Council of Europe, F-67075 Strasbourg Cedex.

Cover design and layout:
Documents and Publications
Production Department
(DPDP), Council of Europe.

This publication has not been copy-edited by the SPDP Editorial Unit to correct typographical and grammatical errors.

© Council of Europe, October 2022,
Printed at the Council of Europe.

Contents

INTRODUCTION	5
A human rights-based approach to drugs policies	5
Added value of human rights standards	5
What are human rights?	5
International Human Rights Law	6
The European Convention on Human Rights	7
Other relevant Council of Europe Conventions	8
Relevant international instruments	9
EUROPEAN COURT OF HUMAN RIGHTS DRUG POLICY RELATED JURISPRUDENCE	11
Treatment in Detention	11
Removal of parental authority	12
Deportation for drug related offences	12
Obtaining evidence	13
Detention because of addiction	14
CASE LAW OF THE HUMAN COURT OF HUMAN RIGHTS	15
Article 3 – Prohibition of inhuman or degrading treatment	15
Article 5 – Right to liberty and personal freedom	19
Article 6 – Right to a fair trial	19
Article 8 – Right to family life	23
Article 14 – Prohibition of discrimination	25
OVERVIEW OF RELATED TEXTS	27

Introduction

A human rights-based approach to drugs policies

Already in 2007, the INCB 2007 stated that *due respect for universal human rights, human duties and the rule of law is important for effective implementation of the international drug control conventions. Non-respect for them can prejudice the ability of the criminal justice system to enforce the law, can lead to discriminatory disproportionate responses to drug offending and can undermine the conventions.*¹

A human rights-based approach means the incorporation of all applicable human rights standards into a specific policy and not merely addressing specific violations. Such an approach means integrating existing human rights standards into a specific policy area, which allows for a better compliance with these standards. Applying the UN definition of a human rights-based approach to the PG context would mean the integration of human rights standards into the plans, policies and processes of drug policies.²

Added value of human rights standards

Research can provide policy makers with a sound evidence base. The principles of human rights law can underpin the case for evidence-based policies that have the protection of public health at the core. This is also the case for drug policies.³ The normative claim can thus be made that states have an ethical and legal obligation to act upon that evidence.

Research shows that the understanding of human rights by states, impact substantially on the development of policies. Different standards in data protection and data transfer, different treatment approaches and understanding of the permissibility of drug screening, as well as varied ways of using quasi-coerced treatment shows, show that in drugs policies standards with human rights implications can vary. It should also be noted that human rights violations associated with drugs policies continue to be a serious issue worldwide and in Europe.⁴

In addition, the UN has underlined that a further added value of the application of a human rights-based approach in tackling multi-dimensional problems lies in the fact that it allows to address these problems in an over-arching manner. It helps to take into account the range of inter-related and mutually reinforcing factors, whilst avoiding stigma, discrimination, insecurity and social exclusion.⁵

Adhering to human right standards can make a significant contribution to global efforts to re-balance drug policies towards bringing public health to the forefront, an objective widely supported.⁶ Promoting and supporting worldwide evidence-based policies, strategies and interventions that are based on a public health and human rights can be an important way to reduce drug use and the health and social burden it causes.⁷

What are human rights?

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.⁸

1. INCB Report 2007, E/INCB/2007/1, p. 9

2. for analogy see *Principles and Guidelines for a Human Rights Approach in Poverty Reduction Strategies*, UNHCR, HR/PUB/06/12, p. 4

3. UNODC, *World Drug Report 2009*, p. 2

4. UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 2009, p. 16

5. see *Principles and Guidelines for a Human Rights Approach in Poverty Reduction Strategies*, UNHCR, HR/PUB/06/12, p. 4

6. UNODC, *World Drug report 2008*, p. 1

7. UNODC, *World drug report 2009*, p. 86

8. <https://www.un.org/en/sections/issues-depth/human-rights/>

Human rights entail both rights and obligations. States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. At the individual level, while we are entitled our human rights, we should also respect the human rights of others.⁹

International Human Rights Law

Legally binding human rights are expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

International human rights law lays down the obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. There are important universal legal instruments and conventions on the level of Council of Europe membership that define a series of fundamental rights and standards that are of relevance to drug policies.

In this background document the term Human Rights is used to refer to the legal rights enshrined in the *Convention for the Protection of Human Rights and Fundamental Freedoms*, in short referred to as the European Convention on Human Rights (ECHR).

Legal obligations

All Council of Europe member states are bound by the ECHR. Without prejudice to the principle of subsidiarity, they are subject to the jurisdiction of the Convention's enforcement mechanism, the European Court of Human Rights. At the same time several other countries from outside Europe are also members of the Pompidou Group, or have an observer status with it. While the governments of these countries are not legally bound by the ECHR, it is still of political relevance for them and in some case even amount to a source of soft law. As a matter of fact, there is no major disparity between the key human rights instruments in force: Universal Declaration of Human Rights (*UN General Assembly resolution 217 A (III) of 10 December 1948*), International Covenant on Civil and Political Rights (*UN General Assembly Resolution 2200A (XXI) of 16 December 1966*), which have been signed by all PG member States.

In general, human rights entail negative obligations for the state: not to interfere with a right. In other words, the state is required to respect the individual's rights and freedoms. For example, it must not torture people (Article 3), it must not enslave them (Article 4), detain them arbitrarily (Article 5), or unduly limit their freedom of expression (Article 10).

In certain circumstances, human rights also bring about positive obligations for the state: to act in order to protect. These are obligations to use the powers of the state to fulfil Convention rights. In other words, the state has to do something in order protect and fulfil the rights of people. Therefore, the state has an obligation to enable the enjoyment of the rights.

Discretion and proportionality test

In their choice of action or response, states have a recognised, albeit variable, margin of appreciation. States are thus allowed a certain measure of discretion in taking legislative, administrative or judicial action. The choice of action must be governed by a proportionality test that is aimed at ensuring a fair balance between the demands of the general interest of the community and the protection of the individual's fundamental rights. In practice this means that the State must demonstrate that the least restrictive means available have been chosen to achieve the policy aim. Importantly, the burden of proof is on the State to demonstrate the proportionality of choice. Moreover, given that human rights place the person at the centre, human rights-based policy responses must give due consideration to the concrete impact that the policy has on the individual and the enjoyment of the rights protected under the European Convention on Human Rights. This requires considering expected effects, potentially adverse consequences and possible mitigating action.

⁹. <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>

Absolute rights and limitation of rights

Some of the rights set out in the European Convention on Human Rights are absolute. They cannot be the subject of interference by the state, without exception. This is the case for the right to life (Art. 2 ECHR) (taking into account also that Europe is currently a death penalty free space) or the prohibition of torture or inhuman or degrading treatment or punishment (Art. 3 ECHR) (account taken of subjective aspects and threshold). The bar is also set high for slavery and forced labour (Art. 4 ECHR).

Other rights may be limited under certain circumstances. The right to liberty or personal freedom (Art. 5 ECHR) allows for the deprivation of liberty when it is prescribed by law and subject to various procedural safeguards in the framework of criminal justice or for the protection of others. Article 5.1.e of the ECHR appears to permit the detention of “alcoholics, drug addicts and vagrants”. Similarly, the right to private life (Art. 8 ECHR) and the freedoms of thought, expression and association (Articles 9, 10 and 11 ECHR) are not absolute and their enjoyment can be subject to conditions or restrictions in specific cases (e.g. for the prevention of disorder or crime, the protection of health or morals, or the protection of the rights and freedoms of others).

The European Convention on Human Rights

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights - ECHR)¹⁰

- ▶ Article 2 the right to life
- ▶ Article 3 prohibition of inhuman or degrading treatment.
- ▶ Article 4 prohibition of slavery and forced labour
- ▶ Article 5 the right to liberty and personal freedom
- ▶ Article 6 the right to a fair trial
- ▶ Article 8 the right to private life
- ▶ Article 10 the right to freedom of expression
- ▶ Article 14 prohibition of discrimination

Article 2 - Right to life

The obligation to respect and protect this right is absolute: it cannot be derogated from in time of war or other public emergency. It applies to intentional and unintentional killings alike. States have to take appropriate measures to safeguard the lives of people within their jurisdiction

Article 3 - Prohibition of torture and inhuman or degrading treatment or punishment

This right cannot be derogated from during war or other public emergency. Unlike most Convention rights, this one is expressed in unqualified terms. As Article 3 provides an absolute guarantee, there is no room for a margin of appreciation doctrine. Of course, the threshold should be reached; this threshold is relative and depends on the specific circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.

Article 4 - Prohibition of forced labour /slavery

Article 4 sets out that No one shall be held in slavery or servitude and be required to perform forced or compulsory labour. Excluded from this right is any work required to be done in the ordinary course of detention, compulsory military and civil service, and services required in case of an emergency or disaster threatening the life or well-being of the community.

Article 5 - Right to liberty and personal freedom

Article 5 provides for the right to liberty and security of person. No one shall be deprived of his liberty except on the grounds of a lawful detention with a procedure prescribed by law. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention which must be decided speedily by a court and his release ordered if the detention is not lawful.

10. *Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1951, European Treaty Series (ETS) no. 005*

Article 6 - Right to a fair trial

Everyone who is facing criminal charges is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law and enjoys the following minimum rights:

- a) to be informed promptly, in a language which he or she understands and in detail, of the nature and cause of the accusation against him or her,
- b) to have adequate time and facilities for the preparation of his defence;
- c) to defend himself in person or through legal assistance of his own choosing or, if he or she has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8 - Right to private life, freedoms of thought, expression, association

Article 8 of the Convention places on states the obligation to respect a wide range of personal interests. In its application of Article 8 the European Court of Human Rights (in the following referred to as 'the Court' or ECtHR) has taken a flexible approach to the definition of the different interests protected, with the result that the provision has seen its scope broaden over time. As a result, issues falling under Article 8 now include identity rights, assisted reproduction, suicide, prisoners' rights and environmental protection.

