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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

Compulsory vaccinations

Grand Chamber hearing

[Vavříčka v. the Czech Republic, application no 47621/13, and five other applications](#)

The six applications concern compulsory vaccinations for children. The first application was lodged by a parent on his own behalf, complaining about the fact that he had been fined for failing to have his child duly vaccinated. The other applications were lodged by parents on behalf of their underage children after they had been refused permission to enrol them in schools or nurseries for failure to comply with the rules on compulsory vaccinations.

Relying on various articles of the Convention, the applicants also refer to the Convention on Human Rights and Biomedicine (Oviedo Convention), considering that compulsory vaccination amounts to a medical intervention for which consent has not been given. They further complain that the decision on which specific illnesses are subject to compulsory vaccination has been left to a mere ministerial decree.

In September 2015 the respondent Government was given notice of these applications under Articles 8 (right to respect for private and family life) and Article 9 (freedom of thought, conscience and religion) and under Article 2 of Protocol no. 1 (Right to education). On 17 December 2019 the Chamber to which these cases had been allocated relinquished jurisdiction in favour of the Grand Chamber. **The Grand Chamber held a public hearing on 1 July 2020.** The video recording of the Court's hearing is available on the [ECtHR website](#).

Protection of health-related data

Judgment

[Frâncu v. Romania](#) no. 69356/13, 13 October 2020

The case concerned the public disclosure of medical data during an appellate court hearing.

On 25 April 2013 the applicant, who was a mayor at the time, was taken into police custody in connection with an investigation concerning the award of public contracts. The applicant appealed the decision to remand him in custody and lodged an application for release. He requested the Court of Appeal to examine his appeal in private. The applicant explained that his application for release was prompted by considerations relating to his own health and that of his minor son, arguing that the medical information on which he sought to rely was private and that its public disclosure would infringe his right to respect for his private and family life. The Court of Appeal refused his request and ordered his continued detention. The proceedings against the applicant were the subject of several press articles. The press coverage of the hearing included details concerning his state of health.

The applicant alleged a breach of his right to privacy, and in particular of his right to the protection of confidential medical data concerning himself and his minor son.

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

Gestational Surrogacy

Pending application

S.C. and others v. Switzerland, no 26848/18, communicated to the Swiss Government on 15 June 2020

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

The applicants are a child born abroad through a gestational surrogacy arrangement, his parents of intent, and the woman who had given birth to him. The applicants complain about the Swiss authorities' refusal to inscribe the second applicant, who is not genetically related to the child, as a parent in the birth certificate.

Invoking **Article 8 (right to respect for private and family life)**, the applicants argue that the decision not to recognize the Californian judgment and birth certificate, with respect to the parental relationship between the parent of intent and the child, constitutes a disproportionate interference. The applicants also complain that an adoption procedure, instead of the recognition of the birth certificate, would not compensate for this infringement. In addition, the adoption procedure would have taken too long to be considered a rapid and effective parentage-building procedure.

The applicants also avail themselves of **Article 14** of the Convention, combined with **Article 8**, arguing that the child suffered discriminatory treatment because of his birth, as the refusal to recognize his birth certificate was based on his conception by surrogacy.

Judgment

[D v. France](#), no 11288/18, 16 July 2020

This case concerned the refusal to record in the French register of births, marriages and deaths the details of the birth certificate of a child born abroad through a gestational surrogacy arrangement in so far as the certificate designated the intended mother, who was also the child's genetic mother, as the mother. The child, the third applicant in the case, was born in Ukraine in 2012. Her birth certificate, issued in Kyiv, named the first applicant as the mother and the second applicant as the father, without mentioning the woman who had given birth to the child. The two first applicants, husband and wife, and the child complained of a violation of the child's right to respect for her private life, and of discrimination on the grounds of "birth" in her enjoyment of that right.

The Court considered that there had been **no violation of Article 8** (right to respect for family life) of the Convention, finding that, in refusing to record the details of the third applicant's Ukrainian birth certificate in the French register of births in so far as it designated the first applicant as the child's mother, France had not overstepped its margin of appreciation in the circumstances of the present case. It also held that there had been **no violation of Article 14** (prohibition of discrimination) of the Convention **read in conjunction with Article 8**, accepting that the difference in treatment of which the applicants complained with regard to the means of recognition of the legal relationship between such children and their genetic mother had an objective and reasonable justification.

Prisoners' health-related rights

Judgment

[Dikaiou and Others v. Greece](#), no. 77457/13, 16 July 2020

This case concerned the conditions of detention of six women, HIV/AIDS sufferers, who were held in the prison of Thebes before or after final conviction. The applicants complained in particular of a lack of care adapted to their state of health. They also argued that they were discriminated against for having HIV/AIDS, on account of being placed together in the same collective cell, entailing their “ghettoisation” and “stigmatisation”. Lastly, they complained about the lack of an effective remedy by which to complain about their detention conditions.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **taken separately or together with Article 14** (prohibition of discrimination). It found, in particular, that the general conditions of the applicants' detention had been satisfactory. It also took the view that their placement together in the same collective cell had pursued a legitimate aim (considerations of efficiency in handling the group and in prison management) and it did not detect any intention on the part of the authorities to segregate them. The Court further observed that the authorities had not failed in their duty to provide the applicants with medical assistance in accordance with their health-related needs. However, the Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 3**, finding that neither the preventive remedy nor the compensatory remedy under Greek law had been effective in enabling the applicants to complain about the conditions in which they were held.

