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STEERING COMMITTEE FOR HUMAN RIGHTS IN THE FIELDS OF BIOMEDICINE AND HEALTH (CDBIO)

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

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Paragraphs in blue indicate unofficial translations, made using automatic translation software.

Contents

Access to personal origins

Mitrevska v. North Macedonia,

(Application no. 20949/21)
14 aout 2024

In today's Chamber judgment in the case of Mitrevska v. North Macedonia the European Court of Human Rights held, unanimously, that there had been: a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

In its judgement, the Court refers to Article 10 of the Oviedo Convention (*private life and right to information*).

The case concerned access to information about an adoption. Ms Mitrevska, who had been adopted as a child, wanted to know more about her biological family, including their medical history. The Court acknowledged the sensitivity of the issue at hand and did not underestimate the impact that disclosure of information on an adoption could have on all those concerned.

However, it found that the authorities had refused Ms Mitrevska's request for information about her origins by merely relying on the relevant national law, which categorises all adoptions as an "official secret", without balancing the competing interests at stake. That balancing exercise should have involved weighing up the interest of the adopted child to know information of central importance to his or her personal life against the general interest, namely the expectation of biological mothers that information about them would not be disclosed.

Autonomy and Informed Consent

Pindo Mulla v. Spain

(Application no. 15541/20)
Judgement
17 september 2024

The case concerned blood transfusions administered to the applicant, a Jehovah's Witness, during emergency surgery, despite her refusal to undergo a blood transfusion of any kind.

In May 2017, the applicant was advised to have surgery to remove a uterine fibroid (myoma) causing urinary retention. She registered an advance directive and issued a lasting power of attorney, each recording her refusal to undergo a blood transfusion of any kind in any healthcare situation, even if her life was in danger. In 2018, she was admitted to her local hospital with serious internal bleeding and signed an informed consent refusing blood transfusion. She agreed to be transferred to a hospital in Madrid known for its capacity to provide forms of treatment that did not involve blood transfusions. During the journey, the doctors at the hospital in Madrid were informed that her condition was very serious. They contacted the duty judge for instructions, indicating that she was a Jehovah's witness, and that she had verbally expressed her refusal of all types of treatment. The duty judge, who did not know the identity of the patient, authorised all medical or surgical procedures that were needed to save her life. Treating the situation as an emergency, the usual consent protocol was not followed at the hospital. Surgery was performed that day and three transfusions of red blood cells were administered to the applicant.

The Court clarified that its role in this case was not to call into question the assessment of Ms Pindo Mulla's health by medical professionals or their decisions on the treatment to be given, but to focus on whether the decision-making process had shown sufficient respect for her autonomy.

The Court reminds that letting a patient decide whether to accept treatment is a basic and fundamental principle in the public health sphere and protected by the rule of free and informed consent. In an emergency situation, the decision to refuse life-saving treatment has to be "clear, specific and unambiguous" and "represent the current position of the patient on the matter."

The Court underlines that the duty judge had not been provided with the full and correct information and therefore her decision had been based on very limited, incorrect and incomplete facts. Moreover, the crucial issue as to whether Ms Pindo Mulla still had the capacity to decide for herself had been sidelined, and the power to decide had been transferred to the doctors treating her.

The Court found in particular that the authorisation to proceed with that treatment had resulted from a decision-making process that had been affected by the omission of essential information about the documenting of Ms Pindo Mulla's wishes, which had been recorded in various forms and at various times in writing. Since neither the applicant nor anyone connected with her had been made aware of the decision taken by the duty judge authorising all treatment, it had not been possible to rectify that omission. Neither this issue nor the issue of her capacity to take a decision had been addressed in an adequate manner in the subsequent proceedings. The national system had therefore not responded adequately to her complaint that her wishes had been wrongly overruled.

These shortcomings meant that Ms Pindo Mulla had not been able to exercise her autonomy in order to observe an important teaching of her religion, in violation of her right to respect for private life under Article 8 of the Convention, read in the light of Article 9.

