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STEERING COMMITTEE
FOR HUMAN RIGHTS IN THE FIELDS OF BIOMEDECINE 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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based on the terms of the official documents published by the ECHR

Contents

Recent case law

Compulsory vaccinations

Decision

Thevenon v. France (application n° 46061/21), 13 September 2022

This case concerned a firefighter's refusal to comply with the Covid-19 vaccination requirement imposed on workers in certain occupations by Law no. 2021-1040 of 5 August 2021 on the management of the health crisis. When the applicant refused vaccination without claiming a medical exemption under the statute, he was suspended from both his professional and volunteer duties. He applied directly to the European Court, complaining of the vaccination requirement imposed on him by virtue of his occupation, and of the fact that his refusal of the Covid-19 vaccine had led, as of 15 September 2021, to his suspension from work and the complete loss of his pay. He invoked **article 8 (right to respect for private life)**, **article 14 (prohibition of discrimination)** and **article 1 of the Protocol no.1 (protection of property)**.

The Court declared the application **inadmissible** for failure by the applicant to exhaust his domestic remedies before applying. In its decision it reiterated that in French law an action for judicial review (*recours pour excès de pouvoir*) was one of the domestic remedies that had to be exhausted and that, in order for all domestic remedies to be exhausted, the domestic case therefore had as a rule to be litigated, should occasion arise, all the way to the court of final appeal, and the claimant had to place before that court the complaints under the Convention that might subsequently be put to the Court in Strasbourg. In rejecting the applicant's submissions on this point it specified that that requirement stood irrespective, first, of the delivery of a decision by the Constitutional Council declaring the law of 5 August 2021 consistent with the French Constitution, since that body did not decide issues under the provisions of the Convention, and, second, of the opinion delivered on the bill by the standing committee of the *Conseil d'État* in the discharge of its advisory functions. The Court concluded that an effective domestic-law remedy had thus been available to the applicant in that he could have instituted challenges in the administrative courts not only to the decisions suspending him from service but also to the compatibility of Law no. 2021-1040 of 5 August 2021, and its implementing order of 7 August.

The decision is final and only available in French.

Restrictive measures in the context of the COVID-19 pandemic

Decision

Piperea v. Romania (application no. 24183/21), 5 July 2022

This case concerned the complaint of the applicant, a law professor and practising lawyer, against measures put in place by the government of Romania under a state of alert declared on 18 May 2020, following a state of emergency (*declararea stării de alertă*), declared on 16 March 2020, during the Covid-19 pandemic. The applicant submitted in particular that the declaration of a state of alert had given rise to a restriction on his right to **freedom of movement** (article **2 § 1 of Protocol No. 4)** and had amounted to a violation of **his right to respect for private life** (**article 4**) because of the requirement it imposed on people leaving home in certain circumstances to fill out a document stating where they were going, why and for how long, together with other personal information.

The Court found that the applicant's complaints either did not meet the admissibility criteria set out in Articles 34 (individual applications) and 35 (admissibility criteria) of the Convention or did not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention and Protocols thereto, and consequently declared the application **inadmissible**. It observed in particular that the measures complained of by the applicant had been introduced as part of the state of alert declared in Romania on 18 May 2020, following the state of emergency declared on 16 March 2020, for public health reasons. The situation had to be characterised as amounting to "unforeseeable exceptional circumstances". Moreover, the measures impugned by the applicant in a general and unfocused manner had been imposed on the entire population in response to what the competent national authorities had determined to be a serious public health situation. The Court also noted that the applicant had complained in the abstract that the measures taken by the Romanian State to fight the spread of the SARS-CoV-2 virus had been inadequate and inappropriate. He had not provided information about his individual situation or explained in specific terms how the national authorities' alleged failures might affect him directly.

The application was unanimously declared **inadmissible**.

The decision is final and is only available in French.

Decision

Toromag, s.r.o. v. Slovakia and 4 other applications (application no. 41217/20), 28 June 2022

The petitions relate to the alleged illegality of the measures taken by the Public Health Authority of Slovakia in the context of preventing the spread of the Covid-19 virus in the period from 15 March 2020 to 19 May 2020. The applicants are the owners of fitness centers that were closed down under the above measures. They allege that they have suffered pecuniary damage and loss of future income as well as loss of part of their clientele.

