March 2014
This Factsheet does not bind the Court and is not exhaustive

Persons with disabilities and the European Convention on Human Rights

Article 1 (obligation to respect human rights) of the European Convention on Human Rights ("the Convention"):

"The High Contracting Parties shall secure to ***everyone*** within their jurisdiction the rights and freedoms defined in … this Convention."

Right to life (Article 2 of the Convention)

Death of a deaf and mute person in police custody

Jasinskis v. Latvia

21 December 2010

The applicant complained about the death in police custody of his deaf and mute son. The latter had sustained serious head injuries in a fall down some stairs, had been taken to the local police station and placed in a sobering-up cell for 14 hours as the police officers believed him to be drunk. The applicant also complained about the ineffectiveness of the ensuing investigation into his son's death.

The European Court of Human Rights held that there had been a **violation of Article 2** (right to life) of the European Convention on Human Rights under its substantial limb. It reiterated that Article 2 of the Convention not only required a State to not "intentionally" take a life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. As concerned a disabled person in detention, all the more care should be taken to ensure that the conditions corresponded to their special needs. However, in the present case, the police had not had the applicant medically examined when they took into custody, as they were specifically required to do by the standards of the European Committee for the Prevention of Torture (CPT). Nor had they given him any opportunity to provide information about his state of health, even after he kept knocking on the doors and the walls of the sobering-up cell. Taking into account that he was deaf and mute, the police had a clear obligation under the domestic legislation and international standards, to at least provide him with a pen and paper to enable him to communicate his concerns. The Court therefore concluded that the police had failed to fulfil their duty to safeguard the applicant's son's life by providing him with adequate medical treatment. The Court further held that the investigation into the circumstances of the death of the applicant's son had not been effective, in **violation of Article 2** of the Convention under its procedural limb.

Death of disabled children and young people in a care home or a psychiatric hospital

Nencheva and Others v. Bulgaria

18 June 2013

Fifteen children and young adults died between December 1996 and March 1997 in a home for physically and mentally disabled young people, from the effects of cold and

shortages of food, medicines and basic necessities. The manager of the home, observing the problems, had tried without success on several occasions to alert all the public institutions which had direct responsibility for funding the home and which could have been expected to act.
The Court held that there had been a **violation of Article 2** (right to life) of the Convention in that the authorities had failed in their duty to protect the lives of the vulnerable children placed in their care from a serious and immediate threat. The authorities had also failed to conduct an effective official investigation into the deaths, occurring in highly exceptional circumstances. The Court considered that the authorities should have known that there was a real risk to the lives of the children in the home, and that they had not taken the necessary measures within the limits of their powers. The children and young people under the age of 22 placed in the home had been vulnerable persons suffering from severe mental and physical disabilities, who had either been abandoned by their parents or had been placed in the home with their parents' consent. All of them had been entrusted to the care of the State in a specialised public facility and had been under the exclusive supervision of the authorities.

Pending case

Center of Legal Resources on behalf of Valentin Câmpeanu v. Romania (application no. 47848/08)

Application communicated to the Romanian Government on 7 June 2011 – Relinquishment of jurisdiction in favour of the Grand Chamber in March 2013
This case concerns the death of a young man of Roma origin – who was HIV positive and suffering from a severe mental disability – while in a psychiatric hospital. The application was lodged by a non-governmental organisation on his behalf. The applicant organisation alleges that Valentin Câmpeanu's rights under Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the Convention have been violated.
The Court held a Grand Chamber hearing in the case on 4 September 2013.

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

Conditions of detention[1]

Price v. the United Kingdom

10 July 2001
A four-limb deficient thalidomide victim who also suffers from kidney problems, the applicant was committed to prison for contempt of court in the course of civil proceedings. She was kept one night in a police cell, where she had to sleep in her wheelchair, as the bed was not specially adapted for a disabled person, and where she complained of the cold. She subsequently spent two days in a normal prison, where she was dependent on the assistance of male prison guards in order to use the toilet.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that to detain a severely disabled person in conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty, constituted a degrading treatment contrary to Article 3 of the Convention.

[1] See also, concerning mentally-ill prisoners, the factsheets on "Detention and mental health" and "Prisoners health-related rights".

Vincent v. France

24 October 2006

The applicant was serving a ten-year prison sentence imposed in 2005. Paraplegic since an accident in 1989, he is autonomous, but cannot move around without the aid of a wheelchair. He complained in particular that the conditions in which he was detained in different prisons were not adapted to his disability.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the fact that it had been impossible for the applicant, who is a paraplegic, to move autonomously around Fresnes Prison, which was particularly unsuited to the imprisonment of persons with a physical handicap who could move about only in a wheelchair. There was no evidence of any positive intention to humiliate or debase the applicant. However, the Court considered that to detain a handicapped person in a prison where he could not move about and, in particular, could not leave his cell independently, amounted to degrading treatment within the meaning of Article 3 of the Convention.

Z.H. v. Hungary (no. 28973/11)

8 November 2011

Deaf and mute, unable to use sign language or to read or write, and having a learning disability, the applicant complained in particular that his detention in prison for almost three months had amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention. Despite the authorities' laudable but belated efforts to address the applicant's situation, it found that his incarceration without requisite measures being taken within a reasonable time had resulted in a situation amounting to inhuman and degrading treatment.

In this case the Court also found a **violation of Article 5 § 2** (right to liberty and security) of the Convention. Given the applicant's multiple disabilities, it was in particular not persuaded that he could be considered to have obtained the information required to enable him to challenge his detention. The Court further found it regrettable that the authorities had not taken any truly "reasonable steps" – a notion quite akin to that of "reasonable accommodation" in Articles 2, 13 and 14 of the United Nations Convention on the Rights of Persons with Disabilities[2] – to address his condition, in particular by procuring him assistance by a lawyer or another suitable person.

Arutyunyan v. Russia

10 January 2012

The applicant was wheelchair-bound and had numerous health problems, including a failing renal transplant, very poor eyesight, diabetes and serious obesity. His cell was on the fourth floor of a building without an elevator; the medical and administrative units were located on the ground floor. Owing to the absence of an elevator, the applicant was required to walk up and down the stairs on a regular basis to receive haemodialysis and other necessary medical treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the domestic authorities had failed to treat the applicant in a safe and appropriate manner consistent with his disability, and had denied him effective access to the medical facilities, outdoor exercise and fresh air. It observed in particular that, for a period of almost fifteen months, the applicant, who was disabled and depended on a wheelchair for mobility, was forced at least four times a week to go up and down four flights of stairs on his way to and from lengthy, complicated and tiring medical procedures that were vital to his health. The effort had undoubtedly caused him unnecessary pain and exposed him to an unreasonable risk of serious damage to his health. It was therefore not surprising that he had refused to go down the stairs to exercise in the recreation yard, and had thus remained confined

[2] Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 at the United Nations Headquarters in New York, opened for signature on 30 March 2007, and entered into force on 3May 2008.

within the walls of the detention facility twenty-four hours a day. In fact, due to his frustration and stress, the applicant had on several occasions even refused to leave his cell to receive life-supporting haemodialysis.