The terms of Article 8 (2) make it clear that the state must refrain from arbitrary interference with a person's private and family life, home and correspondence. Furthermore, the Court has found that states must ensure the effective enjoyment of liberty so understood. The Court gives states margin of appreciation to decide what policies to apply and how to apply them. However, this margin is being kept under review and the Court has also consistently requested states to provide for procedural safeguards against arbitrariness in policy application.

Article 10 – Right to freedom of expression

The Council of Europe recognizes the importance of civil society participation as an important element of the democratic process and therefore has formally anchored civil society participation in the development and implementation of its policies, programmes, projects and activities. The Committee of Ministers of the Council of Europe has recognised '*the essential contribution made by NGOs to the development and realisation of democracy and human rights, in particular through the promotion of public awareness, participation in public life and securing the transparency and accountability of public authorities*'¹¹. The principle of civil society participation flows from the ECHR which guarantees the freedom of expression (Art. 10) and the freedom of assembly and association (Art. 11).

Article 14 - Prohibition of discrimination

Article 14 prohibits discrimination and guarantees the enjoyment of rights and freedoms without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This includes health status such as HIV/AIDS, tuberculosis and addiction.

Other relevant Council of Europe Conventions

In addition to the ECHR there are other important Council of Europe legal instruments with drug policy and human rights relevance, which set out specific rights and obligations for governments of signatory states:

Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment¹²

- ▶ Article 1 establishes a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment which examines the treatment of persons deprived of their liberty to strengthen the protection of such persons from torture and from inhuman or degrading treatment or punishment as prohibited under article 3 of the ECHR.

11. CM/Recommendation (2007)14 of October 2007

12. 1987, ETS no. 126

Framework Convention for the Protection of National Minorities¹³

- ▶ Article 4 guarantees to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority is prohibited.
- ▶ Article 10 guarantees the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Convention on Human Rights and Biomedicine¹⁴

- ▶ Article 1 defines the purpose of this convention as to protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms regarding the application of biology and medicine.
- ▶ Article 2 acknowledges the primacy of the human being by setting out that the interests and welfare of the human being shall prevail over the sole interest of society or science.
- ▶ Article 3 stipulates equitable access to health care of appropriate quality.
- ▶ Article 4 requires that any intervention in the health field, including research, must be carried out in accordance with relevant professional obligations and standards.
- ▶ Article 5 sets out that intervention in the health field may only be carried out after the person concerned has given free and informed consent to it and that appropriate information as to the purpose, risks and consequences of an intervention is given. The person concerned may freely withdraw consent at any time.
- ▶ Article 10 defines in section 1. that everyone has the right to respect for private life in relation to information about his or her health. Section 2 provides the entitlement to everybody to know any information collected about his or her health, including the right not to be so informed.

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data¹⁵

- ▶ Article 6 prohibits the processing of personal data concerning health unless domestic law provides appropriate safeguards.

European Social Charter (revised)¹⁶

- ▶ Article 11 provides for the right to protection of health and stipulates that, with a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia: to remove as far as possible the causes of ill-health; to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health; to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Relevant international instruments

Drug policies and related questions are covered by a wide range of international instruments. Standards and specific rights set out in these instruments usually do not constitute individually enforceable rights in themselves, as is the case under the ECHR, but they bind governments to these principles. In view of human rights dimensions in drug policies, the following are of particular relevance:

Universal Declaration of Human Rights (UDHR)¹⁷

The right to Non-discrimination is common to all core human rights treaties, including the Universal Declaration and the UN charter. It seeks ensure **protection from discrimination** based on numerous grounds, including health status. Equally important is the obligation of states to identify groups and individuals who need special care/ assistance so that their rights are guaranteed.

13. 1995, ETS no. 157

14. 1997, ETS no. 164

15. 1981, ETS no. 108

16. 1996, ETS no. 163

17. Universal Declaration of Human Rights, UN General Assembly resolution 217 A (III) of 10 December 1948

- ▶ Article 3 guarantees the right to life, liberty and the security of person.
- ▶ Article 5 prohibits torture or to cruel, inhuman or degrading treatment or punishment.
- ▶ Article 7 guarantees equality before the law and equal protection of the law without any discrimination.
- ▶ Article 8 provides the right to an effective legal remedy for acts violating the fundamental rights.
- ▶ Article 9 prohibits arbitrary arrest, detention or exile.
- ▶ Article 10 guarantees the right to a fair trial.
- ▶ Article 25 contains specifically a right to a standard of living adequate for the health and well-being including medical care and necessary social services, and the right to security in the event of sickness.

International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁸

- ▶ Article 12 (1) specifically binds states to principles of non-discrimination and equal treatment.
- ▶ Art. 12 (2) (d) The creation of conditions which ensures medical service and medical attention for all (people) in the event of sickness.

Convention on the Rights of the Child (CRC)¹⁹

- ▶ Article 33 states that all measures must be taken to protect children from the use of narcotic drugs and psychotropic substances.

Convention on the Rights of Persons with Disabilities (CRPD)²⁰

This Convention includes **principles of non-discrimination, right to health, rehabilitation, promotion of dignity of persons with disabilities** through public awareness campaigns, the right to adequate standard of living, etc. (Articles 4, 5, 8, 25-28).

UN Conventions on Narcotic Drugs

Several decades ago, the international community made a solemn commitment with the Single Convention on Narcotic Drugs of 1954 as amended by the 1972 Protocol²¹ and the Convention on Psychotropic Substances of 1971²², to make adequate provision to ensure, and not to unduly restrict, the availability of drugs that were considered indispensable for medical and scientific purposes. *In recent decades, that promise has not been completely fulfilled. Too many people still suffer or die in pain or do not have access to the medications they need. Unnecessary suffering resulting from a lack of appropriate medication due to inaction and excessive administrative requirements is a situation that shames us all.*²³ In the Convention on Psychotropic Substances of 1971 signatory countries recognized that the availability of such substances should not be unduly restricted.

2000 Charter of Fundamental Rights of the European Union²⁴

- ▶ Article 35 on health care sets out that everyone has the right of access to **preventive health care** and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

18. UN International Covenant on Economic, Social and Cultural Rights UN General Assembly resolution 2200A (XXI) of 3 January 1976

19. UN General Assembly resolution 44/25 of 20 November 1989

20. UN Convention on the Rights of Persons with Disabilities UN General Assembly resolution A/61/611 (LXI) 6 December 2006

21. United Nations, Treaty Series, vol. 976, No. 14152

22. Ibid., vol. 1019, No. 14956

23. INCB, Availability of Internationally Controlled Drugs: Ensuring Adequate Access for Medical and Scientific Purposes, New York, 2015

24. Charter of Fundamental Rights of the European Union Official Journal of the European Communities, 18.12.2000 - 2000/C 364/01

European Court of Human Rights drug policy related jurisprudence

Treatment in Detention

For people suffering from drug related diseases and symptoms of drug withdrawal **the State has a positive obligation to protect the health and well-being of persons deprived of their liberty** under Article 2 ECHR. In addition, there is also a negative obligation to not inflict torture under Article 3 and a positive obligation to meet standards of treatment.

The European Prison Rules, the Committee for the prevention of Torture and domestic prison regulations themselves provide that the health care in prisons should be the same as that in the community. According to the Court's case law, prisoners can claim to be on the same footing as the community as regards the provision of health care (*Mathew v the Netherlands*, paras. 186, 193). At the same time the Court concedes that **medical assistance in prison may not be at the same level as in the best medical institutions for the general public, States have to ensure that the health and well-being of detainees were adequately secured by providing them with the requisite medical assistance** (*Khudobin v. Russia*).

There are **three particular elements to be considered** in relation to the compatibility of a prisoner's health with their stay in detention under Article 3: (a) the **medical condition of the prisoner**, (b) the **adequacy of the medical assistance** and care provided in detention and (c) the **advisability of maintaining the detention** measure in view of the state of health of the applicant (*Mouisel v. France*, paras. 40-42).

The failure of prison authorities to prevent, diagnose and cure diseases constitutes a violation of Article 3 where there is a **positive obligation to take appropriate steps to safeguard the lives** of those within its jurisdiction (see inter alia, *L.C.B. v. UK*, para. 36). This includes the requisite medical care for detained persons suffered from HIV and withdrawal symptoms from heroin dependency (*Keenan v. the United Kingdom*, para. 111 and *Mouisel v. France*, para. 40). Deteriorating health conditions of detained persons require effective and immediate steps such as obtaining specialist medical assistance and/or transfer to a hospital (*McGlinchey and Others v. UK*).

Medical checks on arrival to the prison is a positive obligation on States under Article 3 to ensure that adequate or timely medical care can be given in cases of disease or prevention of health consequences. Not to provide adequate medical examination may also constitute a failure of the **negative obligation under Article 3 not to cause mental and physical suffering, diminish human dignity** and arouse feelings as to cause humiliation and debasement (*Melnik v. Ukraine*). The same **negative obligation applies in cases of HIV and other blood borne diseases** which is relevant because there is a higher prevalence of these diseases among people who use drugs (*Kotsaftis v. Greece*).

