Compilation of relevant case-law (summaries) in the child rights field delivered by the European Court of Human Rights

www.echr.coe.int

Applications to the Court may be sent only by post, even if they have been faxed beforehand:

The Registrar
European Court of Human Rights
Council of Europe
67075 Strasbourg-Cedex
France
Fax: +33 (0)3 88 41 27 30
Compilation of relevant case-law (summaries) in the child rights field delivered by the European Court of Human Rights

Procedure before the Court .................................................................................................................................................. 6

I- The European Court of Human Rights (ECHR) ........................................................................................................... 6

A- The Mandate of the European Court of Human Rights ................................................................................................. 6

B- What can this mechanism do to assist you? .................................................................................................................... 6

1. Friendly settlement ................................................................................................................................................................. 7

2. Judgment ................................................................................................................................................................................ 7

3. Interim measures ................................................................................................................................................................... 10

II- Rule 39 and Interim Measures ........................................................................................................................................ 11

A- RULE 39 ................................................................................................................................................................................ 11

1. WHO/WHEN/FOR WHAT .................................................................................................................................................... 11

B- General Presentation ............................................................................................................................................................ 11

1. What are interim measures? .................................................................................................................................................... 11

2. requests ‘ processing ............................................................................................................................................................ 11

3. Absence of appeal .................................................................................................................................................................. 12

4. Duration and lifting of orders under Rule 39 ...................................................................................................................... 12

5. Deportation of a person to a member State ......................................................................................................................... 12

Factsheet ECHR ..................................................................................................................................................................... 13

I- Children’s Rights ................................................................................................................................................................. 13

A- The concept of private and family life, article 8 .................................................................................................................... 13

B- Education ............................................................................................................................................................................. 13

- Belgian Linguistic Case (nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64) 23.7.1968 Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. BELGIUM .......................................................................................................................... 13

- Timishev v. Russia (nos. 55762/00 and 55974/00) 13.12.2005 .............................................................................................. 13

- D.H.v. Czech Republic (no. 57325/00) 13.11.2007 ..................................................................................................................... 14

- Sampanis and Others v. Greece (no. 32526/05) 5.6.2008 ........................................................................................................ 14
- Oršuš and Others v. Croatia (no. 15766/03) 16.3.2010 ..................................................... 14
- Horváth és Vadázi v. Hungary (no. 2351/06) 09.11.2010 ..................................................... 15

C- Inheritance and Affiliation ........................................................................................................ 15
- Marckx v. Belgium (no. 6833/74) 13.6.1979 final ............................................................... 15
- Inze v. Austria (no. 8695/79) 28.10.1987 final ................................................................. 16
- Mazurek v. France (no. 34406/97) 1.2.2000 .................................................................... 16
- Camp and Bourimi v. the Netherlands (no. 28369/95) 3.10.2000 ..................................... 16
- Pla and Puncernau v. Andorra (no. 69498/01) 13.7.2004 ............................................... 17
- Merger and Cros v. France (no. 68864/01) 22.12.2004 ..................................................... 17
- Brauer v. Germany (no. 3545/04) 28.5.2009 ................................................................ 17
- Zaunegger v. Germany, 03.12.09 (judgment) ................................................................... 17
- Mustafa and Armagan v. Turkey 6.4.2010 (judgment) .................................................... 19
- Syngelidis v. Greece (application no. 24895/07) 11.2.2010 ............................................. 20

D- Personal Identity ....................................................................................................................... 21
- Jäggi v. Switzerland (no. 58757/00) 13.7.2006 ................................................................. 22

E- Adoption .................................................................................................................................... 22
- Moretti and Benedetti v. Italy 27.04.2010 ....................................................................... 22
- Schwizgebel v. Switzerland 10.06.2010 ........................................................................... 24

F- Health ........................................................................................................................................ 26
- Oyal v. Turkey 23.03.2010 ................................................................................................ 26

G- Reproductive Rights .................................................................................................................. 28
- Prenatal Medical Tests: Draon v. France (no. 1513/03), Draon & Maurice v. France (no. 11810/03) both 16.10.2005 ................................................................. 28

H- Forced Sterilisation ................................................................................................................... 28

I- Medical negligence ..................................................................................................................... 29
- Yardımçı v. Turkey (no. 25266/05) 5.1.2010 .................................................................... 29

J- Citizenship .................................................................................................................................. 29
- Pending case, Genovese v. Malta (no. 53124/09) ............................................................ 29