Zarzycki v. Poland

6 March 2013

The applicant is disabled; both his forearms are amputated. He complained that his detention of three years and four months without adequate medical assistance for his special needs and without refunding him the cost of more advanced bio-mechanical prosthetic arms had been degrading. He alleged that, as a result, he had been forced to rely on other inmates to help him with certain daily hygiene and dressing tasks.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, noting the pro-active attitude of the prison administration *vis-à-vis* the applicant. It was true that the Court had often criticised the scheme of providing routine assistance to a prisoner with a physical disability through cellmates, even if they were volunteers and even if their help had been solicited only when the prison infirmary was closed. In the particular circumstances of the present case, however, the Court did not find any reason to condemn the system which had been put in place by the authorities to secure the adequate and necessary aid to the applicant. As further regards obtaining prostheses, bearing in mind that the basic-type mechanical prostheses had been available and indeed provided to the applicant free of charge and that a refund of a small part of the cost of bio-mechanical prostheses had also been available, the Polish State could not be said to have failed to discharge its obligations under Article 3 of the Convention by not paying the full costs of a prosthetic device of an advanced type. The authorities had thus provided the applicant with the regular and adequate assistance his special needs warranted and there was no evidence of any incident or positive intention to humiliate or debase the applicant. Therefore, even though a prisoner with amputated forearms was more vulnerable to the hardships of detention, the treatment of the applicant in the circumstances of the present case had not reached the threshold of severity required to constitute degrading treatment contrary to Article 3 of the Convention.

Grimailovs v. Latvia

25 June 2013

In June 2002 the applicant, who had a metal insert in his spine after breaking his back two years earlier, was given a five and a half year prison sentence. He complained, *inter alia*, that the prison facilities were unsuitable for him as he was paraplegic and wheelchair-bound. In 2006 he was conditionally released.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention. The applicant had been detained for nearly two-and-a-half years in a regular detention facility which was not adapted for persons in a wheelchair. Moreover, he had had to rely on his fellow inmates to assist him with his daily routine and mobility around the prison, even though they had not been trained and did not have the necessary qualifications. Although the medical staff had visited the applicant in his cell for ordinary medical check-ups, they had not provided any assistance with his daily routine. The State's obligation to ensure adequate conditions of detention included making provision for the special needs of prisoners with physical disabilities and the State could not absolve itself from that obligation by shifting the responsibility to cellmates. The conditions of the applicant's detention in view of his physical disability and, in particular, his inability to have access to various prison facilities, including the sanitation facilities, independently and the lack of any organised assistance with his mobility around the prison or his daily routine, had thus reached the threshold of severity required to constitute degrading treatment.

See also: ***Farbtuhs v. Latvia***, judgment of 2 December 2004; ***D.G. v. Poland (no. 45705/07)***, judgment of 12 February 2013.

Living conditions in psychiatric institutions or social care homes

Stanev v. Bulgaria (see also below, under "Right to liberty and security" and under "Right to a fair trial")
17 January 2012 (Grand Chamber)
This case concerned a man who claimed he had been placed against his will, for many years, in a psychiatric institution in a remote mountain location, in degrading conditions.
The Court observed that Article 3 of the Convention prohibited the inhuman and degrading treatment of anyone in the care of the authorities, whether detention ordered in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned. The Court also noted that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had concluded, after visiting the home, that the living conditions there at the relevant time could be said to amount to inhuman and degrading treatment. In the present case, even though there was no suggestion that the Bulgarian authorities had deliberately intended to treat the applicant in a degrading way, taken as a whole, his living conditions (the food was insufficient and of poor quality; the building was inadequately heated and in winter the applicant had to sleep in his coat; he could shower only once a week in an unhygienic and dilapidated bathroom; the toilets were in an execrable state; etc.) for a period of approximately seven years had amounted to degrading treatment, in **violation of Article 3** of the Convention.

Risk of ill-treatment in case of expulsion or extradition

Hukic v. Sweden
27 September 2005 (decision on the admissibility)
This case concerned the expulsion to Bosnia and Herzegovina of a family who allegedly risked being persecuted, and whose younger child who was suffering from Down's syndrome would not receive adequate medical care for his handicap if deported.
The Court declared **inadmissible** (manifestly ill-founded) the applicants' complaints under Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Concerning the alleged irreparable harm to the younger child as he would not receive treatment for his handicap in Bosnia and Herzegovina, it observed in particular that, according to information obtained in the case file, treatment and rehabilitation for children with Down's syndrome could be provided in the applicants' home town, although not of the same standard as in Sweden. Moreover, despite the seriousness of his handicap, Down's syndrome could not be compared to the final stages of a fatal illness.

S.H.H. v. the United Kingdom (no. 60367/10)
29 January 2013
Seriously injured during a rocket launch in Afghanistan in 2006 and left disabled following several amputations, the applicant arrived in the United Kingdom on 30 August 2010. On 1 September 2010, he applied for asylum alleging that his removal to Afghanistan would expose him to ill-treatment. The applicant unsuccessfully complained that his removal to Afghanistan would breach Article 3 (prohibition of inhuman or degrading treatment) of the Convention on two grounds linked with his disability: first, he asserted that disabled persons were at higher risk of violence in the armed conflict currently underway in Afghanistan; and, second, that, since he had lost contact with his family, he would face a total lack of support as well as general discrimination.
The Court held that there would be **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if the applicant were removed to Afghanistan. It held in particular that the responsibility of Contracting States under Article 3 of the Convention could only be engaged in very exceptional cases of general violence where the humanitarian grounds against removal were compelling. In this case, the applicant neither complained before the Court that his removal to Afghanistan would put him at risk of deliberate ill-treatment from any party, nor that the levels of violence in Afghanistan were such as to entail a breach of Article 3. Furthermore, the applicant had

failed to prove that his disability would put him at greater risk of violence than the general Afghan population. As lastly regards the foreseeable degradation of the applicant's living conditions, even though the Court acknowledged that the quality of the applicant's life would be negatively affected upon removal, this fact alone could not be decisive.