The Court recognises the **vulnerability of HIV-positive persons in prison** and like other diseases place a **positive obligation to provide adequate medical treatment**. A lack of appropriate treatment was found in *Kats and Others v. Ukraine*, where the authorities refused to transfer the applicant, who suffered from schizophrenia and was drug dependent, to a medical facility or medical wing of the prison to treat numerous serious diseases exacerbated by her HIV infection.

Failure by prisons to facilitate needle exchange programmes due to the high risks of HIV and HCV does not per se constitute a violation of Articles 2 and 3 (*Shelley v. UK*). In determining whether the minimum level of severity of suffering has been established to constitute a breach of Article 3 all circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim must be considered (*Ireland v. the United Kingdom*, para. 162). It is therefore possible that a positive obligation might arise to prevent the spread of a particular disease or infection. **The margin of appreciation is wide for matters of general preventive measures** (*mutatis mutandis, Osman v. UK*, para.

116). This difference in between persons outside and inside detention in receiving needle exchange services does not constitute discrimination in breach of Article 14. **Not providing needle exchange services in prisons is proportionate when supported by objective and reasonable justification.** This indicates further that the Court grants a wide margin of appreciation to States surrounding decisions around treatment in prison compared to outside prison (*Shelley v. UK*).

Removal of parental authority

Splitting up a family is a very serious interference. Deprivation of parental authority can only be justified in exceptional circumstances, the overriding requirement being a child's best interests. While drug addiction and unemployment are of relevance for considerations, these do not suffice alone to remove parental authority (*Y.I. v. Russia*). **Removal of parental authority must remain a last resort** and requires national courts to consider firstly any less drastic measure legally available. In cases where these principles are not observed, the measure to remove parental authority would have been disproportionate and in violation of Article 8 of the Convention. Factors to be considered by courts in taking a decision about the removal of parental custody include: the **parent's intention to resolve the drug addiction**, and how the addiction and living circumstances affect **the ability to take care of children**. Real defects in the family's living conditions must be demonstrated and consideration must also be given to the **parent's expressed attachment** to the children. Generally, courts must apply the following **principles in the decision finding process** (*Eriksson v. Sweden*). Measures interfering in the right to respect for their family life must:

1. Be in accordance with the law
2. Have a legitimate aim
3. Be necessary in a democratic society

The measure must be in accordance with the law. Circumstances in which it may be necessary to take a child into public care are so variable that it is reasonable to formulate vague laws to cover every eventuality that legitimately risks the health and wellbeing of the child. In interpreting and applying legislation, preparatory work under the domestic legislation provides guidance as to the exercise of the discretion it confers. Safeguards exist against arbitrary interference such as review by administrative courts.

The removal of parental authority must have a legitimate aim. The legitimate aim in such cases is solely the purpose of protecting children.

The measure must be necessary in a democratic society. The notion of necessity implies that the interference corresponds to a pressing social need and that it is proportionate to the legitimate aim pursued. A margin of appreciation is left to the Contracting States (*W v. UK, judgment, Series A no. 121, p. 27, paras 60 (b) and (d)*).

Deportation for drug related offences

Article 3 implies the obligation on States not to deport a person where there are substantial grounds for believing that the person would face a real risk of being subjected to treatment contrary to Article 3 (*Soering v. UK*, paras. 90-91). Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Ireland v. UK*, para. 163) and therefore, **deportation for all crimes including any drug-related offences must not interfere with Article 3 obligations.**

The removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8.1 (*Dalia v. France, Moustaquim v. Belgium*, para. 16). Measures which prevent family members from living together constitute an interference with the right protected by Article 8 and that to split up a family is an interference of a very serious order (*Mehemi v. France*, para. 45). None the less, **authorities have the right to exercise great firmness to those who actively contribute to the spread of illicit drugs** (*Baghli v. France*, para. 48).

1. For reaching a decision the following guiding principles are to be applied (*Sezen v. the Netherlands*):
2. the nature and seriousness of the offence committed;
3. the length of the applicant's state in the country;
4. the time elapsed since the offence was committed and the applicant's conduct during this period;
5. the nationalities of the persons involved;
6. the applicant's family situation, such as length of marriage;

7. whether the spouse knew about the offence at the time when he or she entered into a family relationship;
8. whether there are children of the marriage and their age;
9. the seriousness of the difficulties which the spouse is likely to encounter in the applicant's country of origin.

Article 3 may also apply where the danger emanates from persons or groups of persons who are not public officials, which can be drug cartels or other criminal groups (*H.L.R. v. France*). The existence of the obligation not to expel is not dependent on whether the risk of the treatment stems from factors which involve the responsibility, direct or indirect, of the authorities of the receiving country (*T.I v. UK*).

The risk of withdrawal of medical facilities provided for AIDS can amount to inhuman treatment. A removal upon the completion a prison sentence to a country where AIDS treatment is not available to ensure for a continuity of care interferes with Article 3 obligations (*D. v. UK*).

Obtaining evidence

In view of the importance of evidence as basis for a conviction, the Court considers that, cumulatively, the **procedural irregularities during the searches**, the inadequate judicial scrutiny both before and during the trial, including the failure of the domestic courts to sufficiently examine allegations, and weak corroborating evidence, can render a trial as a whole unfair (*Megrelishvili v. Georgia*).

The right to obtain the **attendance and examination of a defence witness** should show that the **examination of that person was necessary for the establishment of the truth** and that the refusal to call that witness was prejudicial to the defence rights (*Guilloury v. France*, para. 55).

Evidence obtained by inhuman or degrading treatment cannot be the basis for a conviction. Treatment has been held by the Court to be **inhuman** when it was **premeditated, applied for hours and caused actual bodily injury or intense physical and mental suffering** (*Labita v. Italy*, para. 120). Treatment has been considered **degrading** when it was such as **to arouse in its victim's feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance** (*Hurado v. Switzerland*, para. 67), or when it was such as to drive the victim to act against his will or conscience (*Denmark, Norway, Sweden and the Netherlands v. Greece*, para. 186; *Keenan v. UK*, para.10). Furthermore, in considering whether treatment is degrading, one of the factors which the Court will consider is **the question whether its object was to humiliate and debase the person concerned**.

With respect to **medical interventions to which a detained person is subjected** against his or her will, Article 3 imposes **an obligation on the State to protect the physical well-being of persons deprived of their liberty**, for example by providing them with the requisite medical assistance. **Even where it is not motivated by reasons of medical necessity, Articles 3 and 8 do not prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him evidence of his involvement in the commission of a criminal offence.** However, any forcible medical intervention to obtain evidence must be **convincingly justified on the facts** of a case. This is especially true where the procedure is intended to retrieve from inside the individual's body evidence. Due regard must be had to the **seriousness of the offence** in issue. The authorities must also demonstrate that they took into consideration **alternative methods of recovering the evidence**. The procedure must not entail any risk of lasting detriment to a suspect's health (*Nevmerzchitsky V. Ukraine*, para. 94 and 97).

The removal of drugs by administration of emetics can be justified on medical grounds, as there is a risk of death through poisoning. To just obtain the evidence authorities can be expected to wait for the drugs to pass through his system naturally, which is common practice among Council of Europe member States. **Obtaining evidence by means of the administration of emetics can be in violation of Article 3 ECHR**, and cannot be relied on as proof of the victim's guilt, even if it was not the intention of the authorities to inflict pain and suffering on the applicant (*Jalloh v. Germany*). The procedure of administering emetics is not to be qualified in the same way as procedures for obtaining a breath test or a blood sample which although constitute an interference of private life, are justified under Article 8.2 as being necessary for the prevention of criminal offences (*Jalloh v. Germany*). **Forcing of the applicant to regurgitate the drugs interferes with physical and mental integrity. The public interest could not justify recourse to such a grave interference because of the small scale of drug dealing.**

In cases of the administration of emetics the principle against self-incrimination is applicable. In order to determine if the right not to incriminate oneself has been violated the following factors must be considered: the nature and degree of compulsion used to obtain the evidence; the weight of the public interest in the investigation and punishment of the offence in issue; the existence of any relevant safeguards in the procedure; and the use to which any material so obtained is put.

The use of anonymous witnesses is not under all circumstances incompatible with the ECHR. It is permissible to hearing witnesses, which require that their anonymity is protected, in the absence of the defence counsel during preliminary judicial investigations if these witnesses are heard in the defendant's or his/her counsel's presence on appeal. **There is no violation of the right to a fair trial if it is established that the handicap of the defence is counterbalanced by judicial procedure. However, a conviction should not be based either solely or to a decisive extent on anonymous statements.**

An **entrapment operation by undercover police must be subject to judicial review** or any other independent supervision (*Khudobin v. Russia*). **Undercover techniques must be adequate safeguards against abuse, as the public interest cannot justify the use of evidence obtained as a result of police incitement** (*Teixeira de Castro v. Portugal*). Undercover police agents acting must confined themselves to **investigating criminal activity in an essentially passive manner** and must not have to **effect of inciting an offence**.

Surveillance is justified under Article 8.2, notably whether it was 'in accordance with the law' and 'necessary in a democratic society'. **Domestic law must provide protection against arbitrary interference with an individual's right** under Article 8. The law must be sufficiently clear in its terms to give individuals an **adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to such covert measures** (*Malone v. UK*, para. 67).

