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COMMITTEE ON BIOETHICS (DH-BIO)

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

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Recent case-law

Liability of health professionals

Judgments

[Sarishvili-Bolkvadze v. Georgia](#), no. 58240/08, 19 July 2018

The case concerned the applicant's complaint about the authorities' duty to protect her son's life from medical negligence and the adequacy of their response to his death.

The Court found that there had been **a violation of Article 2 (right to life)** because of the authorities' failure to provide an effectively functioning regulatory framework, and **a violation of Article 2** because of shortcomings in the civil proceedings for compensation. The Court noted that some of the doctors who had cared for the applicant's son had not had proper licences and that the hospital itself had been carrying out various medical activities without the necessary permits. That showed failings in Georgia's implementation of its regulatory framework for ensuring patient safety, meaning it had failed to live up to its duties under the Convention.

Vlase v. Romania, no. 80784/13, 24 July 2018
([Judgment available in French only](#))

The applicants complained of the lack of an effective investigation following their criminal complaint concerning their father's death in a military hospital following post-operative complications.

The Court found **a violation of the procedural aspect of Article 2 (right to life)**.

Bilinmiş v. Turkey, no. 28009/10, no. 28009/10, 23 October 2018
([Judgment available in French only](#))

The case concerned the death of the applicants' newborn children in a public hospital. According to expert reports, one of the babies died from a hospital-acquired infection. The second twin died after having been treated with a contaminated solution of "total parenteral nutrition".

The Court concluded that there had been **a violation of the procedural aspect of Article 2** (lack of effective investigation into the second twin's death).

Elvan Alkan and Others v. Turkey, no. 43185/11, 23 October 2018
([Judgment available in French only](#))

The applicants alleged that the first applicant's permanent disability, assessed at 28%, had been the result of medical negligence.

The Court concluded that there had been a **violation of Article 8** (right to respect for private and family life).

Erkan Birol Kaya v. Turkey no. 38331/06, 23 October 2018
([Judgment available in French only](#))

The case concerned an alleged instance of medical negligence which, in the applicant's view, resulted in his leg being amputated.

The Court concluded that there had been **no violation of the substantive limb of Article 8 (right to respect for private life)** and that there had been a **violation of the procedural limb of Article 8 (lack of an effective investigation)**.

Discrimination on Grounds of Health

Judgment

[Ibrogimov v. Russia](#), no. 32248/12, 15 May 2018 (Committee)

The applicant complained about having been excluded from Russian Territory, where his parents and siblings resided, on the ground that he was HIV positive.

The Court held that there had been a **violation of Article 14 (prohibition of discrimination)**, read together with **Article 8 (right to respect for private life)**.

Reproductive Rights

Judgments

[Pojatina v. Croatia](#), no. 18568/12, 4 October 2018

The applicant in the case was a mother who had given birth to her fourth child at home with the help of a midwife from abroad. She alleged in particular that, although Croatian law allowed home births, women such as her could not make this choice in practice because they were not able to get professional help.

The Court held that there had been **no violation of Article 8 (right to respect for private and family life)** of the Convention. The Court found that the applicant had clearly been made aware that the domestic law did not allow assisted home births. It further found that the authorities had struck the right balance between the applicant's right to respect for her private life and the State's interest in protecting the health and safety of mothers and children. It pointed out in particular that Croatia was not currently required under the Convention to allow planned home births. There was still a great disparity between the legal systems of the Contracting States on home births and the Court was sensitive to the fact that the law developed gradually in this area.

Pending cases

[Gauvin-Fournis v. France](#), no. 21424/16

[Silliau v. France](#), no. 45728/17

(statements of facts available in French only)

applications communicated to the French Government on 5 June 2018

The applicants, who have been born following artificial insemination with donor sperm, complain under **Article 8 (right to respect for private life)** and **Article 14 (prohibition of discrimination)** about being deprived of access to information on the identity of the donor.

Surrogacy

Pending case

[Maillard and Others v. France](#) (no. 17348/18)

application communicated to the French Government on 23 May 2018

(statement of facts available in French only)

Request for an advisory opinion under Protocol No. 16 to the Convention

On 16 October 2018 the Court received a [request for an advisory opinion](#) on two questions relating to surrogacy from the French Court of Cassation.

Prisoners' health-related rights

Judgments

[Ebedin Abi v. Turkey](#), no. 10839/09, 13 March 2018

The applicant, who suffered from type 2 diabetes and from coronary artery disease, complained about his diet while he was in detention and, in particular, of not being provided with meals compatible with the diet that doctors had prescribed for him, and of a deterioration in his health as a result.

The Court held that there had been **a violation of Article 3 (prohibition of inhuman or degrading treatment)**, finding that the Turkish authorities had not taken the necessary measures to protect the applicant's health and well-being and had failed to ensure that his conditions of detention were adequate and respected his human dignity.

[Zabelos and Others v. Greece](#), no. 1167/15, 17 May 2018

The applicants are 18 persons who were or are still detained in Korydallos Prison Hospital. They all suffer from HIV infection, apart from one applicant who suffers from chronic obstructive pulmonary disease. The applicants complained in particular about the conditions of their detention, namely of overcrowding at the prison hospital, which had resulted in a deterioration of their already fragile health.