Aswat v. the United Kingdom

16 April 2013

The applicant, who suffers from paranoid schizophrenia, is currently detained in a high security psychiatric hospital in the United Kingdom. He has been indicted in the United States as a co-conspirator in respect of a conspiracy to establish a jihad training camp in Oregon and in 2005 he was arrested in the United Kingdom following a request for his arrest and extradition by the US authorities. The applicant complained that his extradition to the United States of America would amount to ill-treatment, in particular because the detention conditions (a potentially long period of pre-trial detention and his possible placement in a "supermax" prison) were likely to exacerbate his condition of paranoid schizophrenia.

While the Court held that the applicant's **extradition** to the United States **would be in violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, it was solely on account of the current severity of his mental illness and not as a result of the length of his possible detention there. In light of the medical evidence before it, it found that there was a real risk that the applicant's extradition to the USA, a country to which he had no ties, and to a different, potentially more hostile prison environment, would result in a significant deterioration in his mental and physical health. Such deterioration would be capable of amounting to treatment in breach of Article 3 of the Convention.

Sterilisation for the purposes of contraception

Gauer and Others v. France

23 October 2012 (decision on the admissibility)

This case concerned the sterilisation for the purposes of contraception of five young women with mental disabilities who were employed at a local work-based support centre (Centre d'aide pour le travail – CAT). They submitted in particular that there had been an interference with their physical integrity as a result of the sterilisation which had been carried out without their consent having been sought, and alleged a violation of their right to respect for their private life and their right to found a family. They further submitted that they had been subjected to discrimination as a result of their disability.

The Court found that the application had been lodged out of time and therefore declared it **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention.

Verbal and / or physical harassment

Đorđević v. Croatia

24 July 2012

This case concerned the complaint by a mother and her mentally and physically disabled son that they had been harassed, both physically and verbally, for over four years by children living in their neighbourhood, and that the authorities had failed to protect them. These attacks had left the first applicant deeply disturbed, afraid and anxious. The applicants had on numerous occasions complained to various authorities. They had also rung the police many times to report the incidents and seek help. Following each call, the police arrived at the scene, sometimes too late, and sometimes only to tell the children to disperse or stop making a noise. They also interviewed several pupils and concluded that, although they had admitted to having behaved violently towards the first applicant, they were too young to be held criminally responsible.

This case concerned the State's positive obligations in a situation outside the sphere of criminal law where the competent State authorities were aware of serious harassment

directed at a person with physical and mental disabilities. The Court held in particular that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the first applicant, finding that the Croatian authorities had not done anything to end the harassment, despite their knowledge that he had been systematically targeted and that future abuse had been quite likely.

Right to liberty and security (Article 5 of the Convention)[3]

H.L. v. the United Kingdom (no. 45508/99)

5 October 2004

The applicant is autistic, unable to speak and his level of understanding is limited. In July 1997, while at a day centre, he started inflicting harm on himself. He was subsequently transferred to a hospital's intensive behavioural unit as an "informal patient". The applicant mainly alleged that his treatment as an informal patient in a psychiatric institution amounted to detention and that this detention had been unlawful, and that the procedures available to him for a review of the legality of his detention did not satisfy the requirements of Article 5 (right to liberty and security) of the Convention.

The Court observed in particular that, as a result of the lack of procedural regulation and limits, the hospital's health care professionals had assumed full control of the liberty and treatment of a vulnerable incapacitated individual solely on the basis of their own clinical assessments completed as and when they had considered fit. It found that this absence of procedural safeguards had failed to protect the applicant against arbitrary deprivation of liberty on grounds of necessity and, consequently, to comply with the essential purpose of **Article 5 § 1** (right to liberty and security) of the Convention, in **violation** of that provision. The Court further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, finding that it had not been demonstrated that the applicant had had available to him a procedure to have the lawfulness of his detention reviewed by a court.

Stanev v. Bulgaria (see also above, under "Prohibition of inhuman or degrading treatment" and below, under "Right to a fair trial")

17 January 2012 (Grand Chamber)

In 2000, at the request of two of the applicant's relatives, a court declared him to be partially lacking legal capacity on the ground that he was suffering from schizophrenia. In 2002 the applicant was placed under partial guardianship against his will and admitted to a social care home for people with mental disorders, near a village in a remote mountain location. Under Article 5 (right to liberty and security) of the Convention, the applicant alleged in particular that he had been deprived of his liberty unlawfully and arbitrarily as a result of his placement in an institution against his will and that it had been impossible under Bulgarian law to have the lawfulness of his deprivation of liberty examined or to seek compensation in court.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, in that the applicant had been illegally detained in the institution in question. It observed in particular that the decision to place the applicant had not been lawful within the meaning of Article 5 § 1 of the Convention since none of the exceptions provided for in that Article were applicable, including Article 5 § 1 (e) – deprivation of liberty of a "person of unsound mind". The period that had elapsed between the expert psychiatric assessment relied on by the authorities and the applicant's placement in the home, during which time his guardian had not checked whether there had been any change in his condition and had not met or consulted him had furthermore been excessive and a medical opinion issued in 2000 could not be regarded as a reliable reflection of the state of the applicant's mental health at the time of his placement in the home (in 2002). The Court further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a

[3] See also the factsheet on "Mental health".

court) of the Convention, concerning the impossibility for the applicant to bring proceedings to have the lawfulness of his detention decided by a court, and a **violation of Article 5 § 5** (right to compensation) concerning the impossibility for him to apply for compensation for his illegal detention and the lack of review by a court of the lawfulness of his detention.

D.D. v. Lithuania (no. 13469/06)

14 February 2012

Suffering from schizophrenia, the applicant was legally incapacitated in 2000. Her adoptive father was subsequently appointed her legal guardian and, at his request, she was interned in June 2004. She was then placed in a care home where she remains to date. The applicant complained in particular about being admitted to this care home without her consent and without possibility of judicial review.

The Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that it had been reliably established that the applicant was suffering from a mental disorder warranting compulsory confinement. Moreover, her confinement appeared to have been necessary since no alternative measures had been appropriate in her case. The Court further held that there had been a **violation of Article 5 § 4** (right to have lawfulness of detention decided speedily by a court) of the Convention, considering that where a person capable of expressing a view, despite being deprived of legal capacity, was also deprived of liberty at the request of his or her guardian, he or she must be accorded the opportunity of contesting that confinement before a court with separate legal representation.