Detention because of addiction

Article 5 (1) (e) permits 'the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants'. Although there have been few complaints related to detention of drug addicts, alcoholics or in order to prevent the spread of infectious diseases, it is implicit that the Court adopts an approach similar to that of persons of unsound mind when evaluating the validity of detention. For this the Court laid down the **criteria to be fulfilled in order to qualify the detention** (*Winterwerp v. the Netherlands*):

- i. a mental disorder must be established by **objective medical expertise**;
- ii. the nature or degree of the **disorder must be sufficiently extreme** to justify the detention;
- iii. detention should **only last as long as the medical disorder** and its required severity persist;
- iv. in cases where the detention is potentially indefinite, periodical reviews must take place by a tribunal which has the power to discharge;
- v. detention must take place in a **hospital, clinic or other appropriate institution authorised** to detain such persons.

In *Aerts v. Belgium* the Court held that **any decision on the deprivation of liberty must protect the individual from arbitrariness** (*Winterwerp v. the Netherlands*, paras. 35 and 45; *Bizzotto v. Greece*, para. 31). There must be a logic and justifiable relationship between the ground of permitted deprivation of liberty and the conditions of detention. **The detention of a mental health patient is only lawful if effected in a hospital, clinic or other appropriate institution** (*Ashingdane v. UK*, para. 44). Persons may be detained when considered to be dangerous for public safety but also that their own interests may necessitate their detention (*Guzzardi v. Italy*). A person may not be detained under this provision 'simply because his views or behaviour deviate from the norms prevailing in a particular society' (*Winterwerp v. the Netherlands*).

Case law of the Human Court of Human Rights

Article 3 – Prohibition of inhuman or degrading treatment

D. v. UK, 30240/96

The applicant was imprisoned in the UK for drug importation. In prison it was discovered that he had HIV and was close to death. Following the completion of his prison sentence, the UK **ordered deportation against the applicant, who argues that his island of St. Kitts does not have appropriate treatment for his disease and he will be homeless; Due the conditions there this would result in the aggregation of his death and ill treatment.**

The Court observes that Article 3 applies to the applicant's deportation from the UK to St. Kitts. Regardless of whether he entered the UK in the technical sense by stop-over to St. Kitts through London, the Court noted that he has been physically present there and thus within the jurisdiction of the respondent State within the meaning of Article 1. The Court notes that the applicant is in the advanced stages of HIV and has been transferred to a hospital. **The abrupt withdrawal of these facilities will entail the most dramatic consequences** for him. In view of these exceptional circumstances, the implementation of the decision to remove him to St Kitts would amount to inhuman treatment by the respondent State in violation of Article 3.

Egmez v. Cyprus, 30873/96

The applicant was **beaten during the arrest of a drug deal** at the buffer zone of Cyprus and complained that he was later tortured by the police investigators. The Court recalls that Article 3 enshrines one of the most fundamental values of democratic societies. **Even in the most difficult circumstances, such as the fight against organised crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment** (*Selmouni v. France*, para. 95). **Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3** (*Ireland v. UK* judgment 18 January 1978, para.162). In order to determine whether a form of ill treatment should be qualified as torture, the Court must have regard to the distinction, embodied in the provision, between this notion and that of inhuman or degrading treatment. The Court has previously found that the Convention should by means of this distinction attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (*Selmouni v. France*, para. 96).

Hafeez vs. U.K., 14198/20

The applicant was a sixty-year-old man with a number of health conditions, which include diabetes and asthma. His extradition was ordered upon request of the Government of the United States of America, in respect of charges relating to drug-trafficking conspiracy. An appeal by the applicant was dismissed. The Court found no violation of Article 3 on the grounds that in case the applicant being sentenced to **life imprisonment two routes to seek a reduction of that sentence are available**: compassionate release and Executive Clemency. As for the health risks the applicant would face in view of pre-and post-conviction prison conditions, the Court held that the applicant's **medical issues were not unusual for a man his age and in any event would be medically to be controllable.**

H.L.R. v. France, 24573/94

The applicant faces a deportation order following the smuggling of cocaine through an airport. He complains that he would be subject to vengeance by drug cartels who will recruit him as a drug smuggler if he returns to Columbia. Article 3 implies the obligation on States not to deport a person where there are substantial grounds for believing that the person would face a real risk of being subjected to treatment contrary to Article 3 (see

Soering v. UK, paras. 90-91). Article 3 prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct (see *Ireland v. UK*, para. 163). The Court does not rule out the possibility that **Article 3 may also apply where the danger emanates from persons or groups of persons who are not public officials. However, it must be shown that the risk is real and that the authorities of the receiving State are not able to obviate the risk by providing appropriate protection.**

Jalloh v. Germany, 54810/00

The applicant was arrested following a drug deal, after which he swallowed a bag containing 0.2g of cocaine which the police forced him to regurgitate through forcibly administering emetics. The applicant complained that he had been subjected to inhuman and degrading treatment.

Treatment has been held by the Court to be **'inhuman' when it was premeditated, applied for hours and caused actual bodily injury or intense physical and mental suffering** (*Labita v. Italy*, para. 120). Treatment has been considered **'degrading' when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance** (*Hurado v. Switzerland*, para. 67), or when it was such as to drive the victim to act against his will or conscience (*Denmark, Norway, Sweden and the Netherlands v. Greece*, para. 186; *Keenan v. UK*, para. 10). Furthermore, in considering whether treatment is 'degrading', one of the factors which the Court will take into account is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (*Raninen v. Finland*, para. 55).

With respect to **medical interventions to which a detained person is subjected against his or her will**, Article 3 **imposes an obligation on the State to protect the physical well-being of persons** deprived of their liberty, for example by providing them with the requisite medical assistance.

Even where it is not motivated by reasons of medical necessity, **Articles 3 and 8 do not prohibit recourse to a medical procedure in defiance of the will of a suspect in order to obtain from him evidence of his involvement in the commission of a criminal offence.** However, any forcible medical intervention to obtain evidence must be **convincingly justified on the facts of a case.** This is especially true where the **procedure is intended to retrieve from inside the individual's body evidence.** Due regard must be had to the seriousness of the offence in issue. The authorities must also demonstrate that they took into **consideration alternative methods of recovering the evidence.** The procedure must not entail any risk of lasting detriment to a suspect's health (*Nevmerzchitsky V. Ukraine*, para. 94 and 97).

As with interventions carried out for therapeutic purposes, the way a person is subjected to a forcible medical procedure in order to retrieve evidence from his body must not exceed the minimum level of severity prescribed by the Court's case law. In particular, account must be taken of whether the person concerned experienced **serious physical pain or suffering as a result of the forcible medical intervention.** Another consideration is whether the forcible medical procedure was ordered and administered by medical doctors and whether the person concerned was placed under constant medical supervision (*Ilijkov v. Bulgaria*). A further relevant factor is whether the forcible medical intervention resulted in **any aggravation of his or her state of health and had lasting consequences for his or her health** (*Krastanov v. Bulgaria*, para. 53).

In the present case, the Court noted that the removal of drugs from the applicant's stomach by administration of emetics could be required on medical grounds, as he risked death through poisoning. However, the emetics were administered in the absence of any prior assessment of the dangers involved in leaving the drug bubble in the applicant's body. The Court concludes that the decision to administer emetics was aimed at securing evidence and not on medical grounds. The Court was not satisfied that this was a serious offence, evidenced by the fact that the street dealer was storing drugs in his mouth and could not have been selling drugs on a large scale. **The Court accepts that it was vital to be able to determine the exact amount and quality of the drugs however it is not satisfied that the forcible administration of emetics was indispensable in the instance case to obtain the evidence. The authorities could simply have waited for the drugs to pass through his system naturally, which is common practice among Council of Europe member States.** The Court finds that the practice of administering emetics poses considerable health risks, granted that it has led to deaths.

The Court finds that the impugned measure attained the minimum level of severity required to bring it within the scope of Article 3. The authorities subjected the applicant to a grave interference with his physical and mental integrity against his will. They forced him to regurgitate in order to retrieve evidence they could equally have obtained by less intrusive methods. The way the measure was carried out was liable to arouse

in the applicant feelings of fear, anguish and inferiority that were capable of humiliating and debasing him. Although this was not the intention, the measure was implemented in a way which caused the applicant both physical pain and mental suffering and therefore has been subjected to inhuman and degrading treatment contrary to Article 3.

Kotsaftis v. Greece, 39780/06

The applicant was placed in pre-trial detention for possessing drugs. The Court ruled that the authorities had not fulfilled their negative obligation under Article 3 to safeguard the applicant's physical integrity due to the lack of medical care for his Hepatitis-B. **The same negative obligation applies in cases of HIV and other blood borne diseases which is relevant because there is a higher prevalence of these diseases among people who use drugs.** Contrary to the findings of an expert report submitted to the prison authorities, the applicant had been kept in detention without being given a special diet or treatment with the appropriate drugs, and had not performed a scheduled operation with a delay of one year. The applicant had also been detained with 2.4 sq. m of personal space which contravened medical advice to have the applicant moved to a larger cell.

The Court recognises the **vulnerability of HIV-positive persons in prison** and like other diseases place a **positive obligation to provide adequate medical treatment**. A lack of appropriate treatment was found in *Kats and Others v. Ukraine*, where the authorities refused to transfer the applicant, who suffered from schizophrenia and was drug dependent, to a medical facility or medical wing of the prison to treat numerous serious diseases exacerbated by her HIV infection.

Lorse and Others v. The Netherlands, 52950/99

The applicant was convicted with drug and weapon offences and placed in a maximum-security prison with fears that he would attempt to escape and pose a risk to society, as he had previously evaded arrest in the past and harmed a person. The applicant was subject to strip searches following every visit with the medical staff and personal visits, in addition to weekly routine strip searches in his dorm even if he had no contact with the outside world. The Court considers that **in the absence of convincing security needs, the practice of weekly strip searches for a period of more than six years diminished the applicant's human dignity and must have given rise to feelings of anguish and inferiority capable of humiliating and debasing him.** Accordingly, the Court concludes that the combination of routine strip searching with the other stringent security measures amounted to inhuman or degrading treatment in violation of Article 3.

