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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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based on the terms of the official documents published by the ECtHR

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## Recent case-law

### Liability of health professionals

#### *Judgment*

[Ulusoy v. Turkey](#), no. 54969/09, 25 June 2019

Request for referral to the Grand Chamber rejected on 05 November 2019

The applicants in this case attributed their son's permanent and irreversible disability to medical negligence during the prenatal and delivery phases of pregnancy. They also complained about the lack of an effective investigation into their allegations.

Concerning **the procedural limb** (investigation into the allegations of medical negligence), the Court held that no authority had been able to provide a consistent and scientifically based response to the applicants' allegations and complaints or to assess the possible responsibility of the health professionals with full knowledge of the facts.

Concerning **the substantive limb** (protection of the moral and physical integrity of individuals in the context of the provision of medical care), the Court noted that the applicants' complaints broadly concerned an erroneous evaluation of the prenatal risks during the labour and childbirth phases. The Court considered therefore that the case primarily concerned allegations of simple errors or negligence. In that connection, reiterating its findings in the case of [Lopes de Sousa Fernandes v. Portugal](#), the Court pointed out that the substantive positive obligations on Turkey were confined to the effective introduction and implementation of a statutory framework capable of protecting patients. It then noted that the statutory framework in force at the material time did not, per se, point to any infringement on the part of the State.

The Court unanimously found **a violation of the procedural limb of Article 8 (right to respect for private life)** and **no violation of the substantive limb of that provision**.

### Access to medication

#### *Judgment*

[Fedulov v. Russia](#), no. 53068/08, 08 October 2019

The case concerned the applicant's complaint about the authorities' failure to provide him with the free drugs to which he had been entitled for his cancer care.

The applicant was diagnosed with cancer in 2007. He was found to be entitled to free medicine, which he needed for eight to 12 months. However, the pharmacy assigned to provide him with the pills free of charge only supplied him once on those terms. On all

other occasions it told him it was out of stock of free medication but that he could buy it at his own expense. Over the following months he paid 1,400 euros for the treatment. He complained to the authorities and the courts about the lack of free medicine and sought to have his expenses reimbursed, but in February 2008 the District Court rejected his claim in full. It found that the authorities involved had done all that was required of them by law.

Relying on Article 1 of Protocol No. 1 (protection of property), the applicant complained about the fact that he had not been provided with the free medicine to which he had been entitled by law and that the authorities had failed to reimburse him after he had had to buy the necessary drugs himself.

The Court concluded that there had been **a violation of Article 1 of Protocol No.1 (protection of property)**.

## Reproductive rights

### Home births

#### *Judgment*

[Kosaitė-Čypienė and Others v. Lithuania](#), no. 69489/12, 4 June 2019

This case concerned Lithuania's law on medical assistance for home births. The applicants, four women, had unsuccessfully requested that the Ministry of Health amend the legislation that prohibited medical professionals from assisting in home births. They complained in particular that the law had dissuaded healthcare professionals from assisting in home births.

The Court held that there had been **no violation of Article 8 (right to respect for private life)** of the Convention. It found that Lithuania had struck a fair balance between the interests involved: namely, the mothers' right to respect for their private life against the State's interest in health and safety. In particular, the four women could have opted for any one of the maternity wards created in Lithuania since the 1990s to ensure home-like conditions for women giving birth, in particular in Vilnius where they lived. Additionally, postnatal care was available if an emergency had arisen during or after a delivery at home. Moreover, although Lithuania had recently changed the law on home births, it had not actually been required to do so under the European Convention given the great disparity between the legal systems of the Contracting States on the matter.

### Surrogacy

#### *Pending applications*

[S.-H. v. Poland](#), nos. 56846/15 and 56849/15, communicated on 26 February 2019

The applicants are twin brothers born in the USA through surrogacy. Their parents are two men, living together in a long-term same-sex relationship. One of their parents, the applicants' genetic father, has Polish citizenship.

The administrative authorities refused their application for Polish nationality on the basis that surrogacy was illegal in Poland and that their birth certificates, indicating two men as their parents, contravened the Polish legal system. Furthermore, according to the Polish legal system and the principle of presumption of paternity, the applicants' parents were the surrogate mother and her husband (USA nationals).