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

Shtukaturov v. Russia (see also below, under "Right to respect for private and family life")

27 March 2008

The applicant has a history of mental illness and was declared officially disabled in 2003. Following a request lodged by his mother, the Russian courts declared him legally incapable in December 2004. His mother was subsequently appointed his guardian and, in November 2005, she admitted him to a psychiatric hospital. The applicant alleged in particular that he had been deprived of his legal capacity without his knowledge.

The Court held that there had been a **violation of Article 6** (right to a fair trial) of the Convention concerning the proceedings which deprived the applicant of his legal capacity. Having reiterated that, in cases concerning compulsory confinement, a person of unsound mind should be heard either in person or, where necessary, through some form of representation, it observed in particular that the applicant, who appeared to have been a relatively autonomous person despite his illness, had not been given any opportunity to participate in the proceedings concerning his legal capacity. Given the consequences of those proceedings for the applicant's personal autonomy and indeed liberty, his attendance had been indispensable not only to give him the opportunity to present his case, but also to allow the judge to form an opinion on his mental capacity. Therefore, the decision of December 2004, based purely on documentary evidence, had been unreasonable and in breach of the principle of adversarial proceedings enshrined in Article 6 § 1 of the Convention.

Farcaş v. Romania

14 September 2010 (decision on the admissibility)

This case concerned the alleged impossibility for the applicant, who since the age of ten has been suffering from a physical disability (progressive muscular dystrophy), to access certain buildings, in particular those of the courts that have jurisdiction in respect of disputes over his civil rights. The applicant claimed in particular that he had not been able to challenge the termination of his contract before the domestic courts because, since the entrance to the local court building was not specially adapted, he could not enter the court or seek assistance from the bar association.

The Court declared the application **inadmissible** (manifestly ill-founded) under Articles 6 § 1 (right to a fair trial) and 34 (right to individual application), taken alone or in conjunction with Article 14 (prohibition of discrimination) of the Convention, finding that neither the right of access to a court nor the right of individual petition had been hindered by insurmountable obstacles preventing the applicant from bringing proceedings or from lodging an application or communicating with the Court. He could have brought proceedings before the courts or the administrative authorities by post, if necessary through an intermediary. The local post-office was accessible and, in any event, access to it was not indispensible for posting letters. The assistance of a lawyer was not necessary to bring the proceedings in question, and the applicant could always have contacted the bar association by letter or fax, or could have made a request to the court for free legal assistance. Moreover, no appearance of discriminatory treatment against the applicant had been noted.

Stanev v. Bulgaria (see also above, under "Prohibition of inhuman or degrading treatment" and under "Right to liberty and security")

17 January 2012 (Grand Chamber)

Placed under partial guardianship against his will and admitted to a social care home for people with mental disorders, the applicant complained in particular that he could not apply to a court to seek release from partial guardianship.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, in that the applicant had been denied access to a court to seek restoration of his legal capacity. While the right of access to the courts was not absolute and restrictions on a person's procedural rights could be justified, even where the person had been only partially deprived of legal capacity, the right to ask a court to review a declaration of incapacity was one of the most important rights for the person concerned. It followed that such persons should in principle enjoy direct access to the courts in this sphere. In addition, the Court observed that there was now a trend at European level towards granting legally incapacitated persons direct access to the courts to seek restoration of their capacity. International instruments for the protection of people with mental disorders were likewise attaching growing importance to granting them as much legal autonomy as possible[4]. Article 6 § 1 of the Convention should be interpreted as guaranteeing in principle that anyone who had been declared partially incapable, as was the applicant's case, had direct access to a court to seek restoration of his or her legal capacity. Direct access of that kind was not guaranteed with a sufficient degree of certainty by the relevant Bulgarian legislation.

R.P. and Others v. the United Kingdom (no. 38245/08)

9 October 2012

The first applicant was the mother of a premature baby who suffered from a number of serious medical conditions requiring constant care. The local authority commenced care proceedings owing to doubts over the ability of the first applicant, who had learning disabilities, to provide such care. The first applicant instructed lawyers to represent her in those proceedings, but amid serious concerns that she was unable to understand their advice, a consultant clinical psychologist was asked to carry out an assessment to determine whether or not she had capacity to provide instructions. The psychologist concluded that she would find it very difficult to understand the advice given by her lawyers and would not be able to make informed decisions on the basis of that advice. The court then appointed the Official Solicitor[5] to act as the first applicant's guardian *ad*

[4] The Court refers in this connection to the United Nations Convention on the Rights of Persons with Disabilities of 13 December 2006 and to Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults of 23 February 1999, which recommend that adequate procedural safeguards be put in place to protect legally incapacitated persons to the greatest extent possible, to ensure periodic reviews of their status and to make appropriate remedies available (see paragraph 244 of the judgment).

[5] In England and Wales the Official Solicitor acts for people who, because they lack mental capacity and cannot properly manage their own affairs, are unable to represent themselves and no other suitable person or agency is able and willing to act.

litem and to provide instructions to her lawyer on her behalf. The first applicant complained that the appointment of the Official Solicitor had violated her right of access to a court.
The Court reiterated that, given the importance of the proceedings to the first applicant – who stood to lose both custody of and access to her only child – and bearing in mind the requirement in the United Nations Convention on the Rights of Persons with Disabilities[6] that State parties provide appropriate accommodation to facilitate disabled persons' effective role in legal proceedings, measures to ensure that her best interests were represented were not only appropriate but also necessary. Observing that, in the present case, the appointment of the Official Solicitor to represent the applicant had been proportionate to the legitimate aim pursued and, in particular, that it had not been taken lightly and that procedures were in place that would have afforded the applicant an appropriate and effective means by which to challenge it at any time, the Court found that the very essence of the first applicant's right of access to a court had not been impaired. It therefore held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention.

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

Access to the beach

Botta v. Italy

24 February 1998

The applicant is physically disabled. In 1990 he went on holiday to the seaside resort of Lido degli Estensi (Italy) with a friend, who is also physically disabled. There he discovered that the bathing establishments were not equipped with the facilities needed to enable disabled people to gain access to the beach and the sea (particularly special access ramps and specially equipped lavatories and washrooms). He complained in particular of impairment of his private life and the development of his personality resulting from the Italian State's failure to take appropriate measures to remedy the omissions imputable to the private bathing establishments of Lido degli Estensi, namely the lack of lavatories and ramps providing access to the sea for the use of disabled people.
The Court held that **Article 8** (right to respect for private and family life) was **not applicable** in the instant case. It found that the right asserted by the applicant, namely the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays, concerned interpersonal relations of such broad and indeterminate scope that there could be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life.