The Court found **violations of Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy)**.

[Provenzano v. Italy](#), no. 55080/13, 25 October 2018

The applicant, now deceased, was arrested in 2006. He was subsequently convicted of numerous extremely serious offences, and sentenced to several life sentences. After his arrest, he was imprisoned under a restrictive regime in Italy to prevent those convicted of mafia-related crimes from maintaining contact with members of the criminal organisation within or outside prison. The applicant became progressively seriously ill in prison and, notably, his cognitive functioning declined. He was eventually hospitalised in 2014 in the correctional wing of the San Paolo civil hospital in Milan, where he remained until his death in 2016.

The Court found **no violation of Article 3 (prohibition of inhuman or degrading treatment) in respect of the conditions of detention and a violation of Article 3 on account of the renewed application of the special prison regime on 23 March 2016**.

Detention and mental health

Grand Chamber hearing

[Rooman v. Belgium](#), no. 18052/11, Grand Chamber hearing on 6 June 2018

The case concerned proceedings brought by the applicant on account of the lack of psychiatric care in the facility in which he was being detained.

The Chamber found a **violation of Article 3 (prohibition of inhuman or degrading treatment)**. The Chamber found in particular that the national authorities had not provided adequate care for the detainee because of the lack of care staff who could speak German, the only language he knew and one of Belgium's official languages. The Chamber held, however, that there had been **no violation of Article 5 § 1 (right to liberty and security)**. It considered, in particular, that there was still a link between the reason for the applicant's detention and his mental illness.

On 11 December 2017 the Grand Chamber Panel accepted the applicant's request that the case be referred to the Grand Chamber. **The Grand Chamber held a hearing on 6 June 2018**.

Judgments

[D.R. v. Lithuania](#), 691/15, 26 June 2018

The case concerned the applicant's complaint that she had been taken for a psychiatric assessment and committed to a psychiatric hospital for one year against her will.

The Court concluded that there had been a **violation of Article 5 (right to liberty and security)**. It noted, in particular, that the applicant had not been heard in person by any of the courts deciding on her placement.

[M.T. v. Estonia](#), no. 75378/13, 23 October 2018

The case concerned the applicant's complaint about the proceedings for review of her son's internment in a psychiatric institution.

The Court found that there had been **no violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court)**.

Admissibility decision

[Guelfucci v. France](#), no. 31038/12, 26 July 2018

The applicant challenged the lawfulness of her forced hospitalization in a psychiatric hospital at the request of the applicant's father.

The Court considered that the application did not disclose any appearance of a violation of the right to liberty and security and was therefore **to be declared inadmissible**.

Failure to protect a person's physical integrity

Judgment

[Milićević v. Montenegro](#), no. 27821/16, 6 November 2018

The applicant has been attacked inside a coffee bar with a hammer and was taken to hospital with a head injury. He complained that the State had failed to protect him from the attack, despite the police being aware of the risk the aggressor posed. It transpired that the aggressor suffered from schizophrenia, that he had a history of violent behaviour and that the police often had complaints about him.

The Court found that there had been **a violation of Article 8 (right to respect for private and family life)** as the State had failed to prevent the attack on the applicant.

Gender identity issues

Judgment

[S.V. v. Italy](#), no. 55216/08, 11 October 2018

This case concerned the Italian authorities' refusal to authorise a transgender person with a female appearance to change her male forename, on the grounds that she had not yet undergone gender reassignment surgery and that no final judicial decision had been given confirming gender reassignment.

The Court held that there had been a violation of **Article 8 (right to respect for private life)**. It found in particular that the applicant's inability to obtain a change of forename over a period of two and a half years, amounted to a failure by the State to comply with its positive obligation to secure the applicant's right to respect for her private life.

Female genital mutilation

Strike out decision

[Soumah v. the Netherlands](#), 61452/15, 5 June 2018

The applicant complained that her minor daughter, who was born in the Netherlands, would be subjected to female genital mutilation, and thus treatment contrary to Article 3 (prohibition of torture and inhuman or degrading treatment), if they were to be returned to Guinea.

After the Government had been given notice of the application, they informed the Court that the Belgian authorities had granted the applicant a residence permit, which was valid until 17 July 2022. On this basis, the Court considered that the matter complained of had been resolved and decided to strike the application out of its list of cases.

Factsheets

Prepared by the Court's Press Service, Factsheets focus on the case law of the Court, and pending cases. These files are not exhaustive and do not bind the Court. The date indicates the latest update of the factsheet.

- [Personal data protection \(September 2018\)](#)
- [Health \(July 2018\)](#)
- [Reproductive rights \(October 2018\)](#)
- [Gestational Surrogacy \(October 2018\)](#)
- [Right to life \(June 2013\)](#)
- [End of life and the European Convention on Human Rights \(January 2018\)](#)
- [Prisoners' health-related rights \(May 2018\)](#)
- [Detention and mental health \(June 2018\)](#)
- [Persons with disabilities and the European Convention on Human Rights \(October 2018\)](#)
- [Children's rights \(June 2018\)](#)
- [Elderly people and the European Convention on Human Rights \(October 2018\)](#)
- [Gender identity issues \(October 2018\)](#)
- [New technologies \(February 2018\)](#)