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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

Tülay Yıldız v. Turkey, no. 61772/12, 11 December 2018

[\(Judgment available in French only\)](#)

The case concerned the death of the applicant's mother from a hospital-acquired infection.

Relying in particular on Article 2 (right to life), the applicant complained inter alia about the circumstances of her mother's death.

The Court concluded that there had been **no violation of the substantive limb of Article 2** and that there had been **a violation of the procedural limb of Article 2**.

Nihat Soylu v. Turkey, no. 48532/11, 11 December 2018

[\(Judgment available in French only\)](#)

The case concerned the death of the applicant's son after a surgery following an accident at school.

The applicant complained of the ineffectiveness of the domestic remedies and of the length of the criminal proceedings and the proceedings for compensation. The Court examined his complaints under **Article 2 (right to life – procedural limb)** and held that **there was a violation of the Article 2 under its procedural limb**.

Kanal v. Turkey, no. 55303/12, 15 January 2019

[\(Judgment available in French only\)](#)

The applicant complained of the after-effects (*sequelae*) of a prostatectomy operation (removal of the prostate in order to treat prostate cancer) caused by an error which he had attributed to the medical staff. Relying in particular on **Article 8 (right to respect for private and family life)**, the applicant submitted that the surgical operation had had harmful consequences for his physical integrity and that he had had no effective remedy for his complaint.

The Court held that there was **a violation of the procedural aspect of Article 8 (right to respect for private life)**.

[Öney v. Turkey](#), no. 49092/12, 15 January 2019
([Judgment available in French only](#))

The case concerned the death of the applicants' daughter following a tonsillectomy in a private hospital.

Relying on **Article 6 (right to a fair trial)** the applicant complained that they had not had an effective remedy in order to have the doctors' criminal responsibility and the length of the proceedings examined. The Court examined the applicants' complaints under **Article 2 (right to life)** of the Convention and held that there was **a violation of the procedural aspect of Article 2** of the Convention.

[Bonnemaison v. France](#), no. 32216/15, 11 April 2019

The case concerned the Medical Association's decision to strike the applicant off the medical register following several sudden patient deaths at the short-stay unit (UHCD) of the Côte Basque Hospital in Bayonne, where he worked as an accident and emergency doctor.

Relying on **Article 6 § 1 (right to a fair hearing)** of the European Convention on Human Rights, the applicant alleged that the disciplinary divisions had not been independent and that the Conseil d'État had not been impartial. Under **Article 6 § 2 (presumption of innocence)**, he alleged that the Conseil d'État ought not to have dismissed his application and that his acquittal at first instance exonerated him from disciplinary sanctions.

Lastly, in view of the financial implications of the ban on exercising his profession, the applicant considered that his striking off the register had been in breach of **Article 1 of Protocol No. 1 (protection of property)**.

The Court concluded that **the complaint based on Article 6 §1 had to be rejected** as manifestly ill-founded and that the **Article 6 § 2 was not applicable** to the present case, thus **the complaint had to be dismissed**.

The Court noted that the **alleged violation of Article 1 of Protocol No. 1 had not been expressly raised** before the Conseil d'État. It followed that this part of the application had also to be rejected.

Communicated cases

[K.O. v. Ireland](#), no. 61836/17, communicated on 18 March 2019

The applicant alleges that in 1965, when she gave birth to her first child, symphysiotomy was carried out without her knowledge or consent. She complains under **Article 3** that the State had breached of its positive obligation **to protect women from inhuman and degrading treatment**.

Liability of child-care professionals

Admissibility decision

[Plotnikov v. Russia](#), no. 74971/10, 20 December 2018

The case concerned the death of the applicant's daughter from a meningitis infection and his complaint of the lack of an effective investigation.

The applicant complained that the failure of the nursery school's management to close the school immediately after a child had been admitted to hospital had led to his daughter being infected and dying, and that therefore the State had failed to comply with its obligation under **Article 2 (right to life)** of the Convention to preserve her life.

The Court found that there was no evidence to suggest that the Russian authorities had not met their obligation under Article 2 to protect the life of the applicant's daughter. An investigation had been instigated three days after her death; it had lasted a year and had been conducted in an appropriately thorough manner. Moreover, the applicant had had recourse to an independent judicial system in the wake of his daughter's death.

Therefore, the European Court of Human Rights has unanimously declared the application **inadmissible**.