Access to public buildings

Zehnalova and Zehnal v. the Czech Republic

14 May 2002 (decision on the admissibility)

The first applicant is physically disabled; the second applicant is her husband. The applicants complained in particular that they had suffered discrimination in the enjoyment of their rights on account of the first applicant's physical condition. They submitted that a large number of public buildings and buildings open to the public in their home town were not accessible to them and that the national authorities had failed to remedy the situation.

[6] See above, footnote no. 2.

The Court declared the application **inadmissible**. It found in particular that Article 8 (right to respect for private and family life) of the Convention was not applicable in the instant case and that the complaints relating to an alleged violation of that Article should be rejected as being incompatible *ratione materiae* with the provisions of the Convention. In the Court's view, the first applicant had notably not demonstrated the existence of a special link between the lack of access to the buildings in question and the particular needs of her private life. In view of the large number of buildings complained of, doubts remained as to whether the first applicant needed to use them on a daily basis and whether there was a direct and immediate link between the measures the State was being urged to take and the applicants' private life; the applicants had done nothing to dispel those doubts. The Court further observed that the national authorities had not remained inactive and that the situation in the applicants' home town had improved in the past few years.

See also: ***Farcaş v. Romania***, decision on the admissibility of 14 September 2010.

Molka v. Poland

11 April 2006 (decision on the admissibility)

The applicant is a severely handicapped person and can move only in a wheelchair. In 1998 he was driven by his mother to a polling station where he intended to vote in the elections to municipality and district councils and provincial assemblies. The Chairman of the Local Electoral Commission informed the applicant's mother that the applicant could not cast his vote because it was not allowed to take a ballot paper outside the premises of the polling station and he was not going to carry the applicant inside the station. The applicant returned home without casting his vote. The applicant alleged in particular that he had been deprived of his right to vote on account of his disability. The European Court raised of its own motion a complaint under Article 8 (right to respect of private and family life) of the Convention.

The Court declared the application **inadmissible**. Concluding that the municipal councils, district councils and regional assemblies did not possess any inherent primary rulemaking powers and did not form part of the legislature of the Republic of Poland, it held that Article 3 (right to free elections) of Protocol No. 1 to the Convention was not applicable to elections to those organs. It followed that this part of the application was incompatible *ratione materiae* with the provisions of the Convention. As further regards Article 8 (right to respect for private and family life) of the Convention, The Court noted that in a number of cases it had held that Article 8 was relevant to complaints about public funding to facilitate the mobility and quality of life of disabled applicants[7]. More generally, it observed that the effective enjoyment of many of the Convention rights by disabled persons may require the adoption of various positive measures by the competent State authorities. In this respect, the Court refers to various texts adopted by the Council of Europe which stress the importance of full participation of people with disabilities in society, in particular in political and public life[8]. The Court did not rule out that, in circumstances such as those in the present case, a sufficient link between the measures sought by an applicant and the latter's private life would exist for Article 8 of the Convention to be engaged. However, it did not find it necessary finally to determine the applicability of Article 8 in the present case since the application was in any event inadmissible on other grounds (the applicant had in particular not shown that he could not have been assisted by other persons in entering the polling station, and the situation

[7] See *Marzari v. Italy*, decision on the admissibility of 4 May 1999; *Maggiolini v. Italy*, decision on the admissibility of 13 January 2000; *Sentges v. the Netherlands*, decision on the admissibility of 8 July 2003; *Pentiacova and Others v. the Republic of Moldova*, decision on the admissibility of 4 January 2005.

[8] Recommendation no. R (92) 6 of the Council of Europe Committee of Ministers to Member States of 9 April 1992 on a coherent policy for people with disabilities; Recommendation 1185 (1992) of the Parliamentary Assembly of the Council of Europe to Member States of 7 May 1992 on rehabilitation policies for the disabled; Article 15 ("Right of persons with disabilities to independence, social integration and participation in the life of the community") of the revised European Social Charter, opened for signature on 3 May 1996; Recommendation Rec(2006)5 of the Committee of Ministers of 5 April 2006 on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

complained of concerned one isolated incident as opposed to a series of obstacles, architectural or otherwise, preventing physically disabled applicants from developing their relationships with other people and the outside world). The complaint under Article 8 of the Convention was therefore manifestly ill-founded.

Assisted suicide[9] and personal autonomy

Pretty v. the United Kingdom

29 April 2002

This case concerned the authorities' refusal to give undertaking not to prosecute the applicant's husband if he assisted her to commit suicide. The applicant was dying of motor neurone disease, a degenerative disease affecting the muscles for which there is no cure. Given that the final stages of the disease are distressing and undignified, she wished to be able to control how and when she died. Because of her disease, she could not commit suicide alone. The applicant argued in particular that, while the right to self-determination ran like a thread through the Convention as a whole, it was Article 8 (right to respect for private and family life) in which that right was most explicitly recognised and guaranteed. She submitted that it was clear that this right encompassed the right to make decisions about one's body and what happened to it, and that this included the right to choose when and how to die.

Although no previous case had established as such any right to self-determination as being contained in Article 8 (right to respect for private and family life) of the Convention, the Court considered that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees. In the present case, the applicant was suffering from the devastating effects of a degenerative disease which would cause her condition to deteriorate further and increase her physical and mental suffering. Without in any way negating the principle of sanctity of life, it is under Article 8 that notions of the quality of life take on significance and it could not be excluded that preventing the applicant from exercising her choice to avoid an undignified and distressing end to her life constituted an interference with her right to respect for her private life. Article 8 of the Convention was therefore applicable.

In the present case, the Court held that there had been **no violation of Article 8** of the Convention, finding that the interference in issue may be justified as necessary in a democratic society for the protection of the rights of others. Doubtless the condition of terminally ill individuals will vary. But many will be vulnerable and it is the vulnerability of the class which provided the rationale for the law in issue. It is primarily for States to assess the risk and the likely incidence of abuse if the general prohibition on assisted suicides were relaxed or if exceptions were to be created.