McGlinchey and Others v. UK, 50390/99

The applicant was convicted for theft and sentenced to four months' imprisonment on 7 December 1998. She had a long history of intravenous heroin dependency and was asthmatic. Prison records showed that she was complaining of withdrawal symptoms and vomited frequently. She was prescribed medication to help with the withdrawal symptoms which were not given on one day, which the applicants allege was a punishment and the Government defend was on the doctor's advice. She had to clean her own vomit and when seen by her mother had vomit in her hair and told her she felt she was going to die in prison. On 12 December her weight was recorded at 40kg. On 14 December she suffered from a cardiac arrest and died on 3rd January 1999. The parties submitted that the prison authorities failed to administer her medication for her asthma and heroin withdrawal, permitted her to dehydrate and vomit unnecessarily and delayed transferring her to a civilian hospital where she could be expertly treated.

Having regard to the **responsibility owed by prison authorities to provide the requisite medical care for detained persons** the Court finds that there was a failure to meet the standards imposed by Article 3. It notes the **failure to provide accurate means** to establish the applicant's weight loss, the gap in monitoring her condition by a doctor over the weekend when there was a further drop in weight and a failure of the prison to take more effective steps to treat her condition such as hospital admission or to obtain expert assistance in controlling the vomiting.

Melnik v. Ukraine, 72286/01

The applicant was arrested on drug charges. The applicant complained a breach of Article 3 due to not receiving the necessary medical treatment for tuberculosis while serving his sentence. He also complained of the conditions of his detention. He further alleged that he was not provided with the required prescription drugs, medicines and the necessary medical care for his tuberculosis. The Court finds the medical care to be inadequate since the applicant was diagnosed with tuberculosis two and a half months after the applicant

first complained of shortness of breath and phlegm. The applicant's conditions of hygiene and sanitation were unsatisfactory and contributed to the deterioration of his poor health, due to weekly access to a shower and ability to wash his clothes. The Court concluded that **there was no indication that there was a positive intention of humiliating or debasing the applicant, however the absence of any such purpose cannot exclude a finding of a violation of Article 3** (*Peers v. Greece*, para. 74).

Rehbock v. Slovenia, 29462/95

In the course of an **arrest following a drug trade, the police injured the applicant**. The Court notes that the applicant was not arrested in the course of a random operation which might have given rise to unexpected developments to which the police might have been called upon to react without prior preparation. They have sufficient time to evaluate the possible risks and take all necessary measures for carrying out the arrest. The applicant did not carry a weapon or threaten to attack the police during the arrest. **The burden therefore rests on the government to demonstrate that the use of force was not excessive.**

Ribitsch v. Austria, 18896/91

The applicant was charged with supplying heroin that led to the overdose of an Austrian national. While in detention the applicant complained of inhuman or degrading treatment.

The Court emphasises that, in respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3. It reiterates **that the requirements of an investigation and the undeniable difficulties inherent in the fight against crime cannot justify placing limits on the protection to be afforded in respect of the physical integrity of individuals** (*Tomasi v. France*, para. 115).

Shelley v. UK, 23800/06

The applicant claimed that the **failure for prisons to facilitate needle exchange programmes due to the high risks of HIV and HCV** violated Articles 2 and 3 within the UK prison population. In determining whether the minimum level of severity of suffering has been established to constitute a breach of Article 3, the Court has held that *'the assessment of this minimum is, in the nature of things relative; it depends on all circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim'* (*Ireland v. the United Kingdom*, para. 162). **The Court was not satisfied that this risk of HIV was sufficiently severe as to raise issues under Articles 2 and 3.** Instead the Court considered a potential claim to be affected by health policy due to the higher risk of infection of HIV and HCV. The Court's case-law has held omissions of the authorities in the field of health care policy which may engage their positive obligations under Article 2. This has previously included regulations around hospitals in adopting measures to protect lives (*Calvelli and Ciglio v. Italy*, para. 49). It is therefore possible that a positive obligation might arise to prevent the spread of a particular disease or infection; however the Court was not persuaded here that any potential threat to health that fell short of the standards of Article 2 or 3 would impose a duty on the State to take preventive steps. The Court decided that **the margin of appreciation is wide for matters of general preventive measures** (*mutatis mutandis, Osman v. UK*, para. 116).

Wenner v. Germany, 62303/13

The applicant has been addicted to heroin for almost 40 years, and whilst incarcerated he was seen as having little to no chance to lead a drug free life. The applicant was denied Opioid agonist treatment (OAT) when he started his sentence. An expert was called in on behalf of the applicant and recommended that the applicant receive OAT as he had been able to **live a relatively normal life whilst undergoing drug substitution therapy** previously outside detention. The prison subsequently denied the applicant access to OAT, even though the applicant expressed a clear wish to continue with the therapy he had started before he was sentenced to prison.

The Court relied on Article 3 of the European Convention on Human Rights, which prohibits torture as well as inhuman or degrading treatment. It concluded that **member states of the Council of Europe that refuse access to OAT have the burden of proving that an alternative medical approach would, in the case of an individual patient, be as effective as OAT.** Such proof needs to be based on an independent medical opinion.

Article 5 - Right to liberty and personal freedom

Aerts v. Belgium, 25357/94

The applicant was institutionalised due to suffering from **mental problems due to being addicted to drugs** and other personality disorders. Belgian law provides for the detention of mentally ill people in a prison as a provisional measure pending designation to a relevant institution. He claims that this continued detention on remand has no legal basis. As a result of not having been transferred, the applicant complained of being prevented the enjoyments of benefits of the detention regime his condition required. Above all, the treatment he had received had done him harm.

As the applicant was not criminally responsible there could be no conviction within the meaning of Article 5.1 (*X v. UK, para. 39*). **Any deprivation of liberty must be done in keeping with Article 5, namely, to protect the individual from arbitrariness** (*Winterwerp v. the Netherlands, paras. 35 and 45; Bizzotto v. Greece, para. 31*). There must be a logic and justifiable relationship between the ground of permitted deprivation of liberty and the conditions of detention. **The detention of a mental health patient is only be lawful if effected in a hospital, clinic or other appropriate institution** (*Ashingdane v. UK, para. 44*).

Case of Ciulla v. Italy, 11152/84

The applicant was prosecuted in Italy for suspicion of drug offences and was subject to preventive measures through a compulsory residence order that restricted his place of residence for a duration of five years. After several months, the applicant was arrested on a warrant and was ordered to serve eight years imprisonment for drug offences as part of the same charge. The court ruled violation of Article 5 paragraph 1 for restricting the applicant from his **liberty to choose where to live based on mere suspicion of an offence**.

Article 6 – Right to a fair trial

Black v. UK, 56745/00

During a drug control strip search with the applicant in prison, an item fell out of his anus. The applicant immediately re-inserted it into his anus. The officers ordered the applicant to hand over the object which the applicant refused on medical grounds. The applicant faced a potential punishment of 42 days' additional detention and was given 5 days detention. The applicant complained a breach of Article 6 that the Governor was not independent or impartial and the absence of a public adjudication decision. The Court concluded a violation of Article 6.1 and 6.3. and ruled that **prisoners can only be physically searched by a medical officer with the consent of a prisoner**.

Chernika v. Ukraine, 53791/11

The applicant was accused of stealing drugs he had had access to as a police officer and selling them to acquaintances. As witnesses they gave incriminating statements during the pre-trial investigation. Pre-trial confrontations were held between them and the applicant. One witness was heard and cross-examined at trial but, after the applicant's conviction had been quashed on appeal, she failed to appear at the retrial. The other two witnesses never appeared either in the course of the trial or retrial.

The first relevant question was what role the evidence of those absent witnesses had played in the applicant's conviction. The second relevant question was how the composition of the court that had convicted the applicant had changed. It had changed entirely, and the new composition had not examined any of the three witnesses.

The Court had to examine if there was a good reason for the witnesses' absence at the retrial which led to the applicant's conviction mainly based on the evidence provided by the absent witnesses. **When the evidence of witnesses is decisive, particularly strong safeguards must be in place to ensure the proper understanding of the witnesses' evidence by the new trial judge and the fairness of the proceedings**. The trial judge, who eventually had convicted the applicant, had had no opportunity to examine personally any of the three key witnesses for the prosecution. Neither had he had at his disposal a video recording of their statements even though domestic law had envisaged such possibility and the latter might have provided an important additional safeguard. The combination of circumstances put the overall fairness of the criminal proceedings against the applicant into question and violated Art. 6.

Constantin and Stoian v. Romania, 23782/06

The applicants complained under Article 6 that they had not received a fair trial. They claimed to have been incited to commit a criminal offence by the **undercover police agents acting as agents provocateurs**, which the first applicant claimed he had been aware of during the operation.

The Court must ascertain whether the **undercover police confined themselves to investigating criminal activity in an essentially passive manner**. The applicants had no predisposition to drug trafficking. Previous conviction for drug use cannot change this conclusion. There was no evidence to suggest that the applicant's behaviour was unlawful in the decision to start criminal proceedings. No heroin was found on the possession of the first applicant or in the home of the second applicant.

The Court of Appeal gave precedence to the statements obtained by the prosecutor. The Court reiterates that when a court of appeal is called upon to examine the case, it cannot as a matter of fair trial; properly determine the issues without a direct assessment of the evidence given by the applicant where they claim not to have committed the act alleged to constitute the criminal offence (*Danila v. Romania*, para. 35).