Clinical research

Communicated case

[Gražulevičiūtė v. Lithuania](#), no.53176/17, communicated on 29 September 2019

The applicant complains under Article 6 § 1 (fairness of proceedings) about the fairness of proceedings refusing to award compensation after her allegedly unlawful suspension from a clinical trial following the death of a patient.

Surrogacy

Advisory opinion

[Advisory opinion concerning the recognition in domestic law of a legal parent child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother](#), no. P16-2018-001, 10 April 2019.

In response to the request made by the French Court of Cassation (in a letter of 12 October 2018 sent to the Registrar of the European Court of Human Rights) the Court delivered, unanimously, the following opinion:

In a situation where a child was born abroad through a gestational surrogacy arrangement and was conceived using the gametes of the intended father and a third-party donor, and where the legal parent-child relationship with the intended father has been recognised in domestic law,

1. the child's right to respect for private life within the meaning of **Article 8 (right to respect for private and family life)** of the European Convention on Human Rights requires that domestic law provide a possibility of recognition of a legal parent-child

relationship with the intended mother, designated in the birth certificate legally established abroad as the “legal mother”;

2. the child’s right to respect for private life does not require such recognition to take the form of entry in the register of births, marriages and deaths of the details of the birth certificate legally established abroad; another means, such as adoption of the child by the intended mother, may be used.

End of life

Decisions on requests for interim orders

[Lambert and Others v. France](#), no. 21675/19, 30 April 2019

On 24 April 2019 members of Vincent Lambert’s family asked the Court **under Rule 39 of the Rules of Court** to indicate to France that it should stay the execution of the authorities’ decision to authorise the withdrawal of Vincent Lambert’s treatment and also that it should prohibit his removal from France.

The Court decided, in the light of the circumstances, to refuse the interim measure requests.

The Court was mindful that, even though **no complaint under Article 2 (right to life)** was before it, the request for interim measures sought once again to oppose the withdrawal of the treatment which was keeping Vincent Lambert alive.

It pointed out that in a [Grand Chamber judgment of 5 June 2015](#), ruling on this essential question, it had found that there would be **no violation of Article 2** of the Convention in the event of implementation of the Conseil d’État judgment of 24 June 2014 authorising the withdrawal of Vincent Lambert’s artificial nutrition and hydration.

On 20 May 2019 the Court decided [to reject a new request for interim measures](#) submitted to it on the same day in this case, pointing out that the applicants had submitted no new evidence such as to induce it to change its position.

Health and military service

Judgments

[B.I. v. Turkey](#), no. 18308/10, 11 December 2018

[\(Judgment available in French only\)](#)

The case concerned a conscript who had had serious health problems during his military service.

Relying in substance on **Article 8 (right to respect for private and family life)**, the applicant alleged that his state of health had deteriorated because of delays and errors in the medical treatment he had received in the military hospitals. He maintained that he had been in good health when he had been recruited and now had a partial disability. Relying on **Article 6 § 1 (impartial tribunal)**, he alleged lack of independence and impartiality on the part of the Supreme Military Administrative Court.

The Court held that there was **no violation of Article 8** and that there had been a **violation of Article 6 § 1**.

Prisoners' health-related rights

[Mammadov and Others v. Azerbaijan](#), no. 35432/07, 21 February 2019

The case concerned an Azerbaijani academic who complained that he had been arrested in 2007, held in unacknowledged detention for 24 hours and then sentenced to 15 days' administrative detention which he had spent in a location unknown either to his family or lawyer. He alleged that he had been ill-treated during that period and had not been provided with medical care for high blood pressure, prostatitis and an overactive thyroid. He died in detention in 2009 of a heart attack.

The Court held, *inter alia*, that there had been: **a violation of Article 3 (prohibition of inhuman or degrading treatment)** as regards Mr Mammadov's ill-treatment between 2 and 17 February 2007. It also held, that there had been **a violation of Article 3** because he had been deprived of medical care between 2 and 17 February 2007.

Detention and mental health

Grand Chamber Judgments

[Rooman v. Belgium](#), no. 18052/11, 31 January 2019

This case concerned the question of the psychiatric treatment provided to a sex offender who had been in compulsory confinement since 2004 on account of the danger that he poses and the lawfulness of his detention. The applicant complained that he had not received the psychological and psychiatric treatment required by his mental-health condition. He also alleged that the lack of treatment was depriving him of the prospect of an improvement in his situation and that, as a result, his detention was unlawful.

