

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 15 April 2015

DH-BIO/INF (2015)5

COMMITTEE ON BIOETHICS (DH-BIO)

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

Document prepared by the Secretariat
using the terms of the official documents published by the ECHR

Contents

Recent case-law 3

 Removal of tissue 3

 Surrogacy 3

 Access to medical care 4

 Ethical issues concerning HIV 5

 Detention and mental health..... 5

 Prisoners’ health-related rights 6

 Decision to discontinue artificial nutrition and hydration..... 6

Factsheets 7

Recent case-law

Removal of tissue

Judgment delivered

[Elberte v. Latvia \(61243/08\)](#)

The case concerned the removal of body tissue from the applicant's deceased husband by forensic experts after his death, without her knowledge or consent. Unknown to the applicant, pursuant to a State-approved agreement, tissue had been removed from her husband's body after her husband's autopsy and sent to a pharmaceutical company in Germany for the creation of bio-implants. She only learned about the course of events two years after her husband's death when a criminal investigation was launched in Latvia into allegations of wide-scale illegal removal of organs and tissues from cadavers. However, domestic authorities eventually did not establish any elements of crime.

Judgment delivered on 13 January 2015 (not final): **violation of Article 8** (right to respect for private and family life) **and of article 3** (prohibition of inhuman or degrading treatment). The Court found in particular that Latvian law regarding the operation of the consent requirement on tissue removal lacked clarity and did not have adequate legal safeguards against arbitrariness. The Court further concluded that the applicant had had to face a long period of uncertainty and distress concerning the nature, manner and purpose of the tissue removal from her husband's body, underlining that, in the special field of organ and tissue transplantation, the human body had to be treated with respect even after death.

Surrogacy

Judgment delivered

[Paradiso and Campanelli v. Italy \(25358/12\)](#)

(available in French only, [press release in English](#))

The case concerned the placement in social-service care of a nine-month-old child who had been born in Russia following a gestational surrogacy contract entered into by a couple; it subsequently transpired that they had no biological relationship with the child.

Judgment delivered on 27 January 2015 (not final): **violation of Article 8** (right to respect for private and family life). The Court found in particular that the public-policy considerations underlying the Italian authorities' decisions could not take precedence over the best interests of the child. Reiterating that the removal of a child from the family setting was an extreme measure that could be justified only in the event of immediate danger to that child, the Court considered that, in the present case, the conditions justifying a removal had not been met.

Communicated cases

The following three applications were communicated on 16 January 2015 making

reference to the judgments of 26 June 2014 (both final on 26 September 2014) in the cases of [Mennesson v. France \(no 65192/11, CEDH 2014\)](#) and [Labassee c. France \(no 65941/11\)](#) (available only in French). The cases concern the refusal to grant legal recognition to parent-child relationships that had been established abroad between children born as a result of surrogacy treatment and the couples/individuals who had had the treatment.

[Laborie and others v. France \(4424/13\)](#)
(available only in French)

[Bouvet and others v. France \(10410/14\)](#)
(available only in French)

[Foulon v. France \(9063/14\)](#)
(available only in French)

Access to medical care

Judgments delivered

[Asiye Genç v. Turkey \(24109/07\)](#)
(available only in French, [press-release in English](#))

The case concerned a prematurely born baby's death in an ambulance, a few hours after birth, following the baby's transfer between hospitals without being admitted for treatment.

Judgment delivered on 27 January 2015 (not final): **violation of Article 2** (right to life). The Court found, firstly, that the State had not sufficiently ensured the proper organisation and functioning of the public hospital service, or its health protection system. Secondly, the Court found that the Turkish judicial system's response to the tragedy had not been appropriate for the purposes of shedding light on the exact circumstances of the child's death.

[Y. Y. v. Turkey \(14793/08\)](#)
(available only in French, [press-release in English](#))

The case concerned the refusal by the Turkish authorities to grant authorisation for gender reassignment surgery on the grounds that the person requesting it, a transsexual, was not permanently unable to procreate.

Judgment delivered on 10 March 2015 (not final): **violation of Article 8** (right to respect for private and family life).

[Dubská and Krejzová v. the Czech Republic \(application nos. 28859/11 and 28473/12\)](#)

The case concerned the prohibition under Czech law on midwives assisting home births.

Judgment delivered on 11 December 2014 (request for referral to the Grand Chamber pending): **No violation of Article 8** (right to respect for private and family life). The Court took into consideration, in particular, that there was no European consensus on whether or not to allow home births, and that this question involved the allocation of financial resources. It concluded that States had a wide margin of appreciation in regulating this issue.