Deprivation of legal capacity[10]

Shtukaturov v. Russia (see also above, under "Right to a fair trial")

27 March 2008

The applicant has a history of mental illness and was declared officially disabled in 2003. Following a request lodged by his mother, the Russian courts declared him legally incapable in December 2004. His mother was subsequently appointed his guardian and, in November 2005, she admitted him to a psychiatric hospital. The applicant alleged in particular that he had been deprived of his legal capacity without his knowledge. He further alleged that he had been unlawfully confined to a psychiatric hospital where he had been unable to obtain a review of his status or meet his lawyer and he had received medical treatment against his will.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention on account of the applicant being fully deprived of his legal capacity, finding that the interference with his private life had been

[9] See also the factsheet on "Euthanasia and assisted suicide".
[10] See also the factsheet on "Mental health".

disproportionate to the legitimate aim pursued by the Russian Government of protecting the interests and health of others. This interference had resulted in the applicant having become fully dependent on his official guardian in almost all areas of his life for an indefinite period, and it could only be challenged through his guardian, who had opposed all attempts to discontinue the measure. Referring in particular to the principles for the legal protection of incapable adults outlined by the Council of Europe's Committee of Ministers in Recommendation no. R (99) 4 of 23 February 1999, recommending that legislation be more flexible by providing a "tailor-made" response to each individual case, the Court observed that Russian legislation only made a distinction between full capacity and full incapacity of mentally ill persons and made no allowances for borderline situations.

Financial aid to parents to raise a disabled child

La Parola and Others v. Italy

30 November 2000 (decision on the admissibility)

The first two applicants, who were unemployed, were the parents of the third applicant, a minor who had been disabled since birth, on whose behalf they also acted. They alleged in particular that, by refusing their disabled child effective medical and financial assistance, the Italian State was violating his right to life and health.

The Court declared the application **inadmissible** (manifestly ill-founded). It observed that the applicants were already in receipt of benefit on a permanent basis to assist them to cope with their son's disabilities. The scale of that benefit showed that Italy was already discharging its positive obligations under Article 8 (right to respect for private and family life) of the Convention.

Lack of access to prenatal genetic tests

R.R. v. Poland (no. 27617/04)

26 May 2011

A pregnant mother-of-two - carrying a child thought to be suffering from a severe genetic abnormality - was deliberately denied timely access to the genetic tests to which she was entitled by doctors opposed to abortion. Six weeks elapsed between the first ultrasound scan indicating the possibility that the foetus might be deformed and the results of the amniocentesis, too late for her to make an informed decision on whether to continue the pregnancy or to ask for a legal abortion, as the legal time limit had by then expired. Her daughter was subsequently born with abnormal chromosomes. The applicant submitted that bringing up and educating a severely-ill child had been damaging to herself and her other two children. Her husband also left her following the birth of their third child.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention because Polish law did not include any effective mechanisms which would have enabled the applicant to have access to the available diagnostic services and to take, in the light of their results, an informed decision as to whether or not to seek an abortion. Given that Polish domestic law allowed for abortion in cases of foetal malformation, there had to be an adequate legal and procedural framework to guarantee that relevant, full and reliable information on the foetus' health be made available to pregnant women. The Court did not agree with the Polish Government that providing access to prenatal genetic tests was in effect providing access to abortion. Women sought access to such tests for many reasons. In addition, States were obliged to organise their health services to ensure that the effective exercise of the freedom of conscience of health professionals in a professional context did not prevent patients from obtaining access to services to which they were legally entitled. In this case the Court also found a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention as the applicant, who was in a very vulnerable position, had been humiliated and "shabbily" treated, the determination of whether she

should have had access to genetic tests, as recommended by doctors, being marred by procrastination, confusion and lack of proper counselling and information.

Lack of legal representation of a disabled child

A. M. M. v. Romania (no. 2151/10)

14 February 2012

This case concerned proceedings to establish paternity of a minor who was born in 2001 outside marriage and who has a number of disabilities. He had been registered in his birth certificate as having a father of unknown identity. Before the European Court, the applicant was first represented by his mother and subsequently, since his mother suffered from a serious disability, by his maternal grandmother.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, finding that the domestic courts did not strike a fair balance between the child's right to have his interests safeguarded in the proceedings and the right of his putative father not to undergo a paternity test or take part in the proceedings. Having to ascertain whether the Romanian State, in its conduct of the proceedings to establish the applicant's paternity, had acted in breach of its positive obligation under Article 8 of the Convention, it observed in particular that the guardianship office, which under the national legislation was responsible for protecting the interests of minors and persons lacking legal capacity, including in judicial proceedings in which they were involved, had not taken part in the proceedings as it was required to do, while neither the applicant nor his mother had been represented by a lawyer at any point in the proceedings. Regard being had to the child's best interests and the rules requiring the guardianship office or a representative of the public prosecutor's office to participate in paternity proceedings, it had been up to the authorities to act on behalf of the applicant in order to compensate for the difficulties facing his mother and avoid his being left without protection.

Medical treatment and lack of consent

Glass v. the United Kingdom

9 March 2004

This case concerned the administration of drugs to a severely disabled child (the second applicant) despite his mother's (the first applicant) opposition. Believing that the child had entered a terminal phase and, with a view to relieving his pain, the doctors had administered diamorphine to him against the mother's wishes. Moreover, a "do not resuscitate" notice had been added to the child's file without consulting the mother. During this time, disputes broke out in the hospital involving family members and the doctors. The child survived the crisis and was able to be discharged home. The applicants argued in particular that United Kingdom law and practice had failed to guarantee the respect for the child's physical and moral integrity.

The Court held that the decision of the authorities to override the mother's objections to the proposed treatment in the absence of authorisation by a court had resulted in a **breach of Article 8** (right to respect for private and family life) of the Convention. It considered that the decision to impose treatment on the second applicant in defiance of his mother's objections had given rise to an interference with his right to respect for his private life, and in particular his right to physical integrity. This interference was in accordance with the law and the action taken by the hospital staff had pursued a legitimate aim. As to the necessity of the interference at issue, it had however not been explained to the Court's satisfaction why the hospital had not sought the intervention of the courts at the initial stages to overcome the deadlock with the mother. The onus to take such an initiative and defuse the situation in anticipation of a further emergency was on the hospital. Instead, the doctors used the limited time available to try to impose their views on the mother.