If it had not been for the agent's express request to buy drugs, the events would not have occurred. **The actions of the undercover police officers had the effect of inciting the applicants to commit the offence of which they were convicted; going beyond the mere passive investigation of existing criminal activity.** The applicant's trial was deprived of fairness and there was a violation of Article 6.1.

Doorson v. The Netherlands, 20524/92

The applicant complained that he was not able to cross-examine witnesses whose statements amounted to evidence in a trial charging the applicant with drug trafficking. The trial judge had refrained the applicant from cross-examining the remaining witnesses to protect the anonymity of the witnesses. **The Court ruled that the use of anonymous witnesses is not under all circumstances incompatible with the ECHR.** There was no issue in relation to the hearing the witnesses in the absence of the applicant's counsel during preliminary judicial investigation, since the two witnesses were heard in counsel's presence on appeal. **If it is established that the handicap of the defence is counterbalanced by the procedures followed by the judicial authorities, then there is no violation of Article 6** para. 1 taken together with para. 3 (d). However even when 'counterbalancing' procedures are found to compensate this handicap, **a conviction should not be based either solely or to a decisive extent on anonymous statements.** This is not the case here.

Jalloh v. Germany, 54810/00

The applicant considered that his right to a fair trial had been infringed using evidence obtained by the administration of emetics. He claimed violation of his right not to incriminate himself.

The Court has consistently held that **the right not to incriminate oneself is primarily concerned with respecting the will of an accused person to remain silent**. This does not extend to the use in criminal proceedings of material which may be obtained from the accused through the use of compulsory powers which has an existence independent of the will of the suspect such as documents acquired to a warrant, breath, blood, urine, hair or voice samples and bodily tissue for the purpose of DNA testing (*Choudhary v. UK, J.B. v. Switzerland; P.G. and J.H. v. UK*, para.). However evidence obtained as a result of acts of violence or brutality or other forms of treatment which can be characterised as torture, being therefore a violation of Article 3 ECHR, should never be relied on as proof of the victim's guilt, even if it was not the intention of the authorities to inflict pain and suffering on the applicant. In the Court's view, **drugs hidden in the applicant's body which were obtained by the forcible administration of emetics could be considered to fall into the category of material having an existence independent of the will of the suspect, the use of which is generally not prohibited in criminal proceedings.**

The evidence was obtained by means of a procedure which violated Article 3, which is in striking contrast to procedures for obtaining a breath test or a blood sample which although constitute an interference of private life, are justified under Article 8.2 as being necessary for the prevention of criminal offences. Therefore, the principle against self-incrimination is applicable in this case.

In order to determine if the right not to incriminate oneself has been violated the following factors must be considered: the nature and degree of compulsion used to obtain the evidence; the weight of the public interest in the investigation and punishment of the offence in issue; the existence of any relevant safeguards in the procedure; and the use to which any material so obtained is put. The Court reiterated that the forcing of the applicant to regurgitate the drugs interfered with his physical and mental integrity. The public interest could not justify recourse to such a grave interference because of the small scale of drug dealing.

Khudobin v. Russia, 59696/00

The applicant sold 0.05g of heroin to undercover police. The applicant had no criminal record and the only allegations of his involvement in drug dealing had come from the police informant. Furthermore, he made no financial gain from the deal. It appears that the police operation was to target any person who would agree to sell heroin instead of a well-known drug dealer.

The operation had not been subjected to judicial review or any other independent supervision. The police had never been questioned by the court, although the defence had sought them heard. The applicant had been absent from the hearing of the merits. The domestic court did not analyse relevant factual and legal elements which would have helped it to distinguish the entrapment from a legitimate form of investigative activity. The proceedings had not been fair and violated Article 6.1.

Krasniki v. Czech Republic, 51277/99

The applicant was accused of having committed the offence of the unauthorised production and possession of narcotic and poisonous substances. The applicant complained that his **conviction had been based exclusively on anonymous witness testimony** and that the judicial proceedings had not adequately guaranteed the necessary safeguards to ensure a fair trial as his counsel had been denied the opportunity to see the anonymous witness during their testimonies or to learn their identities and alleges a violation of Article 6.1 and 6.2.

The use of statements made by anonymous witnesses are not always incompatible with the Convention (*Doorson v. the Netherlands*, para. 69; *Van Mechelen and Others v. the Netherlands*, para. 52). However, handicaps for the defence should be sufficiently counterbalanced by the procedures followed by the judicial authorities. The applicant should not be prevented from testing the anonymous witness's reliability (*Kostowski v. the Netherlands*, para. 42). No conviction should be based either solely or to a decisive extent on anonymous statements (*Van Mechelen and Others*, paras. 54-55). **When assessing whether the procedures followed in the questioning of an anonymous witness had been sufficient to counterbalance the difficulties caused to the defence, due weight had to be given to the extent to which the anonymous testimony had been decisive in convicting the applicant.**

The investigating officer considered the nature of the environment of drug dealers who frequently use threats or violence against people who testify against them, however it cannot be established from the records taken during the witnesses' interviews or from trial reports how this was assessed. Nor did the Regional court carry out such an examination into the seriousness and substantiation of the reasons for granting anonymity to the witnesses when it approved the judgment of the District court which had decided to use the statements of the anonymous witnesses in evidence. The Court was not satisfied that the interest of the witnesses in remaining anonymous could justify limiting the rights of the applicant to such an extent (*Visser v. the Netherlands*, para. 48).

Ludi v. Switzerland, 12433/86

The applicant maintained that his drug trafficking conviction was primarily based on the undercover agent's report, and yet the applicant could not at any stage during the proceedings question the witness. The Court agrees that the applicant was deprived throughout the proceedings of checking or casting doubt on the witness' report. **Consistent with the Court's case law, all evidence must be produced in the presence of the accused at a public hearing with a view to adversarial argument.** Exceptions to this principle must not infringe the rights of the defence. **The defendant must be given an adequate and proper opportunity to challenge and question a witness against him.** (*Asch v. Austria*, 10 para 27).

Malininas v. Lithuania, 10071/04

The applicant was arrested for drug trafficking. The applicant complained that he had been subjected to entrapment and had been unfairly convicted of drug dealing. He further complained about the non-disclosure at his trial of certain evidence relating to the authorisation and use of the Criminal Conduct Simulation Model. The Court held that in **undercover techniques there must be adequate safeguards against abuse, as the public interest cannot justify the use of evidence obtained as a result of police incitement** (*Teixeira de Castro v. Portugal* para. 34-36). In the present case there was no evidence that the applicant had committed any drug offences beforehand or drug trafficking. The criminal conduct simulation model was not fully disclosed to the applicant. The relevant evidence was thus not put openly before the trial court or tested in an adversarial manner. The elements of the police incitement extended the police' role beyond that of undercover agents to that of 'agents provocateurs'. They did not merely join an on-going offence; they instigated it. The necessary inference from these circumstances is that the police did not confine themselves to investigation the applicant's criminal activity in an essentially passive manner but exercised an influence such as to incite the commission of the offence (*Teixeira de Castro v. Portugal*, paras. 37-39).

Mansur v. Turkey, 16026/90

The case concerns the length of detention in remand and the length of criminal proceedings. The ECHR guarantees to everyone against whom criminal proceedings are brought **the right to a final decision within a reasonable time** on the charge against him (*Adiletta and Others v. Italy*, para. 17). It is for the Contracting States to organise their legal systems in such a way that their courts can meet this requirement (*Vocaturo v. Italy*, para. 17). The Court rejects the argument in that the endeavour to eliminate drug trafficking, justifies detaining the applicant while all matters which might have a bearing on the judgment are investigated.

Megrelishvili v. Georgia, 30364/09

The case concerns the alleged **unfairness of the criminal proceedings** conducted against the applicant in 2007 on account of the way the principal evidence was obtained and used against him. He also claimed that the searches had been unlawful as he and his family members had been 'arbitrarily refused the right to invite attesting witnesses'.

The Court found the way the key evidence against the applicant had been obtained cast doubt on its reliability and accuracy. In view of the importance of evidence as basis for a conviction, the Court considers that, cumulatively, the procedural irregularities during the searches, the **inadequate judicial scrutiny both before and during the trial**, including the failure of the domestic courts to sufficiently examine the applicant's allegations that the drugs did not belong to him, and the weakness of the corroborating evidence, rendered the applicant's trial as a whole unfair. There has accordingly been a violation of Article 6 § 1 of the Convention.

Messina v. Italy, 13803/93

Man imprisoned over allegations of mafia involvement and drug offences claims that his pretrial detention exceeded a period of 'Reasonable time' as required under Article 6 para 1 which is determined with reference to the criteria laid down in the Court's case law and in the light of the circumstances of the case. While the Court accepts that the **judicial authorities must have encountered difficulties linked to the number of persons to be questioned and the number of witnesses to be heard, as well as the need for evidence to be taken on commission; the Court cannot regard seven years as reasonable.**

Polyakov v. Russia, 77018/01

The applicant was convicted of drug trafficking and complained that the courts had arbitrarily rejected his requests to examine several witnesses whose testimony would help his defence.

Article 6.3 does not require the attendance and examination of every witness (*Vidal v. Belgium*, para. 33). An applicant claiming a violation of his **right to obtain the attendance and examination of a defence witness** should show that the **examination of that person was necessary for the establishment of the truth** and that the refusal to call that witness was prejudicial to the defence rights (*Guilloury v. France*, paragraph 55).