II- Mental Health ............................................................................................................................... 29
A- “Private Life” (Article 8) covers a person’s physical and moral integrity............................ 29
- X. and Y. v. the Netherlands, 26.03.1985 ......................................................................... 29
- K. and T. v. Finland, 12.07.2001 ........................................................................................ 30

B- Confinement ............................................................................................................................. 30
• Nielsen v. Denmark, 28.11.1998 ...................................................................................... 30

III- Protection of personal data ......................................................................................................... 30
A- Files and access to data............................................................................................................. 30
• Gaskin v. the United Kingdom, 07.07.1989 ........................................................................ 30
B- Files kept by the judicial authorities ......................................................................................... 31

IV- Expulsions and extraditions ...................................................................................................... 32
A- Risks of ill treatment by third parties ........................................................................................ 32
• Collins and Akaziebie v. Sweden 8.3.2007 ............................................................................ 32
B- Pending cases: risk of female genital mutilation in Nigeria ...................................................... 32
• Izevbekhai v. Ireland (no. 43408/08) concerning a mother and her two daughters and
  Omeredo v. Austria (no. 8969/10) .......................................................................................... 32
C- Recently adopted similar cases: conditions of detention of persons removed or pending their
  removal .......................................................................................................................................... 32
• Before removal Muskhadzhiyeva and Others v. Belgium 19/01/2010 ................................ 32

V- CHILD PROTECTION ....................................................................................................................... 33
A- Corporal punishment ................................................................................................................ 33
• Tyrer v. United Kingdom (application no. 5856/72) 25.4.1978 ........................................ 33
• A. v. United Kingdom (no. 25599/94) 23.9.1998 .............................................................. 33
B- Internet ..................................................................................................................................... 33
• K.U. v. Finland (no. 2872/02) 2.12.2008 ............................................................................ 33
C- Risk of abuse in child care ......................................................................................................... 34
• Scozzari and Giunta v. Italy (nos 39221/98 & 41963/98) 13.7.2000 ................................ 34
D- Domestic violence & abuse....................................................................................................... 34
• Z and Others v. United Kingdom (no. 29392/95) 10.5.2001 ................................................ 34
• D.P. & J.C. v. United Kingdom (no. 38719/97) 10.10.2002 .................................................. 34
• E & Others v. United Kingdom (no. 33218/96) 26.11.2002 .................................................. 36
• Siliadin v. France (no. 73316/01) 26.7.2005 ..................................................................... 36
• Kontrovà v. Slovakia (no. 7510/04) 31.5.2007 ................................................................. 36
• E.S. and Others v. Slovakia (no. 8227/04) 15.9.2009 ....................................................... 37
E- Sexual abusers of minors ........................................................................................................... 37
• Gardel c. France 17.11.2009...................................................................................................... 37
• A.D. and O.D. v. United Kingdom, 16.3.2010 ................................................................. 38
• M.A.K. and R.K. v. United Kingdom, 23.3.2010 ................................................................. 39
F- Forced labour and trafficking ................................................................. 39

G- Ill-treatment by police ........................................................................... 40
  • Okkali v. Turkey (no. 52067/99) 17.10.2006 ........................................... 40
  • Stoica v. Romania (no. 42722/02) 4.3.2008 ........................................... 40
  • Alkes v. Turkey 02.03.2010 .................................................................. 40
  • Çigerhun Öner v. Turkey (no. 2) (application no. 2858/07) 23.11.2010 .... 41

H- Children in court .................................................................................... 41
  • T. v. United Kingdom (no. 24724/94) & V. v. United Kingdom (no. 24888/94) 16.12.1999 .......................................................... 41
  • S.C. v. United Kingdom (no. 60958/00) 15.6.2004 .................................. 42
  • Stagno v. Belgium (no. 1062/07) 7.7.2009 ............................................ 43
  • Adamkiewicz v. Poland, 2.3.2010 ......................................................... 43

I- Children in detention ............................................................................... 44
  • Selçuk v. Turkey (no. 21768/02) 10.1.2006 .......................................... 44
  • Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (no. 13178/03) 12.10.2006 ...... 44
  • Güveç v. Turkey (no. 70337/01) 20.1.2009 ........................................... 45
Procedure before the Court

I- The European Court of Human Rights (ECHR)

The European Court of Human Rights is a treaty body. It was set up under the European Convention on Human Rights to ensure that States respect the Convention.

The Court can receive complaints from individuals or from states alleging that a certain state has violated the Convention. It examines such complaints and passes judgments which are legally binding on States. This means that States must comply with the Court’s judgments.

The Court is made up of over 47 judges, one from each of the states which are a party to the Convention. They are elected to serve on the Court in an independent capacity. The Court is based in Strasbourg, France and it is a permanent body meeting all year round.