Professional misconduct of medical staff

Spyra and Kranczkowski v. Poland

25 September 2012

The applicants, a mother and son – who now has a serious disability, requiring permanent assistance, continuous re-adaptation and a special diet –, alleged that the second applicant's disability had been caused by a lack of appropriate medical treatment when the first applicant had given birth in hospital, in particular because the nursing staff had failed to meet the standards for the care of new-born babies. The applicants also complained about the lack of effectiveness of the procedures undertaken by the Polish authorities to elucidate the origin of the handicap.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. Noting in particular that according to the experts' reports the treatment provided to the applicants had been adequate and in line with the rules of medical practice, it found that the State's responsibility was not engaged under the substantive head of Article 8. As to the procedural head of that Article, the Court first noted that the applicants had made good use of the remedies available to them in order to shed light on the origins of the son's disability. The applicants had also had their case examined in civil proceedings at three levels of jurisdiction and by the disciplinary board of the medical association, in the context of procedures that could not be criticised and that had ruled out any connection between the medical staff's actions and the applicant's disability, having shed light on the origin of the problem. Therefore, even though the conducting of the criminal investigation might have raised issues under Article 8, the Polish legal system, taken as a whole, had provided the applicants with remedies by which to have their case examined adequately.

Rape of a mentally disabled person

X and Y v. the Netherlands (no. 8978/80)

26 March 1985

A girl with a mental handicap (the second applicant) was raped, in the home for children with mental disabilities where she lived, the day after her sixteenth birthday (which was the age of consent for sexual intercourse in the Netherlands) by a relative of the person in charge. She was traumatised by the experience but deemed unfit to sign an official complaint given her low mental age. Her father (the first applicant) signed in her place, but proceedings were not brought against the perpetrator because the girl had to make the complaint herself. The domestic courts recognised that there was a gap in the law.

The Court recalled that although the object of Article 8 (right to respect for private and family life) of the Convention is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. In the present case, the Court found that the protection afforded by the civil law in the case of wrongdoing of the kind inflicted on the second applicant was insufficient. This was a case where fundamental values and essential aspects of private life were at stake. Effective deterrence was indispensable in this area and it could be achieved only by criminal-law provisions. Observing that the Dutch Criminal Code had not provided her with practical and effective protection, the Court therefore concluded, taking account of the nature of the wrongdoing in question, that the second applicant had been the victim of a **violation of Article 8** of the Convention.

Withdrawal of parental authority, placement of children, and disabled parents' access rights to their children

Kutzner v. Germany

26 February 2002

The applicants, husband and wife, and their two daughters had lived since the children's birth with the first applicant's parents and an unmarried brother in an old farmhouse. The applicants had attended a special school for people with learning difficulties. Owing to their late physical and, more particularly, mental development, the girls were examined on a number of occasions by doctors. On the advice of one of the doctors and on application by the applicants, the girls had received educational assistance and support from a very early age. The applicants complained that the withdrawal of their parental authority in respect of their daughters and the placement of the latter in foster families, mainly on the grounds that they did not have the intellectual capacity to bring up their children, had breached their right to respect for their family life.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It recognised that the authorities may have had legitimate concerns about the late development of the children noted by the various social services departments concerned and the psychologists. However, it found that both the order for placement in itself and, above all, its implementation had been unsatisfactory. In the instant case, the Court considered that although the reasons relied on by the administrative and judicial authorities had been relevant, they had not been sufficient to justify such a serious interference in the applicants' family life. Notwithstanding the domestic authorities' margin of appreciation, the interference had therefore not been proportionate to the legitimate aims pursued.

Saviny v. Ukraine

18 December 2008

This case concerned the placement of children in public care on ground that their parents, who have both been blind since childhood, had failed to provide them with adequate care and housing. The domestic authorities based their decision on a finding that the applicants' lack of financial means and personal qualities endangered their children's life, health and moral upbringing. Notably they were unable to provide them with proper nutrition, clothing, hygiene and health care or to ensure that they adapt in a social and educational context. The applicants had appealed against the decision unsuccessfully.

The Court held that there had been a **violation of Article 8** (right to respect of private and family life) of the Convention, doubting the adequacy of the evidence on which the authorities had based their finding that the children's living conditions had in fact been dangerous to their life and health. The judicial authorities had only examined those difficulties which could have been overcome by targeted financial and social assistance and effective counselling and had not apparently analysed in any depth the extent to which the applicants' irremediable incapacity to provide requisite care had been responsible for the inadequacies of their children's upbringing. Indeed, as regards parental irresponsibility, no independent evidence (such as an assessment by a psychologist) had been sought to evaluate the applicants' emotional or mental maturity or motivation in resolving their household difficulties. Nor had the courts examined the applicants' attempts to improve their situation. Furthermore, the Court noted that at no stage of the proceedings had the children been heard by the judges. Moreover, not only had the children been separated from their family of origin, they had also been placed in different institutions.

A.K. and L. v. Croatia (no. 37956/11)

8 January 2013

The first applicant is the mother of the second applicant, who was born in 2008. Soon after his birth, the second applicant was placed, with his mother's consent, in a foster

family in another town, on the grounds that his mother had no income and lived in a dilapidated property without heating. The first applicant complained in particular that she had not been represented in subsequent court proceedings which had resulted in a decision divesting her of her parental rights, on the ground that she had a mild mental disability, and that her son had been put up for adoption without her knowledge, consent or participation in the adoption proceedings.
The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. Observing in particular that, despite the legal requirement and the authorities' findings that the first applicant suffered from a mild mental disability, she had not been represented by a lawyer in the proceedings divesting her of parental rights, and that, by not informing her about the adoption proceedings the national authorities had deprived her of the opportunity to seek restoration of her parental rights before the ties between her and her son had been finally severed by his adoption, the Court found that the first applicant had thus been prevented from enjoying her right guaranteed by domestic law and had not been sufficiently involved in the decision-making process.

Dmitriy Ryabov v. Russia

1 August 2013
The applicant complained about only having restricted access to his son following his placement in his maternal grandparents' care soon after being born in April 2002 as he and his wife (now deceased) were both suffering from schizophrenia. He alleged in particular that the court decisions to restrict his parental rights on the ground that he was a danger to his son had not been convincing and that any contact that had been granted to him had been illusory as it had to take place with the consent of his son's guardian, the maternal grandmother, who was hostile to him having any contact with his son.
In the circumstances of the present case, the Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It was not disputed that the restriction of the applicant's parental rights had amounted to an interference with his right to respect for his family life. This interference had however been in accordance with the law, pursued the legitimate aim of protecting the health and morals and rights and freedoms of the child, and had been necessary in a democratic society, within the meaning of Article 8 of the Convention.