The Court notes that the court rejected the applicant's request to produce evidence without any reason. The request was relevant to the subject matter of the accusation. The only direct evidence showing that the applicant had sold drugs was the putative purchaser's deposition made during the pre-trial investigation, which she retracted at trial. Thus the Court considers that the conviction was based primarily on the assumption of his being in a particular place at a particular time, the right to obtain the attendance and examination of witnesses on his behalf and the principle of equality of arms, imply that he should have afforded a reasonable opportunity to challenge the assumption effectively (*Popov v. Russia*, para. 183).

Teixeira de Castro v. Portugal, 25829/94

In this case it was necessary to determine whether the two police officers' activity went beyond that of undercover agents. The officers' intervention did not take place as part of an anti-drug trafficking operation ordered and supervised by a judge. Neither did the authorities have a good reason to suspect the applicant of a drug trafficking offence; on the contrary he has no criminal record and no preliminary investigation concerning him had been opened. He was not known to the police officers before they encountered him through intermediaries. The drugs that he supplied were not at his home but were obtained from a third party who obtained them from another person. There is no indication that the applicant possessed more drugs than the police officers incited him to supply.

The use of undercover agents must be restricted, and safeguards put in place. The right to a fair trial holds such a prominent place that it cannot be sacrificed for the sake of expedience (*Delcourt v. Belgium*, para. 25).

The public interest cannot justify the use of evidence obtained as a result of police incitement. The interference is that the police officers did not confine themselves to investigating the applicant in a passive manner but exercised an influence such as to incite the commission of the offence. The Court concluded that the actions of the police went beyond those of undercover agents because they instigated the offence and there is nothing to suggest that without their intervention it would have been committed. The intervention meant that the applicant was deprived of a fair trial.

Vanyan v. Russia, 53203/99

The applicant was searched and found to be in possession of a sachet of heroin. The applicant complained that he had been convicted of an offence which had been incited by the police and his conviction was based on evidence from the police officers involved and from OZ, an individual acting on their instructions. OZ was used by police to take part in the test purchase of drugs in order to expose drug trafficking by the applicant. There is no evidence to suggest that before the intervention the police had reason to suspect that the applicant was a drug dealer. The police relied on a statement which was not scrutinised by the court and which cannot therefore be considered. The police had not confined themselves to investigating the applicant's criminal activity in a passive manner. The Court held that the use of undercover agents must be restricted, and safeguards put in place even in cases concerning the fight against drug trafficking. **The requirement of a fair criminal trial under Article 6 entail that the public interest in the fight against drug trafficking cannot justify the use of evidence obtained as a result of police incitement** (*Teixeira de Castro v. Portugal*, paras. 1462-1463).

Article 8 – Right to family life

Amrollahi v. Denmark, 56811/00

The applicant, an Iranian national with residency in Denmark, was found guilty for drug trafficking and sentenced to three years imprisonment and expelled from Denmark. The applicant complained that if deported he would lose contact with his wife, children and stepdaughter as they cannot be expected to follow him to Iran.

The removal of a person from a country where close members of his family are living may amount to an infringement of the right to respect for family life as guaranteed in Article 8.1 (*Moustaquim v. Belgium*, para. 16). Due to the applicant's ties with Denmark, being married to a Danish woman with a Danish child together who have no ties to Iran, the Court is of the opinion that it is impossible for the applicant and his family to relocate to Iran. Therefore, the expulsion was disproportionate to the aims pursued.

Dalia v. France, 26102/95

The applicant was arrested for the heroin trafficking. The applicant is an Algerian national who moved to France at 18 where she lived for 19-years. After her exclusion order she gave birth. The Court ruled that the exclusion order violated Article 8 paragraph 1. The Court states that the interference is not so drastic as that which may result from the expulsion of applicants who were born in the host country of went there as a young child (*C. v. Belgium*, para. 34). **Decisions to expel someone from a country must be necessary in a democratic society that is justified by a pressing social need and by proportionate to the legitimate aim pursued** (*Mehemi v. France*, para. 34).

Eriksson v. Sweden, no. 11373/85

Measures interfering in the right to respect for their family life must:

1. Be in accordance with the law
2. Have a legitimate aim
3. Be necessary in a democratic society

'In accordance with the law' meaning:

- a) Laws must be formulated with sufficient precision to enable the citizen to **foresee**, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. The law is ever evolving, however, and so vague terms may be necessary (*Sunday Times v. UK*, para. 49).
- b) 'In accordance with the law' must relate to the domestic law but also relate to the **quality** of the law, requiring it to be compatible with the rule of law and be **accessible**. There must be a measure of protection in domestic law against arbitrary interferences by public authorities which is enshrined in Article 8.1

- c) Laws which confer discretion are not in themselves inconsistent with the condition of foreseeability, provided that the **scope of discretion** is indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual protection against arbitrary interference.

The Court noted that the mother's right to Article 8 includes a right to the taking of measures with a view to her being reunited with her child, which she was prevented from doing despite the applicant's suitability to take care of children and the conditions of her home. The applicant was denied the opportunity to meet with her daughter to an extent and in circumstances likely to promote the aim of reuniting them. The Court concludes that the **severe and lasting restrictions on access combined with the long duration of the prohibition on removal are not proportionate to the legitimate aims pursued**. Accordingly, there has been a violation of Article 8.

Khan v. UK, 35394/97

Concerns the use of surveillance in the house of a suspected drug trafficker, where the police obtained evidence from another man admitting being an accomplice in a separate attempt to smuggle drugs. The applicant was convicted to three years' imprisonment.

The issue is whether surveillance was justified under Article 8.2, notably whether it was 'in accordance with the law' and 'necessary in a democratic society'. **Domestic law must provide protection against arbitrary interference with an individual's right** under Article 8. The law must be sufficiently clear in its terms to give individuals an **adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to such covert measures** (*Malone v. UK*, para. 67). At the time of the event, there existed no statutory system to regulate the use of covert listening devices. Guidelines existing at the relevant time were neither legally binding nor were they directly publicly accessible. Therefore, the interference was not 'in accordance with the law', as required by Article 8.2.

Mehemi v. France, 25017/94

The applicant was born in France and lived there for thirty-years and his parent lived in France for forty-years. He has a wife whom he no longer lives with and three children. The applicant was caught in possession of 7kg of hashish and conspired to import 142kg. The applicant emphasised that his permanent exclusion from France had separated him from his wife and children.

The Court reiterated that States have the **right to control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences**. However, the Court must measure a **fair balance between the applicant's right to respect for his private and family life, and the prevention of disorder or crime**. In view of the applicant's lack of links with Algeria, the strength of his links with France and above all the fact that the order for his permanent exclusion from French territory separated him from his minor children and his wife, the Court considers that the measure in question was disproportionate to the aims pursued and there had been a breach of Article 8.

Sezen v. the Netherlands, 50252/99

The applicant entered the Netherlands at the age of 23 and has a residence permit and formed a relationship with the second applicant who moved to Netherlands at the age of seven, holds a residence permit, is married and has a child. The applicant was sentenced to four years' imprisonment for being a co-perpetrator of possession 52 kg of heroin.

The Court has previously held that domestic measures which prevent family members from living together constitute an interference with the right protected by Article 8 and that to split up a family is an interference of a very serious order (*Mehemi v. France*, para. 45). The Court had to determine if the applicants' **right to respect for family life was balanced with the interests of public safety and the prevention of disorder and crime**. For this the following guiding principles apply:

9. the nature and seriousness of the offence committed;
10. the length of the applicant's state in the country;
11. the time elapsed since the offence was committed and the applicant's conduct during this period;
12. the nationalities of the persons involved;
13. the applicant's family situation, such as length of marriage;
14. whether the spouse knew about the offence at the time when he or she entered into a family relationship;

15. whether there are children of the marriage and their age;
16. the seriousness of the difficulties which the spouse is likely to encounter in the applicant's country of origin.

The Court understands – in view of the devastating effects drugs have on people's lives – why the authorities show great firmness to those who actively contribute to the spread of this scourge (*Baghli v. France*, para. 48). The crime had not been committed at the time of marriage. The children speak Dutch and Kurdish and not Turkish. The Court accepts that following the first applicant to Turkey would mean a radical upheaval for the second applicant and the children. Consequently, the State failed to strike a fair balance and there had been a violation of Article 8.

Y.I. v. Russia, 68868/14

The case concerned the applicant's complaint about being deprived of her parental authority in respect of her three children because she had addiction problems. Drug addiction is a ground for removing parental authority under the Russian Family Code, and its application entailed her losing all contact rights. The applicant was found guilty of drug trafficking and sentenced to six years' imprisonment and the domestic courts had deprived her of parental authority, deciding that it would be dangerous to leave the children in her care. The courts referred to her drug addiction and the fact that she was unemployed. In her defence, the applicant argued, providing evidence, that she had started rehabilitation treatment and found a job.

The Court found that the national courts had not sufficiently justified taking such a drastic measure while there were less radical solutions available under domestic law. Nor had they taken into consideration that she had no history of neglecting her children, had started rehabilitation and had not apparently been given any support for her drug problems. The Court reiterated **that splitting up a family was a very serious interference. Deprivation of parental authority can only be justified in exceptional circumstances, the overriding requirement being a child's best interests. While drug addiction and unemployment are of relevance for considerations, these do not suffice alone to remove parental authority.**

Firstly, it must be considered if **the parent intends to and has taken steps to resolve the drug addiction.** Secondly, **unemployment and financial difficulties cannot in themselves be enough grounds for severing a parent-child bond.** The court decisions had not explained how her being unemployed had affected her ability to take care of her children. Furthermore, **real defects in the family's living conditions must be demonstrated and established.** Due consideration must also be given to the **parent's expressed attachment to the children**, where evidence shows that the parent has taken care of the children prior to their removal and had made efforts to maintain contact afterwards. At the same time **the attachment of the children to the parent and the consequences of a separation** must be considered.