References made to the Oviedo Convention and its explanatory report:

The intervening French government refers to article 8 and 9 of the Oviedo Convention to support the opinion that "States should have the power to determine the conditions in which a doctor could dispense with the patient's consent. Where an emergency situation was concerned, this was already addressed by Article 8 of the Oviedo Convention. Outside of such situations, States should also have the power to determine the conditions in which a patient's advance instructions could be disregarded. This was reflected in the wording of Article 9 of the Oviedo Convention. "

The Court refers to Article 5, 8, 9 and to the explanatory report to assess the justification of the interference in the patient's rights

- Regarding the legality of the Spanish system, the Court notes that the emergency exception that is provided for in domestic law corresponds very closely in substance to the Oviedo Convention, read in light of the explanatory report and accepts the Government's argument that "given the clinical emergency here, the aim expressly pursued by the duty judge in granting authorisation to treat the applicant was to safeguard her life and physical integrity"

- Regarding the necessity of the interference, the Court refers to Article 5 of the Oviedo Convention to remind that "the freedom to accept or refuse specific medical treatment was vital to self-determination and personal autonomy". In an attempt to reconcile the Convention Rights and the duties at stake, the Court refers to Article 5, 8, 9 and paragraph 72 of the explanatory report to argue that "What must be ensured is that, in an emergency situation, a decision to refuse life-saving treatment has been made freely and autonomously by a person with the requisite legal capacity who is conscious of the implications of their decision (…) It must also be ensured that the decision – the

existence of which must be known to the medical personnel – is applicable in the circumstances, in the sense that it is clear, specific and unambiguous in refusing treatment, and represents the current position of the patient on the matter. It follows that where in an emergency there are reasonable grounds to doubt the individual's decision in any of these essential respects, it cannot be considered a failure to respect his or her personal autonomy to proceed with urgent, life-saving treatment." Mentioning Article 9 of the Oviedo Convention, the Court reminds that the Oviedo Convention does not enter any further into the arrangements that States must or may make with respect to previously expressed wishes. The Court notes that, in keeping with their non-binding nature, these positions contemplate considerable discretion for States regarding the status of and the modalities in relation to such instruments.

These paragraphs are not part of any official press release and are intended to explain the legal arguments and reasoning based on the Oviedo Convention and its Explanatory Report.

B.D. v. Belgium,

(Application no. 50058/12)
Judgement
27 august 2024

The case concerns a Belgian national who was born in 1980. He complains that he was placed in compulsory confinement in the psychiatric wings of various prisons in Belgium.

In 1999, finding that he had not been criminally responsible for his acts, the Belgian judicial authorities ordered the applicant's compulsory confinement for burglary and attempted theft. At various times from 1999 to 2009 and from 2010 to 2015 he was placed in the psychiatric wing of Ghent Prison and in the social protection unit of Merksplas Prison, pending placement in an institution designated by the Social Protection Board. Subsequently, in 2015, he was admitted to the Ghent forensic psychiatry centre, where he stayed until his discharge on probation on 8 June 2020.

Relying on Article 5 §§ 1 and 4 (right to liberty and security/right to a speedy decision on the lawfulness of detention) of the Convention, the applicant complains of his compulsory confinement.

He complains that he did not receive suitable therapeutic treatment for his mental health or effective legal assistance in obtaining a decision on the lawfulness of his detention.

Violation of Article 5 § 4
Violation of Article 5 § 1

Kazachynska v. Ukraine

(Application no. 79412/17)
Judgement
07 November 2024

In its Committee judgment in the case of Kazachynska v. Ukraine the European Court of Human Rights has, unanimously, held that there had been: **a violation of Article 3 (prohibition of inhuman or degrading treatment/investigation), and a violation of Article 5 § 1 (right to liberty and security).**

The case concerned in particular Ms Kazachynska's confinement in a psychiatric hospital and her allegations of ill-treatment there.