Right to marry (Article 12 of the Convention)

Lashin v. Russia

22 January 2013
The applicant suffers from schizophrenia and has been legally incapacitated since 2000. In 2002 he and his fiancée applied to the competent authority in order to register their marriage. However, they were unable to do so as the Russian Family Code prohibits persons legally incapacitated due to a mental disorder from getting married.
Having already found a **violation of Article 8** (right to respect for private and family life) of the Convention on account of the maintenance of the applicant's status as an incapacitated person and his inability to have it reviewed in 2002 and 2003, the Court considered that there was **no need for a separate examination under Article 12** (right to marry) of the Convention. The applicant's inability to marry was one of many legal consequences of his incapacity status.

Prohibition of discrimination (Article 14 of the Convention)

Glor v. Switzerland

30 April 2009
The applicant, who suffers from diabetes and was declared unfit for military service by a

military doctor, was nevertheless required to pay a tax for not doing his military service. He considered this as discrimination and argued that he was quite willing to do military service but was prevented from doing it, yet nevertheless obliged to pay a tax by the competent authorities, who considered his disability a minor one. The applicant alleged that the disability threshold (40% physical or mental disability) used as the criterion for exemption from the impugned tax had no legal basis.
Referring in particular to Recommendation 1592 (2003) towards full social inclusion of people with disabilities, adopted by the Parliamentary Assembly of the Council of Europe on 29 January 2003, and to the United Nations Convention on the Rights of Persons with Disabilities[11], the Court considered that there was a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment. It held that in the present case there had been a **violation of Article 14** (prohibition of discrimination), **taken in conjunction with Article 8** (right to respect for private and family life), of the Convention, finding that the domestic authorities had not struck a fair balance between the protection of the interests of the community and respect for the applicant's rights and freedoms. In the light of the aim and effects of the impugned tax, the objective justification for the distinction made by the domestic authorities, particularly between persons who were unfit for service and not liable to the tax in question and persons who were unfit for service but nonetheless obliged to pay it, did not seem reasonable in relation to the principles which prevailed in democratic societies.

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

Koua Poirrez v. France

30 September 2003
The applicant, an Ivory Coast national, who was adopted by a French national, has suffered from a severe physical disability since the age of seven. The French authorities issued him with a card certifying that he was 80% disabled. In 1990 the Family Allowances Office refused to award him a disabled adult's allowance (D.A.A.) on the ground that he was not a French national and there was no reciprocal agreement between France and the Ivory Coast in respect of this benefit. The applicant unsuccessfully challenged this decision in the French courts.
The Court considered that a non-contributory benefit such as the D.A.A. could give rise to a pecuniary right for the purposes of Article 1 (protection of property) of Protocol No. 1 to the Convention. It held that in the present case there had been a **violation of Article 14** (prohibition of discrimination) of the Convention **taken in conjunction with Article 1 of Protocol No. 1**, finding that there was no objective and reasonable justification for the difference in treatment between French nationals or nationals of countries that had signed a reciprocal agreement and other foreigners. Even though – at the material time – France was not bound by a reciprocal agreement with the Ivory Coast, it had undertaken, in ratifying the Convention, to secure to everyone within its jurisdiction – which the applicant unquestionably was – the rights and freedoms defined in the Convention.

Draon v. France and Maurice v. France

6 October 2005 (Grand Chamber)
The applicants are parents of children with severe congenital disabilities which, due to medical errors, were not discovered during prenatal medical examinations. They brought proceedings against the hospital authorities concerned, but as a result of a new law, which came into force while their actions were pending, they were awarded compensation only for non-pecuniary damage and not for the actual costs incurred as a result of their children's disability.

[11] See above, footnote no. 2.

The Court held that there had been a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, finding that the new law had abolished, with retrospective effect, a substantial portion of the claim to recovery of damages which the applicants could legitimately have expected to be realised, and they had not received appropriate compensation since then.

Right to education (Article 2 of Protocol No. 1 to the Convention)

Pending case

Gherghina v. Romania (no. 42219/07)

Application declared partly inadmissible and partly communicated to the Romanian Government on 6 March 2012 – Relinquishment of jurisdiction in favour of the Grand Chamber in January 2014

In 2001, while he was enrolled in the first year of university, the applicant had an accident which resulted in severe physical impairment in his lower limbs. He complains in particular that he is the victim of a violation of his right to education, and of discrimination based on his physical impairment, on account of the alleged impossibility for him to pursue his university studies in his town of residence or nearby, given the lack of facilities adapted to his disability in the premises where the classrooms are located.

In a decision of 6 March 2012, the Chamber to which the case had been allocated adjourned the examination of the applicant's complaints under Articles 8 (right to respect for private and family life) of the Convention and 2 (right to education) of Protocol No. 1 to the Convention, taken alone or in conjunction with Article 14 (prohibition of discrimination) of the Convention. Considering that it was not in a position, at this stage, to decide on the admissibility of these complaints, it found it necessary to communicate them to the Romanian Government (the questions put by the Court to the parties can be found here).

On 14 January 2014 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

The Grand Chamber will hold a hearing in the case on 12 November 2014 at 9.15 a.m.

Right to vote (Article 3 of Protocol no. 1 to the Convention)

Alajos Kiss v. Hungary

20 May 2010

Diagnosed with a psychiatric condition in 1991, the applicant was placed under partial guardianship in May 2005 on the basis of the civil code. In February 2006, he realised that he had been omitted from the electoral register drawn up in view of the upcoming legislative elections. His complaint to the electoral office was to no avail. He further complained to the district court, which in March 2006 dismissed his case, observing that under the Hungarian Constitution persons placed under guardianship did not have the right to vote. When legislative elections took place in April 2006, the applicant could not participate. The applicant complained that his disenfranchisement, imposed on him because he was under partial guardianship for a psychiatric condition, constituted an unjustified deprivation of his right to vote, which was not susceptible to any remedy since it was prescribed by the Constitution, and which was discriminatory in nature.

The Court held that there had been a **violation of Article 3** (right to free elections) **of Protocol No. 1** to the Convention, finding that the indiscriminate removal of voting rights without an individualised judicial evaluation, solely on the grounds of mental disability necessitating partial guardianship, could not be considered compatible with the legitimate grounds for restricting the right to vote. The Court observed in particular that the State had to have very weighty reasons when applying restrictions on fundamental rights to particularly vulnerable groups in society, such as the mentally disabled, who were at risk of legislative stereotyping, without an individualised evaluation of their

capacities and needs. The applicant had lost his right to vote as a result of the imposition of an automatic, blanket restriction. It was questionable to treat people with intellectual or mental disabilities as a single class and the curtailment of their rights had to be subject to strict scrutiny.

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