Invoking Article 1 of Protocol No. 1 to the Convention, the applicants complained that the contested measures did not meet the requirements of legality, in particular because, under the given legal regime, the power to adopt them belonged to the Government and not to the public health authority and it was not possible to challenge them before the domestic courts, including the Constitutional Court.

The Court found that the applicants deliberately withheld important information and documents known from the outset and did not inform the Court of important new developments in the course of the proceedings.

The **applications were declared inadmissible** for being abusive.

The decision is only available in English.

Decision

Magdić v. Croatia (application no. 17578/20), 5 July 2022

The case concerns the initial measures adopted by the Croatian authorities between 19 March and 11 May 2020 in the context of preventing the spread of the Covid-19 virus.

The applicant complains, relying on **Articles 9 and 11** of the Convention and **Article 2 of Protocol No. 4**, that the measures in question infringed his **freedom of religion**, his **freedom of assembly** and his **freedom of movement**.

The Court notes that the applicant complains *in abstracto* in his application, considering that he has not provided any information to show how exactly the measures in question affected him, or would be likely to affect him directly, or targeted him on account of his possible individual characteristics.

The Court declared the application **inadmissible.**

The decision is only available in English.

Referral

Communauté genevoise d'action syndicale (CGAS) v. Switzerland (application no. 21881/20), 5 September 2022

The case concerns an association, the Communauté genevoise d'action syndicale (CGAS), which complains that it has been deprived of the right to organize and take part in public demonstrations as a result of measures adopted by the Government under Ordinance 2 on measures to combat the coronavirus (O.2 Covid-19) adopted on 13 March 2020 by the Federal Council. On this basis, public and private events were banned as of 16 March 2020. The ban was accompanied by a criminal penalty of deprivation of liberty or pecuniary punishment in case of non-compliance.
From 30 May 2020, the ban on gatherings was relaxed (maximum 30 people). Events with more than 1000 people were banned until the end of August. On 20 June 2020, the ban on demonstrations was lifted, with an obligation to wear a mask.

The application was submitted to the European Court of Human Rights on 26 May 2020. The applicant association relies on **Article 11 (freedom of assembly and association)**. In its judgment of 15 March 2022, the Court found, by four votes to three, a violation of Article 11 of the Convention.
On 5 September 2022, the case was **referred to the Grand Chamber** at the request of the respondent Government.

End of life

Judgment

Mortier v. Belgium (application no. 78017/17), 4 October 2022

This case concerned the death by euthanasia of the applicant's mother, without the applicant or his sister having been informed. The applicant's mother had not wished to inform her children of her euthanasia request in spite of the repeated advice from the doctors. Relying on **Article 2 (right to life)**, the applicant alleged in particular that the State had failed to fulfil its obligations to protect his mother's life, since the statutory procedure for euthanasia had allegedly not been followed in her case. He also complained about the lack of an in-depth and effective investigation into the matters raised by him.

Relying on **Article 8 (right to respect for private and family life)**, Mr. Mortier alleged that by failing to effectively protect his mother's right to life, the State violated this provision.

The Court firstly explained that the case was not about whether there was a right to euthanasia, but about compatibility with the Convention of the act of euthanasia performed in the case of the applicant's mother.

Regarding the pre-euthanasia acts and procedure, the Court found that the statutory provisions on euthanasia constituted in principle a legislative framework that specifically ensured the protection of the right to life of the patients as required by Article 2.

On account of the conditions in which the act of euthanasia had been carried out in the case of the applicant's mother, the Court took the view that it could not be said from the evidence before it that the act in question, performed in accordance with the established statutory framework, had breached the requirements of Article 2.

However, the Court found that the State had failed to fulfil its procedural positive obligation, on account of the lack of independence of the Federal Board for the Review and Assessment of Euthanasia and the length of the criminal investigation in the case.

Lastly, the Court found that the doctors assisting the applicant's mother had done everything reasonable, in compliance with the law, their duty of confidentiality and medical secrecy, together with ethical guidelines, to ensure that she contacted her children about her euthanasia request.

No violation of Article 2 on account of the legislative framework governing the pre-euthanasia acts and procedure.

No violation of Article 2 of the Convention on account of the conditions in which the act of euthanasia had been carried out in the case of the applicant's mother

Violation of Article 2 of the Convention on account of the post-euthanasia review procedure.

No violation of Article 8.

The judgment is only available in French.