The Court is widely recognised as one of the best international human rights mechanisms in the world. However, it is strictly limited in the kind of cases it can examine and it can take a very long time (up to 7 years) for the Court to process a case.

A- The Mandate of the European Court of Human Rights

The Court can examine allegations of violations of the rights set out in the European Convention on Human Rights. All of the rights listed in the Convention are protected by the Court.

The rights contained in the Convention are given additional protection in Protocols to the Convention. A Protocol is an additional piece of text added to a Convention after the original Convention has been finalised. The protocols only apply to those states which have ratified them. The full text of the Convention and its Protocols is available in 33 European languages.

B- What can this mechanism do to assist you?

If the Court decides that a complaint is admissible (that is, if it accepts a complaint) it can examine the complaint. Written and oral evidence can be taken from both the applicant (the person who

---


submitted the complaint to the Court) and representatives of the state concerned. Further to its examination of a complaint, the Court can take the following actions:

1. Friendly settlement

The Court can reach a friendly settlement between the applicant and the state concerned. The friendly settlement procedure is an important tool for the reduction of the European Court of Human Rights’ (ECtHR) case load. Recent practice demonstrates that this procedure is increasingly resorted to by applicants and Contracting States.

2. Judgment

If no friendly settlement can be reached, the Court can pass a judgment. In its judgment the Court can order the state concerned to change its national law in order to stop the violation occurring or to prevent future violations. It can also order the state to pay compensation to the victim and to take measures to restore the victims to the position they were in before the violation occurred.

Basic information on the complaints procedure to follow before the ECtHR

- General

Any Contracting State (inter-state cases) or any individual, a non-governmental organization or a group of individuals (individual applications) claiming to be a victim of a violation of the Convention may lodge directly with the Court in Strasbourg an application alleging a breach by a Contracting State of one of the Convention rights or of a right contained in one of its Additional Protocols unless the State at the origin of the breach has not ratified the Protocol. A notice for the guidance of applicants and forms for making applications may be obtained from the Registry.

Detailed admissibility criteria are contained in Article 35 of the ECHR:

- A complaint/application can be submitted to the Court ONLY after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of six months from the date on which the final decision has been taken.
- Applications cannot be anonymous or substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international settlement or investigation.
- Applications are declared inadmissible if 1) incompatible with the provisions of the Convention; 2) manifestly ill-founded; 3) are the result of an abuse of the right of individual application; 4) the applicant has not suffered a significant disadvantage.

---


4 Rules for legal status of the applicant do not apply: anybody, including a child or a person with legal incapacity can lodge a complaint before the Court, the only requirement being to be the direct victim of an alleged violation.
The procedure before the European Court of Human Rights is adversarial and public. Hearings, which are held only in a minority of cases, are public, unless the Chamber/Grand Chamber decides otherwise on account of exceptional circumstances. Memorials and other documents filed with the Court’s Registry by the parties are, in principle, accessible to the public.

Individual applicants may present their own cases, but legal representation is recommended, and indeed usually required once an application has been communicated to the respondent Government. The Council of Europe has set up a legal aid scheme for applicants who do not have sufficient means.

The official languages of the Court are English and French, but applications may be submitted in one of the official languages of the Contracting States. Once the application has been declared admissible, one of the Court’s official languages must be used, unless the President of the Chamber/Grand Chamber authorises the continued use of the language of the application.

- Admissibility procedure

The ECHR is facing a necessary evolution concerning the admissibility procedure. Indeed, the explosive growth of litigation in the last ten years is due not only to the accession of new Council of Europe member states but also to a massive inflow of individual applications from both old and new member states. This situation poses a threat to the effective functioning of the Court. If it is to fulfill its essential functions, the processing of cases that are manifestly inadmissible or purely repetitive must be speeded up as a matter of urgency.

The reform of the Court, which started back in 2001, was the subject of a new protocol to the European Convention on Human Rights, Protocol No. 14. The latter entered into force on 1 June 2010. Its purpose is to guarantee the long-term efficiency of the Court by optimizing the screening and processing of applications. It envisages, among other measures, the creation of new judicial formations for the most simple cases, a new admissibility criterion (the criteria of "significant disadvantage") and introduces a nine-year non-renewable term of office for judges.

In February 2010 by ratifying Protocol No. 14, Russia joined the other 46 member states which had already ratified the Protocol, thereby enabling the latter to come into force on 1 June 2010. The entry into force of Protocol No. 14 also paves the way for EU accession to the European Convention on Human Rights.