**Communicated under Articles 8 (right to respect of private and family life) and 14 (non-discrimination) of the Convention.**

## Forcible medical intervention

### *Judgment*

[R.S. v. Hungary](#), (no. 65290/14) 2 July 2019

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

The Court held that there **had been a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the Convention, finding that the authorities had subjected the applicant to a serious interference with his physical and mental integrity, against his will, without it even having been necessary seeing as a blood test had also been carried out to find out whether he had been intoxicated.

## Expulsion of ill people

[Savran v. Denmark](#), no. 57467/15, 01 October 2019

The case concerned the applicant's complaint that owing to his mental health his rights would be violated if he were to be returned to Turkey.

The Court found in particular that psychiatrists had recommended that the applicant receive close monitoring and follow-up in order to make the applicant's treatment effective and allow for his reintegration into society after committing a serious offence. The Court had doubts about the applicant receiving such care in Turkey, where moreover he had no family network and would need a regular and personal contact person to help him.

The Court held that that removing the applicant to Turkey without the Danish authorities receiving sufficient and individual assurances on his care in Turkey **would violate Article 3 (prohibition of inhuman or degrading treatment)** of the Convention.

## Detention and mental health

### *Judgments*

[Bruun Hansen v. Denmark](#), no. 51072/15, 9 July 2019

Following previous similar convictions, the applicant was convicted in 1996 of a serious sexual assault of a minor and sentenced to “safe custody” for an indefinite term. His therapeutic treatment, and thus his chances of rehabilitative release from prison, had reached a deadlock in terms of the relationship of trust with staff of the institution, the applicant having refused chemical castration which was a condition of release and, eventually, having refused counselling. In 2015 a court ordered his continued deprivation of liberty. He complained under Article 5 § 1 (a) arguing that his continued imprisonment was not sufficiently linked to the original objective of detention.

The Court found that there had been **a violation of Article 5 (right to liberty)** on the grounds that the domestic court had dismissed the applicant’s specific request for an external expert opinion, although at that point in time the applicant had been detained in safe custody for almost 19 years and the most recent external expert opinion had been from 2007. The decision not to release the applicant, or to apply a more lenient sentence than safe custody, had therefore not been based on an assessment that was reasonable in terms of the objectives pursued by the sentencing court in 1996.

[Solcan v. Romania](#), no. 32074/14, 08 October 2019

The case concerned the authorities’ refusal to allow a person being held in a psychiatric facility to attend her mother’s funeral.

The applicant’s mother died in 2013 and she lodged a request with the district court for leave to attend the funeral. The court refused because she posed a danger to the public on account of her mental health. In a final decision the County Court dismissed her appeal on points of law as there were no legal provisions allowing detention in a psychiatric facility to be interrupted.

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

## Gender identity issues

### *Decision on Admissibility*

[P. v. Ukraine](#), no. 40296/16, 11 June 2019

The applicant complained that there was no procedure in Ukraine allowing intersex people like him to change their gender and name records according to their self-identification. He also complained of the absence of an effective domestic remedy in that regard. Lastly, the applicant complained that he had suffered discrimination in the enjoyment of his Convention rights for being an intersex person. He relied on Articles 8, 13, and 14 of the Convention.

The Court declared the application inadmissible on procedural grounds (**failure to exhaust domestic remedies**).

## **End of life**

### **Euthanasia**

#### *Pending application*

[Mortier v. Belgium](#), no 78017/17, communicated on 3 December 2018

In this case the applicant's mother, who was in a state of chronic depression, was euthanised by a doctor, without the applicant and his sister's knowledge. The Court gave notice of the application to the Belgium Government and put questions to the parties under **Articles 2 (right to life), 8 (right to respect for private and family life) and 35 (admissibility criteria)** of the Convention.

## 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 \(October 2019\)](#)
- [Health \(November 2019\)](#)
- [Reproductive rights \(June 2019\)](#)
- [Gestational Surrogacy \(September 2019\)](#)
- [End of life and the European Convention on Human Rights \(May 2019\)](#)
- [Prisoners' health-related rights \(February 2019\)](#)
- [Detention and mental health \(January 2019\)](#)
- [Persons with disabilities and the European Convention on Human Rights \(October 2019\)](#)
- [Children's rights \(October 2019\)](#)
- [Elderly people and the European Convention on Human Rights \(February 2019\)](#)
- [Gender identity issues \(July 2019\)](#)
- [New technologies \(October 2019\)](#)
- [Parental Rights \(October 2019\)](#)
- [Environment \(June 2019\)](#)