The Court found that the applicant had been unlawfully detained in a psychiatric hospital for 13 days. She had been given neuroleptic medication and tied to her bed whenever she had attempted to leave, without any proof of her posing a danger to herself or others or indeed actually having a mental disorder. Such arbitrary treatment had to have made her feel anxious and inferior.

The judgment is final.

Lavorgna v. Italy

(Application no. 8436/21)
Judgement
07 November 2024

The case of Lavorgna v. Italy concerned the treatment given to Mr Lavorgna while in confinement in a psychiatric ward. He had been strapped down and given sedatives owing to reported aggressive actions.

In today's **Chamber** judgment1 the European Court of Human Rights held, unanimous, that there had been: **a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights as regards both the **treatment of the applicant** and the ensuing **investigation.**

The Court found in particular that the Government had failed to demonstrate why such a long period of restraining Mr Lavorgna had been necessary and had not addressed his arguments that the restraint had been "precautionary" rather than a "last resort".

Lindolm and the Estate after Leif Lindholm v. Denmark

(Application no. 25636/22)
Judgement
05 November 2024

The applicants are Lilian Elisabeth Lindholm, born in 1953 and currently living in Randers (Denmark); and the estate of her late husband, Leif Ingolf Lindholm, born in 1947. They are/were both Jehovah'sWitnesses.

Ms Lindholm's husband died on 21 October 2014; he had spent the previous month in hospital after a two-metre fall through a roof, first disoriented and then unconscious. The case concerns a blood transfusion administered to him, despite his carrying a "blood-refusal card" at the time of the accident.

Ms Lindholm unsuccessfully brought legal proceedings to complain that the blood transfusion hadbeen against her husband's will. In 2022 the Supreme Court found in particular that doctors had avoided giving Mr Lindholm blood until they had considered it necessary to save his life; and, that there had been a legal basis for that decision in national law, which provided that a patient's refusal of a blood transfusion had to be "current and informed".

The applicants complain that the Supreme Court judgment finding the blood transfusion lawful, despite Mr Lindholm's previously stated refusal of the procedure on account of his religious beliefs, was in violation of Articles 8 (right to respect for private and family life) and 9 (freedom of religion) of the European Convention on Human Rights.

No violation of Article 8 read in the light of Article 9

Children's rights and mental health

Savinovskikh and Others v. Russia,

(Application no.16206/19)
9 July 2024

In today's Chamber judgment in the case of Savinovskikh and Others v. Russia the European Court of Human Rights held, unanimously, that there had been: a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the termination of custody and of the foster-care agreement for D.D. and K.K., two children aged four and five, on the ground of their foster parent being transsexual and undergoing a change of gender identity.

The Court observed that the children had serious medical diagnoses, had been abandoned at birth and, prior to their placement in the applicant's family at the ages of one and three years respectively, had been kept in State-run institutions. The decision to take away the applicant's custody of them had not been supported by any individualised expert examination or any scientific study regarding the impact of a change of gender identity on the children's psychological health and development.

The reasoning of the domestic courts had relied primarily on the legal impossibility of same-sex couples' being accepted as foster parents. No consideration had been given to the affection that the children might hold for the applicant and the other members of his family.

The Court found that the national authorities had failed to conduct an in-depth examination of the overall family situation and to properly weigh up the respective interests of each person whilst focusing on what would be the best solution for the children.

Climate Change and Implications on Health

Carême v. France

(Application no. 7189/21)
Decision
9 April 2024

The case concerned the complaint of the applicant, former resident and mayor of the Grande-Synthe municipality, that France had taken insufficient steps to prevent climate change and that this failure entailed a violation of his right to life and his right to respect for his private and family life and his home.

Having regard to the fact that the applicant had no relevant links with Grande-Synthe and that, moreover, he did not currently live in France, the Court considered that for the purposes of any potentially relevant aspect of Article 2 (right to life) or Article 8 (right to respect for private and family life or home) he could not claim to have victim status under Article 34 of the Convention, and that was true irrespective of the status he invoked, namely that of a citizen or former resident of Grande-Synthe.