Detention and mental health / restraint measures

Judgment

P.W.v. Austria (application no. 10425/19), 21 June 2022

This case involved the preventive detention of the applicant in a facility for mentally ill offenders. The applicant was charged with resisting arrest after she hit a police officer who had been called when she was unable to pay for a cab. Invoking **Article 5 § 1 (e) (right to liberty and security)**, the applicant complained in particular that her confinement in an institution for mentally ill offenders was neither proportionate nor necessary.
The Court found that it had been demonstrated that the deprivation of liberty of the applicant had been necessary in the circumstances of the case. In particular, it noted that three experts, all specialists in psychiatry or neurology, had each given an opinion on the applicant and that, according to all three experts, the applicant had a schizophrenic disorder. There was no doubt that this disorder was sufficiently severe to be considered a "real" mental disorder of such a nature as to require treatment in a specialized institution. The applicant's insanity had therefore been conclusively established. Moreover, her mental disorder had been established before a competent authority by means of an objective medical expertise and was of such a nature or extent as to justify internment. Moreover, in deciding to commit the applicant to hospital rather than to outpatient treatment, the national courts had taken into account the fact that the applicant had been described as a person who was not sufficiently aware of being affected by a disorder and who displayed a negative attitude towards treatment, in particular in that she had already refused to take her medication.

No violation of Article 5 § 1 (e).

The judgment is final and only available in English.

Prohibition of discrimination

Judgment

Arnar Helgi Larusson v. Iceland (application no. 23077/19), 31 May 2022

The applicant, a wheelchair user, complained about access to municipal buildings housing cultural and social institutions in Reykjanesbær. Invoking **Article 14 (prohibition of discrimination)** in conjunction with **Article 8 (right to respect for private life)**, the applicant claimed in particular that the inaccessibility of the two buildings in question impeded his personal development and his right to establish and develop relations with his community.
The Court found that, on the whole, the municipality of Reykjanesbær had taken adequate measures to ensure the accessibility of the public buildings, within the limits of the budget available to it and with respect for the cultural heritage to which the buildings in question belonged, and that the applicant had not suffered discrimination. In particular, the Court referred to the United Nations Convention on the Rights of Persons with Disabilities, according to which the denial of access of persons with disabilities to facilities and services open to the public must be considered discrimination. It recognizes that States have a certain margin of appreciation in this matter and considers that they are obliged to facilitate access for persons with disabilities, provided that this does not entail a disproportionate burden for them. In the present case, noting the general efforts made to improve access to municipal buildings in Iceland, the Court was not convinced that there was a discriminatory failure to provide access to the applicant that was enjoyed by others. The municipality of Reykjanesbær had initially chosen to improve access to sports and educational facilities, which the Court considered reasonable. The Court also notes that improvements have been made since then and that the competent authorities have committed themselves to gradually improving access for persons with disabilities. It concluded that requiring Iceland to take immediate additional measures would constitute a "disproportionate or undue burden".

No violation of Article 14 combined with Article 8.

The judgment is only available in English.

Medical negligence and liability of health professionals

Judgment

Tusă v. Romania (application no. 21854/18), 30 August 2022

The applicant in this case had had her left breast removed on the basis of a cancer diagnosis which had turned out to be mistaken. She complained in particular of the consequences of the surgery and of the outcome of the proceedings which she had instituted in the national courts, relying on **Article 8 (right to respect for private life)**.

The Court found that the legal machinery in place under Romanian law had not afforded the effectiveness which the Court's case-law required. It observed in particular that the regulatory framework established by the Romanian legislation, with its range of

procedural remedies to choose from, could appear to be of benefit to potential litigants. Yet, in the applicant's case, the various proceedings she had instituted had yielded differing results. Moreover, the legal machinery in place under Romanian law had proved sluggish and cumbersome in the applicant's case. It was true that the applicant had elected to pursue all the remedies available to her under the regulatory framework, but she could not be faulted for that. It was, in the Court's view, understandable that she had wished to obtain clarification of the facts concerning her situation and compensation for the harm she believed she had suffered. However, the tort case – the only proceedings in which such compensation might in principle be forthcoming – had remained pending nine years after she had filed it with the courts and 14 years after she had consulted the doctor and had the surgery.

Violation of Article 8.

The judgment is only available in French.