The Court considers the removal of parental authority a last resort and requires national courts to consider firstly any less drastic measure legally available. In cases where these principles are not observed, the measure to remove parental authority would have been disproportionate and in violation of Article 8 of the Convention.

Article 14 – Prohibition of discrimination

Shelley v. UK, 23800/06

The applicant complained under Article 14 that he was discriminated against since those in prison were treated less favourably than those in the community. This difference in treatment between persons outside and inside detention was found to not breach Article 14 as **the Court found that not providing needle exchange services in prison was proportionate and supported by objective and reasonable justification.** This indicates that the Court grants a wide margin of appreciation to States surrounding decisions around treatment in prison compared to outside prison.

The European Prison Rules, the Committee for the prevention of Torture and domestic prison regulations themselves provide that the health care in prisons should be the same as that in the community. According to the Court's case law, prisoners can claim to be on the same footing as the community as regards the provision of health care (*Mathew v the Netherlands*, no. 24919/03, paras. 186, 193). While the Court concedes that **medical assistance in prison may not be at the same level as in the best medical institutions for the general public, States have to ensure that the health and well-being of detainees were adequately secured by providing them with the requisite medical assistance** (*Khudobin v. Russia*).

Overview of related texts

Pompidou Group

- ▶ Human Rights and people who use drugs in the Mediterranean region: current situation in 17 MedNET countries (2020)
- ▶ Pompidou Group statement on the treatment of opioid dependence syndrome, P-PG (2018) 2
- ▶ Pompidou Group statement on bringing human rights into drug policy development, implementation, monitoring and evaluation, P-PG/HR (2017) 1
- ▶ Pompidou Group statement on costs and unintended consequences of drug control policies P-PG (2017) 9
- ▶ Costs and unintended consequences of drug control policies, Report by the expert group on possible adverse effects and associated costs of drug control policies, 2017
- ▶ Drug policy and human rights in Europe: Managing tensions, maximising complementarities, report by Damon Barrett, 2016
- ▶ Athens Declaration on protecting public health by ensuring essential services in drug policy under austerity budgets – and explanatory memorandum, P-PG (2013) 11

Council of Europe

- ▶ PACE report Drug policy and human rights in Europe: a baseline study, AS/Jur (2019) 25 Rev
- ▶ Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1951, Council of Europe Treaty Series (ETS) no. 005
- ▶ Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981, Council of Europe Treaty Series (ETS) no. 108
- ▶ European Social Charter (revised), 1996, European Treaty Series (ETS) no. 163
- ▶ European Convention of the Exercise of Children's Rights, Strasbourg, 1996, European Treaty Series (ETS) No. 160
- ▶ Framework Convention for the Protection of National Minorities, 1995, European Treaty Series (ETS) no. 157
- ▶ Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, 1997, European Treaty Series (ETS) no. 164

European Union

- ▶ Decision No [102/97/EC](#) of the European Parliament and of the Council of 16 December 1996 adopting a programme of Community action on the prevention of drug dependence within the framework for action in the field of public health (1996-2000) [Official Journal L 19 of 22.01.1997]
- ▶ Decision No [102/97/EC](#) of the European Parliament and of the Council of 16 December 1996 adopting a programme of Community action on the prevention of drug dependence within the framework for action in the field of public health (1996-2000) [Official Journal L 19 of 22.01.1997]
- ▶ Communication from the Commission of 26 May 1999 on a [European action plan to combat drugs](#) (2000-2004) [[COM\(1999\) 239 final](#)]
- ▶ European Union Drugs Strategy (2000-2004) of 1 December 1999 [Council document 12555/3/99]
- ▶ Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 26 May 1999 on the European Union action plan to combat drugs (2000-2004) [[COM\(1999\) 239 final](#)]
- ▶ Charter of Fundamental Rights of the European Union Official Journal of the European Communities, 18.12.2000 - 2000/C 364/01

- ▶ Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy of 23 October 2000, [Official Journal of the European Communities L 327/1]
- ▶ Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002 adopting a programme of Community action in the field of public health (2003-2008) [Official Journal L 271 of 09.10.2002]
- ▶ Decision No 1786/2002/EC of the European Parliament and of the Council of 23 September 2002 adopting a programme of Community action in the field of public health (2003-2008) – [Official Journal L 271 of 9.10.2002]
- ▶ Communication from the Commission to the Council and the European Parliament of 4 November 2002 on the mid-term evaluation of the EU Action Plan on Drugs (2000-2004) [COM(2002) 599 final]
- ▶ Council Recommendation 2003/488/EC of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence [Official Journal L 165 of 3.07.2003]
- ▶ Communication from the Commission to the European Parliament and the Council of 12 November 2003 on coordination on drugs in the European Union [COM(2003) 681 final]
- ▶ Communication from the Commission to the Council and the European Parliament of 22 October 2004 on the results of the final evaluation of the EU Drugs Strategy and Action Plan on Drugs (2000-2004) [COM(2004) 707 final]
- ▶ Communication from the Commission of 22 October 2004 on the results of the final evaluation of the EU Drugs Strategy and Action Plan on Drugs (2000-2004) [COM(2004) 707 final]
- ▶ Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking [Official Journal L 335 of 11.11.2004]
- ▶ Report on the final evaluation of the EU Drugs Action Plan (2005-2008), COM (2008)
- ▶ EU Drugs Strategy 2005-2012, European Council 15074/04
- ▶ Council Decision 2005/387/JHA of 10 May 2005 on information exchange, risk-assessment and the control of new psychoactive substances [Official Journal L 127 of 20.5.2005]
- ▶ Communication from the Commission of 10 May 2005 – The Hague Programme: ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice [COM(2005) 184 final]
- ▶ EU Action Plan on Drugs (2005-2008) of 8 July 2005 [Official Journal C 168 of 8.7.2005]
- ▶ European Commission. 2006. Green Paper on the Role of Civil Society in Drugs Policy in the European Union. COM (2006) 316 final
- ▶ European Commission. 2007. Report from the Commission to the European Parliament and the Council: On the implementation of the Council Recommendation of 18 June 2003 on the prevention and reduction of health-related harm associated with drug dependence. COM (2007) 199 final
- ▶ Communication from the Commission of 10 December 2007 on the 2007 Progress Review of the implementation of the EU Action Plan on Drugs (2005-2008) [COM(2007) 781 final]
- ▶ EU Drugs Action Plan for 2009-2012 (2008/C 326/09) [Official Journal 20.12.2008]
- ▶ EU Regulation 1408/71 on national statutory social security schemes, Regulation 1612/68 on social advantages for EU migrant workers and their families
- ▶ EU Council Directive 79/7 on equal treatment of men and women with regards to social security
- ▶ EU Council Directive 2000/43 prohibiting discrimination on grounds of race or ethnic origin
- ▶ EU Council Directive 76/207, as amended by Directive 2002/73, on equal treatment of men and women as regards access to employment, vocational training and promotion, and working conditions

United Nations

- ▶ Universal Declaration of Human Rights, UN General Assembly resolution 217 A (III) of 10 December 1948
- ▶ Commentary on the Single Convention on Narcotic Drugs, 1961, United Nations, New York, 1973
- ▶ UN International Covenant on Economic, Social and Cultural Rights UN General Assembly resolution 2200A (XXI) of 3 January 1976
- ▶ UN General Assembly resolution 44/25 of 20 November 1989

- ▶ Official Records of the Economic and Social Council, Twenty-sixth Session, Supplement No. 1 (E/3169)
- ▶ CND Resolution S-20/3 Declaration on the Guiding Principles of Drug Demand Reduction, 8 September 1998 (A/RES/S-20/3)
- ▶ CND Resolution 43/3, Enhancing assistance to drug abusers, 15 March 2000
- ▶ CND Resolution 59/163, International cooperation against the world drug problem, 8 February 2005 (A/RES/59/163)
- ▶ CND Resolution 49/4, Responding to the prevalence of HIV/AIDS and other blood-borne diseases among drug users, 2006
- ▶ UN Convention on the Rights of Persons with Disabilities UN General Assembly resolution A/61/611 (LXI) 6 December 2006
- ▶ UN Special Rapporteur on the Right to Health 2007 report (A/HRC/4/28),
- ▶ Unicef, 2007, Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems
- ▶ UNODC, Making drug control 'fit for purpose': Building on the UNGASS decade, Report by the Executive Director of the United Nations Office on, Drugs and Crime as a contribution to the review of the twentieth special session of the General Assembly, doc. E/CN.7/2008/CRP.17

WHO

- ▶ 1993 WHO guidelines on HIV infection and AIDS in prisons
- ▶ 2002 EUR/RC52/R9: Scaling up the response to HIV/AIDS in the European Region of WHO
- ▶ 2003 Declaration on Prison health as Part of Public Health
- ▶ 2005 Status Paper on Prisons, Drugs and Harm Reduction
- ▶ 2007 Health in Prisons: A WHO Guide to the Essentials in Prison Health
- ▶ 2007 Trenčín statement on prisons and mental health
- ▶ UNODC, WHO and UNAIDS, 2006, HIV/AIDS Prevention, Care, Treatment and Support in Prison Settings: A Framework for an Effective National Response
- ▶ WHO, UNODC, UNAIDS, 2007, Interventions to Address HIV in Prisons: HIV Care, Treatment and Support
- ▶ WHO, UNODC, UNAIDS, 2007, Interventions to Address HIV in Prisons: Drug Dependence Treatment

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