Ethical issues concerning HIV

Friendly settlement

[S. J. v. Belgium \(Grand Chamber 70055/10\)](#)

The case concerned the threatened expulsion from Belgium of a Nigerian mother suffering from AIDS.

Judgment delivered on 19 March 2015: **strike out** of the Court's list of cases. The Court took note of the terms of the friendly settlement and the arrangements for ensuring compliance with the undertakings given, namely the fact that the applicant and her children had been issued with residence permits granting them indefinite leave to remain.

Detention and mental health

Decision

[Constancia v. the Netherlands \(73560/12\)](#)

The case concerned the applicant's complaint about being detained as a person of "unsound mind" in the absence of a precise diagnosis of his mental state. The applicant, who was convicted of the violent manslaughter of an eight-year old boy, had refused to be examined, making the assessment of his mental condition impossible.

Decision delivered on 26 March 2015 (final): **inadmissible as being manifestly ill-founded**. The Court found in particular that the applicant's trial court, in the face of his complete refusal to cooperate, had been entitled to conclude from the information obtained as well as on its own investigation of the case-file, that the applicant was suffering from a genuine mental disorder which was of a kind or degree warranting compulsory confinement. This is the first case in which the Court allowed other existing information to be substituted for a medical examination of the applicant's mental state.

Judgment adopted

[Dvořáček v. Czech Republic \(12927/13\)](#)

(available in French only, [press release in English](#))

The case concerned the conditions surrounding the compulsory admission of the applicant to a psychiatric hospital to undergo protective sexological treatment.

Judgment delivered on 6 November 2014 (final): **no violation of Article 3** (prohibition of inhuman or degrading treatment). The Court found that although most of the restrictions complained of by the applicant in relation to his detention had undoubtedly caused him discomfort, they had been justified by his state of health and his conduct. It also found that, since it could not be established that the applicant had been pressured into undergoing the sexological treatment, the failure to use a specific form setting out the applicant's consent was not such as to infringe Article 3, while indicating that such a form would reinforce legal certainty for all concerned.

Prisoners' health-related rights

Judgment delivered

[Helhal v. France \(10401/12\)](#)

(available in French only, [press release in English](#))

The case concerned the compatibility of a disabled prisoner's state of health with his continuing detention and the arrangements for his care in prison.

Judgment delivered on 19 February 2015 (not final): **violation of Article 3** (prohibition of inhuman or degrading treatment). The Court found in particular that, although the applicant's continuing detention did not in itself constitute inhuman or degrading treatment in the light of his disability, the inadequacy of the physical rehabilitation treatment provided to him and the fact that the prison premises were not adapted to his disability amounted to a breach of Article 3 of the Convention.

Grand Chamber Hearing held

[Mozer v. the Republic of Moldova and Russia \(11138/10\)](#)

The applicant, who is suffering from bronchial asthma, respiratory deficiency and other conditions, complains in particular that he is deprived of medical assistance and held in inhuman conditions of detention by the authorities of the self-proclaimed "Moldovan Republic of Transdniestria". He submits that both Moldova and Russia are responsible for these actions.

On 20 May 2014 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. On 4 February 2015 the Grand Chamber held a hearing in the case.

Decision to discontinue artificial nutrition and hydration

Grand Chamber Hearing held

[Lambert and Others v. France \(46043/14\)](#)

The applicants are the parents, a half-brother and a sister of Vincent Lambert who sustained a head injury in a road-traffic accident in 2008 as a result of which he is

tetraplegic. They complain in particular about the judgment delivered on 24 June 2014 by the French Conseil d'État which, relying on, among other things, a medical report drawn up by a panel of three doctors, declared lawful the decision taken on 11 January 2014, by the doctor treating Vincent Lambert, to discontinue his artificial nutrition and hydration.

On 4 November 2014 the Chamber to which the application was allocated relinquished jurisdiction in favour of the Grand Chamber. The Grand Chamber held a hearing on 7 January 2015.

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 \(September 2014\)](#)
- [Health \(March 2015\)](#)
- [Mental health \(May 2013\)](#)
- [Detention and mental health \(January 2014\)](#)
- [Prisoners' health-related rights \(February 2015\)](#)
- [Euthanasia and assisted suicide \(January 2015\)](#)
- [Reproductive rights \(February 2015\)](#)
- [Right to life \(June 2013\)](#)
- [New technologies \(September 2014\)](#)