Judgment

Dolenc v. Slovenia (application n°20256/20), 20 October 2022

The case concerned an Israeli citizen who had been left paralysed after being operated on by the applicant, a well-known neurosurgeon, in a Ljubljana hospital and the ensuing proceedings in both Israel and Slovenia.
Relying on **Article 6 (right to a fair trial)**, Mr Dolenc alleged that the Slovenian courts should have refused to recognise the Israeli judgments, awarding the applicant's former patient more than 2 million euros, because they had been rendered in unfair proceedings. The Court found in particular that before recognising the Israeli judgments, the Slovenian courts had failed to duly satisfy themselves that the trial in Israel had been fair. There had in particular been issues concerning evidence-gathering. The court in Israel did not hear such crucial witnesses as the hospital staff and a Slovenian law expert and excluded their statements from the case file.

Violation of Article 6 § 1.

The judgment is only available in English.

Cannabis-based medication

Judgment

Thörn v. Sweden (application no. 24547/18), 1 September 2022

This case concerned the conviction and fine issued to the applicant for a cannabis offence. He asserted that he had been taking the drug for pain relief, but did not have a prescription to that effect. He had been confined to a wheelchair since 1994 following breaking his neck in a traffic accident, with many pain-related issues in the years since. At the time, medical cannabis was available in Sweden, ordinarily for the treatment of multiple sclerosis.

The Court held that there had been no violation of **Article 8** (**right to respect for private life**) of the Convention in the present case, finding, overall, that in striking the particular balance between the applicant's interest in having access to pain relief and the general interest in enforcing the system of control of narcotics and medicines, the Swedish authorities had acted within their wide discretion ("margin of appreciation"). The Court, in particular, found it established that the conviction of the applicant and his fine of approximately 520 euros had entailed an interference with his right to respect for his private life, and that his actions had been carried out in order to help him function better in his everyday life. On the question of whether that interference had been "necessary in a democratic society", the Court reiterated that the case at issue did not concern either the legality of the production or consumption of cannabis, but rather whether not excluding the applicant from criminal liability in this case had violated his right to respect for private life. The Swedish Supreme Court had held that even if he had acted out of necessity and his actions had not posed a risk to others, those actions had nevertheless been unjustifiable under the law. Effectively his personal circumstances had been taken into account only in sentencing. The Court lastly noted that it had received no information on the particular impact of the punishment on the applicant, and that the domestic courts had licensed a prescription for a cannabis-based drug for the applicant in 2017 while the criminal proceedings had been pending.

No violation of Article 8.

The judgment is only available in English.

Clinical trial of new medicine

Judgment

Traskunova v. Russia (application no. 21648/11), 30 August 2022

This case concerned the death of the applicant's daughter while she was participating in the clinical trial of a new drug for schizophrenia, namely asenapine. The ensuing inquiry revealed that her daughter had slipped into a coma and died because of heart disease which had gone undetected and which had been aggravated by the experimental drug. The applicant unsuccessfully attempted to have disciplinary proceedings instituted against those responsible and to bring criminal proceedings into the death. Invoking **Article 2 (right to life)**, she argued that her daughter's doctors had put her life at risk by failing to carry out comprehensive medical check-ups prior to admitting her to the trials, to then monitor her condition, and to discontinue the trials as soon as side effects had appeared.
The Court found that the respondent State has failed to comply with its substantive and procedural obligations under Article 2. In particular, the Court noted that the State had not ensured an effective implementation and functioning of the legal framework with a view to protecting the right to life of the applicant's daughter – a mentally ill and thus vulnerable individual – in the context of clinical trials of experimental medicinal products, and it had not provided an adequate judicial response to the applicant in that connection.

Violation of Article 2.

The judgment is only available in English.

Forcible medical intervention or treatment

Judgment

S.F.K. v. Russia (application no. 5578/12), 11 October 2022

The applicant, Ms S.F.K., was born in 1989 and lives in the Republic of Bashkortostan (Russia).
The case concerns her complaint that in 2010 she was forced to have an abortion by her parents, even though she had made it clear to them and at the public hospital where the intervention took place that she wanted to continue with the five-week pregnancy. The parents were opposed to her relationship with the would-be father, who was the suspect in a violent crime and had been arrested.
She lodged a number of complaints against her parents and the medical personnel, but no criminal proceedings were ever instituted as the relevant authorities found that no elements of a crime could be established and that her parents "had acted in the best interests of their child". She has since had two miscarriages and was declared infertile in 2017.
Relying on **Article 3 (prohibition of inhuman or degrading treatment)**, she complains that the forced abortion, and inadequate medical care before and afterwards, amounted to inhuman and degrading treatment and a breach of her right to respect for her private life.