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

(Application no. 53600/20)
Judgment
9 April 2024

The case concerned a complaint by four women and a Swiss association, Verein KlimaSeniorinnen Schweiz, whose members are all older women concerned about the consequences of global warming on their living conditions and health. They consider that the Swiss authorities are not taking sufficient action, despite their duties under the Convention, to mitigate the effects of climate change. The Court found that Article 8 of the Convention encompasses a right to effective protection by the State authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life.

However, it held that the four individual applicants did not fulfil the victim-status criteria under Article 34 of the Convention and declared their complaints inadmissible. The applicant association, in contrast, had the right (*locus standi*) to bring a complaint regarding the threats arising from climate change in the respondent State on behalf of those individuals who could arguably claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being and quality of life as protected under the Convention.

The Court found that the Swiss Confederation had failed to comply with its duties ("positive obligations") under the Convention concerning climate change. There had been critical gaps in the process of putting in place the relevant domestic regulatory framework, including a failure by the Swiss authorities to quantify, through a carbon budget or otherwise, national greenhouse gas (GHG) emissions limitations. Switzerland had also failed to meet its past GHG emission reduction targets. While recognising that national authorities enjoy wide discretion in relation to implementation of legislation and measures, the Court held, on the basis of the material before it, that the Swiss authorities had not acted in time and in an appropriate way to devise, develop and implement relevant legislation and measures in this case.

In addition, the Court found that Article 6 § 1 of the Convention applied to the applicant association's complaint concerning effective implementation of the mitigation measures under existing domestic law. The Court held that the Swiss courts had not provided convincing reasons as to why they had considered it unnecessary to examine the merits of the applicant association's complaints. They had failed to take into consideration the compelling scientific evidence concerning climate change and had not taken the complaints seriously.

Duarte Agostinho and Others v. Portugal and 32 Others

(Application no. 39371/20)
Decision
9 April 2024

The applicants, six young Portuguese nationals, complained of the existing, and serious future, impacts of climate change. They submitted that Portugal was already experiencing a range of climate-change impacts, including increase in mean temperatures and extreme heat, which was a major driver of wildfires. They relied on various Convention Articles, international instruments such as the 2015 Paris Agreement and the UN Convention on the Rights of the Child, and general reports and expert findings concerning the harm caused by climate change.

In the applicants' view, Portugal and the 32 other respondent States bore responsibility for the situation in issue. They submitted that they were currently exposed to a risk of harm from climate change, and that the risk was set to increase significantly over the course of their lifetimes. They argued that their generation was particularly affected by climate change and that, given their ages, the interference with their rights was more marked than in the case of previous generations. They also claimed Portugal was one of the most affected countries.

As concerned the extraterritorial jurisdiction of the respondent States other than Portugal, the Court found that there were no grounds in the Convention for the extension, by way of judicial interpretation, of their extraterritorial jurisdiction in the manner requested by the applicants.

It followed that territorial jurisdiction was established in respect of Portugal, whereas no jurisdiction could be established as regards the other respondent States. The applicants' complaint against the other respondent States had therefore to be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention. Having regard to the fact that the applicants had not pursued any legal avenue in Portugal concerning their complaints, the applicants' complaint against Portugal was also inadmissible for non-exhaustion of domestic remedies.

Müllner v. Austria

(application no. 18859/21),
Pending case
Communicated on 18 June 2024

The European Court of Human Rights has given notice to the Government of Austria of the application **Müllner v. Austria** (application no. 18859/21) and requested that they submit their observations.

The case concerns Austria's alleged failure to mitigate the impact of climate change, in particular global warming, by taking effective measures to reduce its greenhouse-gas emissions and to limit the increase in the global average temperature to 1.5°C above pre-industrial levels. Mr Müllner suffers from multiple sclerosis and argues that his symptoms worsen in higher temperatures.