The Grand Chamber held that from the beginning of 2004 until August 2017 **there had been a violation of Article 3 (prohibition of inhuman or degrading treatment)**, and **that from August 2017 onwards there had been no violation of Article 3**. It found in particular that the national authorities had failed to provide treatment for the applicant's health condition from the beginning of 2004 to August 2017, and that his continued detention without a realistic hope of change and without appropriate medical support for a period of about thirteen years had amounted to particularly acute hardship, causing him distress of an intensity exceeding the unavoidable level of suffering inherent in detention. In contrast, the Court held that since August 2017 the authorities had shown a real willingness to remedy the applicant's situation by undertaking tangible measures, and that the threshold of severity required to bring Article 3 into play had not been reached.

The Grand Chamber also held that from the beginning of 2004 until August 2017 **there had been a violation of Article 5 (right to liberty and security)** and that from August 2017 onwards there had been **no violation of Article 5**. In that regard, the Court decided in particular to refine its case-law principles, and to clarify the meaning of the obligation on the authorities to provide treatment to persons placed in compulsory confinement. The Court then held that the applicant's deprivation of liberty during the

period from the beginning of 2004 to August 2017 had not taken place in an appropriate institution which was capable of providing him with treatment adapted to his condition, as required by Article 5 § 1. In contrast, it found that the relevant authorities had drawn the necessary conclusions from the Chamber judgment of 18 July 2017 and had put in place a comprehensive treatment package, leading it to conclude that there had been no violation of this provision in respect of the period since August 2017.

[Fernandes de Oliveira v. Portugal](#), no. 78103/14, 31 January 2019

The case concerned the suicide of the applicant's adult son while he was a voluntary inpatient at a psychiatric hospital and the civil proceedings for damages the applicant, his mother, pursued following his death.

The Court held that there has been **no violation of the substantive limb of Article 2** (right to life). The Court considered that the regulatory framework for the care of the applicant's son was in line with Convention requirements for protecting patients under Article 2. Evolving its case-law, it held that States must take reasonable measures to protect voluntary psychiatric inpatients, as well as those who are involuntarily placed in hospital. In this case, the authorities had provided sufficient safeguards given the lack of a clear and imminent risk of suicide.

However, the Government had failed to give convincing reasons for the length of the domestic compensation proceedings – more than 11 years – and accordingly there had been **a violation of the procedural aspect of Article 2**.

Judgments

[Hodžić v. Croatia](#), no. 28932/14, 4 April 2019

The case concerned the proceedings for the applicant's confinement in a psychiatric hospital. The Court held that there has been a **violation of Article 6 § 1 (right to a fair trial) in its criminal limb** concerning the proceedings before the criminal courts. It also held that there has been a **violation of Article 6 § 1 in its civil limb** concerning the proceedings for the applicant's placement in a psychiatric hospital.

The Court found in particular that, without obtaining another expert report addressing the applicant's objections or giving him an opportunity to examine an "expert" on his behalf, his possibility to challenge the conclusions of an expert report commissioned by the prosecution had been significantly hampered.

It further noted that in the subsequent proceedings for the applicant's committal to a psychiatric hospital, he had been unable to adduce any evidence in his favour challenging the necessity and grounds for his placement there.

[Čutura v. Croatia](#), no. 55942/15, 10 January 2019

The case concerned a court order to keep the applicant in a psychiatric hospital where he had been placed after it had been found in the criminal proceedings that he had uttered threats in a state of mental derangement.

The Court unanimously held that there had been a **violation of Article 5 § 1 (right to liberty and security/persons of unsound mind)**. The Court found in particular that the applicant's court-appointed lawyer had been passive and ineffective and that the domestic court had failed to compensate for the lack of effective legal representation. The procedural requirements necessary for keeping the applicant in hospital had therefore not been met and there had been a violation of the Convention.

[Gömi v. Turkey](#), no. 38704/11, 19 February 2019

The case concerned the continued detention of the applicant, who has suffered from a psychotic illness since 2003.

The Court held that there was a **violation of Article 3 (prohibition of inhuman or degrading treatment)**. In the light of all the evidence on file, the Court considered that in the absence of constant monitoring of his illness by a specialist team, the authorities had failed to provide the applicant with medical treatment suited to the prison environment.