Violation of Article 3 (ill-treatment)

Violation of Article 3 (investigation)

The judgment is only available in English.

Judgment

Y.P. v. Russia (application no. 43399/13), 20 September 2022

The applicant, Ms Y.P. is a Russian national who was born in 1980 and lives in Krasnoyarsk (Russia).
The case concerns the applicant's sterilisation in a public hospital without her consent. She found out in 2010 – when consulting a gynaecologist because she could not get pregnant – that she had been sterilised two years before during a Caesarean section. Her civil claim against the maternity hospital was dismissed by the courts in 2012.
Relying on Article 3 (prohibition of inhuman or degrading treatment), the applicant alleges that the sterilisation without her consent had serious psychological and emotional effects on her and her relationship with her husband. Also, under Article 8 (right to respect for private and family life), she argues that there was no medical necessity for her urgent sterilisation as her life was not at risk and that, even if there was a risk during future pregnancies from a ruptured uterus, this was not sufficient grounds to sterilise her without her full and informed consent. She also maintains under Article 8 that the judicial response to her civil complaint was inadequate.

No violation of Article 3.

Violation of Article 8.

The judgment is only available in English.

Global warming

Duarte Agostinho and others v. Portugal and others (application no 39371/20), 28 June 2022

Relinquishment

The applicants are Portuguese nationals aged between 10 and 23. They argue that the forest fires that have occurred in Portugal each year since 2017 are a direct result of global warming. They allege a risk to their health on account of these fires and assert that they have already experienced disrupted sleep patterns, allergies and respiratory problems as a result, which are aggravated by the hot weather. The fifth and sixth applicants stress that climate disruption is causing very powerful storms in winter and maintain that their house, which is situated near the sea in Lisbon, is potentially at risk of damage from the storms.
The applicants also assert that they experience anxiety caused by these natural disasters and by the prospect of spending their whole lives in an increasingly warm environment, affecting them and any future families they might have.
The applicants complain that the 33 States concerned2 are failing to comply with their positive obligations under **Articles 2 (right to life) and 8 (right to respect for private and family life)** of the Convention, read in the light of their undertakings under the 2015 Paris Agreement on climate change (COP 21).
The applicants also allege a **violation of Article 14 (prohibition of discrimination)** taken in conjunction with Article 2 and/or Article 8 of the Convention, arguing that global warming affects their generation particularly and that, given their age, the interference with their rights is greater than in the case of older generations.

The application was lodged with the European Court of Human Rights on 7 September 2020. On 13 November 2020 the Governments concerned were given notice of the application, with questions from the Court. The Chamber also decided to deal with this case as a matter of priority, in accordance with Rule 41 of the Rules of Court.
The Chamber to which the case had been allocated **relinquished jurisdiction in favour of the Grand Chamber on 28 June 2022.**

The application only exists in French.

Carême v. France (application no 39371/20), 31 May 2022

Relinquishment

The case concerns a complaint by an inhabitant and former mayor of the municipality of Grande-Synthe, who submits that France has taken insufficient steps to prevent climate change and that this failure entails a violation of the right to life and the right to respect for right to respect for private and family life.

The application was lodged with the European Court of Human Rights on 28 January 2021.
The Chamber to which the case had been allocated **relinquished jurisdiction in favour of the Grand Chamber on 31 May 2022.**

Other

New ECHR information tool

The Court's Knowledge Sharing platform (ECHR-KS) was opened to the public on 18 October 2022. Its mission is to share Convention case-law knowledge, complementing the existing information tools such as HUDOC.

The ECHR-KS is developed and maintained by the Registry and its content does not bind the Court.

The platform presents the latest analysis of case-law developments in a thematic and contextualised manner through particular Convention Articles and Transversal Themes. The materials produced by the Registry are supplemented by documents and links of more general case-law relevance. The platform's content is updated weekly, making it a comprehensive and up-to-date source of Convention case-law analysis.

The ECHR-KS is available in both official languages, English and French.

Further to the launching of ECHR-KS, the monthly compilation of Legal Summaries (the Case-Law Information Note or "CLIN") will no longer be published by the Court. Legal Summaries in individual cases will continue to be posted on HUDOC and will also be referenced on the ECHR-KS platform.