Euthanasia

Daniel Karsai v. Hungary,

(Application no. 32312/23)

Judgement

02 September 2024

In today's **Chamber** judgment1 in the case of Daniel Karsai v. Hungary (application no. 32312/23) the European Court of Human Rights held, by 6 votes to 1, that there had been **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights; and **no violation of Article 14 (prohibition of discrimination) in conjunction with Article 8.**

The case concerned the question of the asserted right to self-determined death of the applicant, who is a Hungarian national and has advanced amyotrophic lateral sclerosis (ALS) a type of motor neurone disease with no known cure. He would like to be able to decide when and how to die before his illness reaches a stage that he finds intolerable. He would need assistance, but anyone assisting him would risk prosecution, even if he died in a country which allowed physician-assisted dying. He complained of not being able to end his life with the help of others and of discrimination compared to terminally ill patients on life-sustaining treatment who are able to ask for their treatment to be withdrawn.

The Court observed that there were potentially broad social implications and risks of error and abuse involved in the provision of physician-assisted dying. Despite a growing trend towards its legalisation, the majority of the member States of the Council of Europe continue to prohibit both medically assisted suicide and euthanasia. The State thus had wide discretion in this respect, and the Court found that the Hungarian authorities had not failed to strike a fair balance between the competing interests at stake and had not overstepped that discretion.

Nevertheless, the Convention had to be interpreted and applied in the light of the present day. The need for appropriate legal measures should therefore be kept under review, taking into account the developments in European societies and in the international standards on medical ethics in this domain.

The Court considered that high-quality palliative care, including access to effective pain management, was essential to ensuring a dignified end of life. According to the expert evidence heard by the Court, the available options in palliative care, guided by the European Association of Palliative Care's revised recommendations, including the use of palliative sedation, were generally able to provide relief to patients in the applicant's situation and allow them to die peacefully.

Mr Karsai had not alleged that such care would be unavailable to him. As regards the alleged discrimination, the Court found that the refusal or withdrawal of treatment in end-of-life situations was intrinsically linked to the right to free and informed consent, rather than to a right to be helped to die, and was widely recognised and endorsed by the medical profession, and also laid down in the Council of Europe's Oviedo Convention. Furthermore, refusal or withdrawal of life-support was allowed by the majority of the member States. The Court therefore considered that the alleged difference in treatment of the two categories was objectively and reasonably justified.

References to the Oviedo Convention

- The Oviedo Convention, its explanatory report, the Parliamentary Assembly Resolution 1859 (2012) on Protecting human rights and dignity by taking into account previously expressed wishes of patients and the *Guide on the decision-making process regarding medical treatment in end-of-life situations* are all cited as relevant materials for the case at hand.

- In its ruling, the Court refers specifically to the Oviedo Convention and states that "the right to refuse or request discontinuation of unwanted medical treatment is inherently connected to the right to free and informed consent to medical intervention, which is widely recognised and endorsed by the medical profession, and is also laid down in the Oviedo Convention." (…) "the refusal or withdrawal of treatment in end-of-life situations is the subject of particular consideration or regulation because of the need to safeguard, *inter alia*, the right to life (…); however, such refusal or withdrawal is intrinsically linked to the right to free and informed consent, rather than to a right to be assisted in dying."

These paragraphs are not part of any official press release, and are intended to explain the legal arguments and reasoning based on the Oviedo Convention and its Explanatory Report.

HIV

Bechi v. Romania

(Application no 45709/20)
Judgement
25 septembre 2024

The applicant, Daniel Bechi, is a Romanian national who was born in 1982 and lives in Reteag (Romania). Mr Bechi, who was diagnosed with HIV, was placed in specially designated prison wings equipped with facilities to accommodate the medical needs of HIV-positive prisoners in Targu-Ocna Prison and Poarta Alba Prison. The prisons were located a distance of 500km and 800km respectively from Mr Bechi's family home.