Having regard to the specific circumstances of the case and to the urgent need to put an end to the violation of Article 3 of the Convention, the Court ruled that it was incumbent on the respondent State, **on account of the application of Article 46 (binding force and execution of judgments)**, to ensure that the mentally ill applicant had appropriate conditions of detention in an institution capable of providing him with the requisite psychiatric treatment, as well as constant medical follow-up.

Communicated cases

[T.R.v.Romania](#), no. 56472/17, communicated on 13 September 2018

([statement of fact available in French only](#))

[Bogdan Biskuped against Poland](#), no. 39646/16, communicated on 20 November 2018

[Konstantin Dyachenko v. Russia](#), no. 25566/18, communicated on 25 March 2019

[Bram Venken v. Belgium](#), no. 46130/14, and four other applications, nos 76251/14, 42969/16, 45455/17, 236/19, communicated on 3 April 2019

([available in French only](#))

Gender identity issues

Judgment

[X v. "the former Yugoslav Republic of Macedonia"](#), no. 29683/16, 17 January 2019

The case concerned administrative proceedings in which the applicant, who is transgender, had sought to have the sex/gender marker on the birth certificate changed.

The applicant submitted reports from 2012 and 2016 showing that the protracted procedure on the legal recognition of his gender identity has had negative consequences on his mental health and life. Relying in particular on **Article 8 (right to respect for private and family life)**, the applicant complained of the absence of a regulatory framework for legal gender recognition and the arbitrary imposition of a requirement for genital surgery.

The Court found that **there was a violation of Article 8** - on account of the lack of a regulatory framework ensuring the right to respect for the applicant's private life.

Genetic testing

Judgment

[Mifsud v. Malta](#), no. 62257/15, 29 January 2019

The applicant complained about being ordered by a court to undergo a DNA test in a contested paternity case. He alleged that the fact that Maltese law made it mandatory to provide a genetic sample in paternity proceedings, contrary to his will, resulted in a **breach of Article 8 (right to respect for private and family life)** of the Convention.

The Court held that there had been **no violation of Article 8**, finding that the domestic courts had fairly balanced the applicant's rights and those of the woman who was trying to establish that he was her father. In particular, the courts had examined the applicant's objections to taking the test in a first-instance civil court and at two levels of constitutional jurisdiction, eventually finding against him and ordering the procedure to take place.

Environmental hazards

Judgment

[Cordella and Others v. Italy](#), nos. 54414/13 and 54264/15, 24 January 2019

In this case, the 180 applicants – who lived or had lived in the municipality of Taranto or in neighboring areas – complained about the effects of toxic emissions from steelworks in Taranto on the environment and on their health. They submitted in particular that the State had not adopted legal and statutory measures to protect their health and the environment, and that it had failed to provide them with information concerning the pollution and the attendant risks for their health. Thus, according to the applicants, the State **violated Article 2 (right to life) and Article 8 (right to respect for private life)**. They also complained about the **violation of Article 13 (right to an effective remedy)** of the Convention.

The Court considered that 19 applicants did not have victim status, since they did not live in one of the towns classified as being at high environmental risk and they had not shown that they were personally affected by the situation complained of. In respect of the other applicants, the Court held that there had been a **violation of Article 8** and a **violation of Article 13** of the Convention. It found, in particular, that the persistence of a situation of environmental pollution endangered the health of the applicants and,

more generally, that of the entire population living in the areas at risk. It also held that the national authorities had failed to take all the necessary measures to provide effective protection of the applicants' right to respect for their private life. Lastly, the Court considered that these applicants had not had available an effective remedy enabling them to raise with the national authorities their complaints concerning the fact that it was impossible to obtain measures to secure decontamination of the relevant areas.

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 \(February 2019\)](#)
- [Health \(December 2018\)](#)
- [Reproductive rights \(April 2019\)](#)
- [Gestational Surrogacy \(April 2019\)](#)
- [Right to life \(June 2013\)](#)
- [End of life and the European Convention on Human Rights \(January 2019\)](#)
- [Prisoners' health-related rights \(February 2019\)](#)
- [Detention and mental health \(January 2019\)](#)
- [Persons with disabilities and the European Convention on Human Rights \(January 2019\)](#)
- [Children's rights \(April 2019\)](#)
- [Elderly people and the European Convention on Human Rights \(February 2019\)](#)
- [Gender identity issues \(January 2019\)](#)
- [New technologies \(March 2019\)](#)
- [Parental Rights \(April 2019\)](#)
- [Environment \(March 2019\)](#)