Detention and mental health/measures of restraint

Judgment

[Aggerholm v. Denmark](#), no. 45439/18, 15 September 2020

The applicant, who had been given a diagnosis of paranoid schizophrenia, complained about being strapped to a restraint bed in a psychiatric hospital for nearly 23 hours, one of the longest periods of such immobilisation ever examined by the European Court of Human Rights.

Given the context and the applicant's history of violent offences, the Court, like the domestic courts, was satisfied that the decision to strap him to a restraint bed had been the only means available to prevent immediate or imminent harm to staff and patients at the hospital. However, the domestic courts had failed to address several issues in so far as the continuation and duration of the measure was concerned. In particular, a duty doctor had continued the measure throughout the night despite having found the applicant calm four hours earlier. The Court concluded that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights.

Gender identity issues

Judgments

[Y.T. v. Bulgaria](#), no. 41701/16, 9 July 2020

The case concerned a transsexual person who had taken steps to change his physical appearance and whose request for (female to male) gender reassignment had been refused by the Bulgarian courts.

The Court considered that the domestic authorities' refusal to grant legal recognition to the applicant's gender reassignment, without giving relevant and sufficient reasons, and without explaining why it had been possible to recognise identical gender reassignment in other cases, had constituted an unjustified interference with the applicant's right to respect for his private life and concluded that there had been a **violation of Article 8** (right to respect for private and family life) of the European Convention on Human Rights.

[Rana v. Hungary](#), no. 40888/17, 16 July 2020 (Committee judgment)

Born a female in Iran, the applicant, a transgender man who had obtained asylum in Hungary, complained about the Hungarian authorities' refusal to change his name and sex marker from "female" to "male" in his identity documents.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that a fair balance had not been struck between the public interest and the applicant's right to respect for his private life owing to the refusal to give him access to the legal gender recognition procedure. It noted in particular that the domestic system for gender recognition had excluded the applicant simply because he did not have a birth certificate from Hungary, a change in the birth register being the way name and gender changes were legally recognised.

Pending application

Y v. France, no 76888/17, communicated on 8 July 2020
[statement of fact available in French only](#)

Invoking **Article 8** (right to respect for private life), the applicant, who is an intersex person, requests to be marked in the birth certificate as "neutral" or "intersex" instead of "male".

Freedom of expression

Pending application

[De Pracomtal and Fondation Jérôme Lejeune v. France](#), nos. 34701/17 and 35133/17, communicated on 31 August 2020

Video promoting continuation of pregnancy following Down syndrome diagnosis excluded from television advertising slots.

As a follow-up to World Down Syndrome Day the applicant association arranged for an awareness-raising video entitled "Chère future maman" ("Dear Future Mom") to be broadcast free of charge by three television channels. The video showed children and young adults with Down Syndrome, including the first applicant, evidently enjoying life.

In response to a number of complaints the national broadcasting authority (Conseil supérieur de l'audiovisuel – “the CSA”) wrote to the television channels concerned informing them that the video could not be broadcast during advertising breaks. The CSA explained that, under the regulations, free broadcasts such as those benefiting charitable organisations were not permitted, with the exception of “public interest” messages. The video in question, which took the form of a response to the fears of a pregnant woman who had received a pre-natal diagnosis of Down Syndrome, conveyed an ambiguous message which was the subject of debate and was liable to trouble the conscience of women who, while complying with the abortion legislation, had made different personal choices. The CSA considered that the message, in so far as it sought to combat the stigmatisation of persons with a disability, could have been conveyed successfully by being placed more fully in context within an appropriate setting, for instance as part of a television programme. An appeal against that decision was dismissed by the Conseil d'État.

The Court gave notice of the applications to the French Government and put questions to the parties under **Article 10** (freedom of expression) of the Convention.

Restrictive measures in the context of the COVID-19 pandemic

Pending application

[Communauté genevoise d'action syndicale \(CGAS\) v. Switzerland](#), no. 21881/20, communicated on 11 September 2020

This case concerns a ban on demonstrations in the context of the Covid-19 pandemic.

The Court gave notice of the application to the Swiss Government and put questions to the parties under **Article 11** (freedom of assembly and association) and **Article 35** (admissibility criteria) of the Convention.

Request for interpretation under Article 29 of the Convention on Human Rights and Biomedicine

Pending request

In December 2019, the European Court of Human Rights has received, for the first time, a [request for an advisory opinion](#) from the DH-BIO, with membership restricted to the parties of the Convention on Human Rights and Biomedicine, under Article 29 of that same convention. The questions posed by the DH-BIO are intended to obtain clarity on certain aspects of the legal interpretation of Article 7 of the Oviedo Convention, with a view to providing guidance for the DH-BIO's current and future work in this area.

On 26 June 2020 the Grand Chamber of the Court invited the Contracting Parties to the European Convention on Human Rights to submit written comments on the request, in light of a number of questions formulated by the Court.

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 \(September 2020\)](#)
- [Health \(October 2020\)](#)
- [Reproductive rights \(July 2020\)](#)
- [Gestational Surrogacy \(July 2020\)](#)
- [End of life and the European Convention on Human Rights \(May 2019\)](#)
- [Prisoners' health-related rights \(July 2020\)](#)
- [Detention and mental health \(July 2020\)](#)
- [Persons with disabilities and the European Convention on Human Rights \(September 2020\)](#)
- [Children's rights \(October 2020\)](#)
- [Elderly people and the European Convention on Human Rights \(February 2019\)](#)
- [Gender identity issues \(October 2020\)](#)
- [New technologies \(September 2020\)](#)
- [Parental Rights \(October 2020\)](#)
- [Environment \(March 2020\)](#)
- [Derogation in time of emergency \(September 2020\)](#)