Relying on Article 3 (prohibition of inhumane or degrading treatment), Article 14 (prohibition on discrimination), and Article 8 (respect for private and family life) of the European Convention, Mr Bechi complains his detention was unsuitable, in that he was subjected to poor prison conditions during his incarceration from 2019 to 2022, including conditions of overcrowding which exposed him to a high contamination risk for hepatitis C. He alleges he was placed in separate wings of the two prisons from other prisoners and restricted from engaging in any work or activities because of his HIV status.

He also alleges the distance from his family residence to the prisons interfered with his ability to maintain contact with his family.

No violation of Article 3 taken alone and in conjunction with Article 14

Medical Access

Access to healthcare in detention

S.M. v. Italy,

(Application no. 16310/20)
Judgement
17 October 2024

The applicant, S.M., is an Italian national who was born in born in 1977 and lives in Varese (Italy). Mr S.M. suffers from HIV and a number of related diseases, including Kaposi sarcoma, HIV-related encephalopathy and chronic HCV-related hepatopathy. The case concerns his imprisonment during the global Covid-19 pandemic.

Relying on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, Mr S.M. complains that the Italian authorities did not take adequate steps to protect him from contracting Covid-19 while in detention, and that his continued detention in that situation was a breach of the Convention.

No-violation of Article 3 in respect of the compatibility of the applicant's state of health with detention

No violation of Article 3 in respect of the protection of the applicant from the risk of contracting COVID-19

Temporale v. Italy,

(Application no. 38129/15)
Judgement
20 septembre 2024

The applicant, Antonio Temporale, is an Italian national who was born in 1955. The applicant in this case complains about the fact that his detention was maintained despite his state of health, and about the quality of the care he received in prison. He submits that, despite medical reports attesting to the seriousness of his health problems, he did not receive the necessary medical care in detention and that, as a result, his condition gradually deteriorated. He considers that this put his life at risk and that such conditions of detention were inhuman and degrading; he relies in that regard on Articles 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention.

Relying on Article 38 (obligation to furnish all necessary facilities for examination of the case) of the Convention, he also considers that the Italian Government failed to provide the information requested by the Court.

No violation of Article 3

No violation of Article 38

W.W. v. Poland

(application no. 31842/20)
Judgement
11 July 2024

The applicant, Ms W.W., is a Polish national who was born in 1992. At the time of lodging the application, Ms W.W. was legally recognised as male and was detained in Siedlce Prison. The case concerns the authorities' refusal to allow Ms W.W. to continue hormone therapy while in prison.
Ms W.W. received legal gender recognition as female on 19 March 2023.

Relying on Article 3 (prohibition of inhuman or degrading treatment), Article 8 (right to respect for private life), Article 2 (right to life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention, Ms W.W. complains, in particular, of the refusal to allow her to continue her hormone treatment while detained.

Violation of Article 8

Medical ethics

Bielau v. Austria,

(Application no. 20007/22)
Judgement
27 August 2024

The applicant, Klaus Bielau, is an Austrian national who was born in 1955 and lives in Graz (Austria).

He is a general practice doctor who also has interests in "holistic medicine" and homeopathy.
The case concerns a disciplinary sanction imposed on the applicant for certain statements he had published on his website regarding the effectiveness of vaccines. In 2017 he was found guilty of disciplinary offences by the Styria and Carinthia Disciplinary Council (*Disziplinarrat*) of the Austrian Medical Association (*Österreichische Ärztekammer*), which held that he had denied the existence of pathogenic viruses and claimed that vaccinations never protected against diseases, that nature knew no diseases and that not a single disease had disappeared through vaccination. He was unsuccessful in having this decision overturned by the Austrian courts.
Relying on Article 10 (freedom of expression) of the European Convention, the applicant complains of the disciplinary sanction.

No violation of Article 10

Medical Negligence and Liability

Validity Foundation on behalf of T.J. v. Hungary

(Application no. 31970/20),
Judgement
10 October 2024

In today's **Chamber** judgment in the case of Validity Foundation on behalf of T.J. v. Hungary (application no. 31970/20) the European Court of Human Rights held, unanimously,

that there had been: **two violations of Article 2 (right to life/investigation)** of the European Convention on Human Rights**.**

The case concerned the death in 2018 of a woman with a severe intellectual disability, Ms T.J., in a State-run social-care home and the ensuing investigation into the allegation that she had died of neglect. She had been in care since the age of ten. The Court noted that understaffing, insufficient medical and therapeutic care, inappropriate living conditions and excessive use of restraining measures against residents had been recorded at the care home in 2017. At least ten residents had died at the home that year. Ms T.J. had been reported as emaciated and constantly tied to her bed.

The authorities had therefore been aware of the alarming conditions before Ms T.J.'s death. Their response, however, both in terms of preventing the deterioration in her health and her untimely death as well as in terms of the ensuing investigation had been inadequate. In particular, the management of the home had voiced no concerns and the authorities had taken no measures to improve the conditions at the home, while the investigation had purely focused on the direct cause of Ms T.J.'s death – pneumonia – without looking into the alleged serious shortcomings in the care system.

Restrictive Measures in the Context of Covid-19

Pasquinelli and Others v. San Marino,

(Application no. 24622/22)
Judgement
29 August 2024

In today's **Chamber** judgment1 in the case of Pasquinelli and Others v. San Marino (application no. 24622/22) the European Court of Human Rights held, unanimously, that there had been: **no violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights.

The case concerned the effects on the applicants – all healthcare workers – following their refusal to be vaccinated against Covid-19.

Bearing in mind the wide discretion States had in healthcare policy matters, the Court found that the measures had been proportionate and justified in view of the legitimate aim pursued, specifically, the health of the population in general, including the applicants themselves, and the rights and freedoms of others. It noted furthermore that the losses suffered by the applicants were an unavoidable consequence of an "exceptional and unforeseeable" context of a global pandemic that had pertained at the relevant time in this case.

Surrogacy

R.F. and Others v. Germany

(Application no. 46808/16)
Judgement,
12 November 2024

The applicants are two German nationals (R.F. and C.F., who were born in 2013 and 1975 respectively) and a French national (M.-C. A.-F., who was born in 1966). They live in Germany.

M.-C. A.-F. and C.F., two women, are a couple who have had their partnership registered with the Cologne registrar since 2010. In 2013 M.-C. A.-F. gave birth to R.F. in Cologne. According to the applicants, R.F. had been conceived by *in vitro* fertilisation using one of C.F.'s eggs and sperm from an anonymous donor. The embryo had then been transferred to M.-C. A.-F.'s uterus. C.F. and M.-C. A.-F. had had these procedures performed in a clinic in Belgium, before returning to Germany. Genetic testing carried out in 2013 confirms that C.F. is R.F.'s genetic mother with a probability of almost 100%.

In the birth register and on R.F.'s birth certificate, M.-C. A.-F. was listed as the child's mother and the father's name was left blank. The applicants brought civil-status proceedings to have C.F. added as the child's (second) mother in the birth register, but their request was rejected at last instance by the Cologne Court of Appeal in 2014. The applicants then lodged a constitutional complaint with the Constitutional Court, which was dismissed.

M.-C. A.-F. and C.F. subsequently brought proceedings to have R.F. adopted by C.F. The Cologne Family Court granted the adoption in October 2015. In this case, the three applicants complain about the family courts' refusal to acknowledge that R.F., to whom M.-C. A.-F. gave birth, is also the son of C.F., who is his genetic mother and M.-C. A.-F.'s partner.

They rely on Article 8 (right to respect for private and family life) of the European Convention, along with Article 14 (prohibition of discrimination). In particular, they complain about the German authorities' refusal to recognise C.F. as one of R.F.'s parents, even though she is his genetic mother, and claim that C.F.'s adoption of the child has not remedied the damage they have suffered. They also allege that they have been treated in a discriminatory manner compared with heterosexual couples who give birth using donated eggs and sperm.

No violation of Article 8