Summary of the treaty

For a more effective operation of the European Court of Human Rights, this Protocol makes the following main changes to the Convention:

- Clearly inadmissible cases: inadmissibility decisions in these cases, which are now taken by a committee of three judges, will be taken by a single judge, assisted by non-judicial rapporteurs. The idea is to increase the Court's filtering capacity, i.e. its capacity to filter out the "hopeless" cases.

5 http://conventions.coe.int/Treaty/EN/Treaties/Html/194.htm
– **Repetitive cases**: where the case is one of a series deriving from the same structural defect at national level, the proposal is that it may be declared admissible and decided by a committee of three judges (instead of a seven-judge Chamber at present) under a simplified summary procedure.

– **New admissibility criterion**: with a view to allowing the Court a greater degree of flexibility, a new admissibility condition is foreseen (in addition to existing conditions such as exhaustion of domestic remedies, six-month time-limit). Under this condition the Court could declare inadmissible applications where the applicant has not suffered a significant disadvantage provided that "respect for human rights" does not require the Court to go fully into the case and examine its merits. However, in order to ensure that applicants even with minor complaints are not left without any judicial remedy, the Court will not be able to reject a case on this ground if there is no such remedy in the country concerned.

Under the Protocol the Committee of Ministers will be empowered, if it decides by a two-thirds majority to do so, to bring proceedings before the Court where a State refuses to comply with a judgment. The Committee of Ministers will also have a new power to ask the Court for an interpretation of a judgment. This is to assist the Committee of Ministers in its task of supervising the execution of judgments and particularly in determining what measures may be necessary to comply with a judgment.

Other measures in the Protocol include changing the judges’ term of office from the present six year renewable term to a single, nine year term and a provision in view of possible accession by the European Union to the Convention.

### Procedure on the merits

Once the Chamber has decided to admit the application, it may invite the parties to submit further evidence and written observations, including any claims for “just satisfaction” by the applicant. If no hearing has taken place at the admissibility stage, it may decide to hold a hearing on the merits of the case.

**The President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not party to the proceedings, or any person concerned who is not the applicant, to submit written comments, and, in exceptional circumstances, to make representations at the hearing. A Contracting State whose national is an applicant in the case is entitled to intervene as of right.**

During the procedure on the merits, negotiations aimed at securing a friendly settlement may be conducted through the Registrar. The negotiations are confidential.

### Judgment

Judgments are adopted by a majority vote. Any judge who has taken part in the consideration of the case is entitled to append to the judgment a separate opinion, either concurring or dissenting, or a bare statement of dissent.

Within three months of delivery of the judgment of a Chamber, any party (to the case) may request that the case be referred to the Grand Chamber if it raises a serious question of interpretation or
application or a serious issue of general importance. Such requests are examined by a Grand Chamber panel of five judges composed of the President of the Court, the Section Presidents, with the exception of the Section President who presides over the Section to which the Chamber that gave judgment belongs, and another judge selected by rotation from judges who were not members of the original Chamber.

A Chamber’s judgment becomes final on expiry of the three-month period or earlier if the parties announce that they have no intention of requesting a referral or after a decision of the panel rejecting a request for referral.

If the panel accepts the request, the Grand Chamber renders its decision on the case in the form of a judgment. The Grand Chamber decides by a majority vote and its judgments are final.

All final judgments of the Court are binding on the respondent States concerned.

Responsibility for supervising the execution of judgments lies with the Committee of Ministers of the Council of Europe. The Committee of Ministers verifies whether States in respect of which a violation of the Convention is found have taken adequate remedial measures to comply with the specific or general obligations arising out of the Court’s judgments.

- Advisory opinions

The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and Protocols.

Decisions of the Committee of Ministers to request an advisory opinion are taken by a majority vote.

Advisory opinions are given by the Grand Chamber and adopted by a majority vote. Any judge may attach to the advisory opinion, a separate opinion or a bare statement of dissent.

3. Interim measures

If the Court is reliably informed that a violation is about to take place, it can direct the state concerned to take interim measures to prevent the violation occurring.

Interim measures are temporary actions to be taken before the Court’s formal examination of a case is completed. For example, the Court can direct a state not to send a person to another country where it might be at risk of torture or another violation of the Convention.
II- Rule 39 and Interim Measures

A- RULE 39

1. WHO/WHEN/FOR WHAT

Anyone can request the application of Rule 39-interim measures and the person does not need to be legally qualified; requests can be posted/faxed to the court.

This rule also applies when a person or group of persons are facing a threat to be removed/deported/extraded from a contracting country to a third country (not party to the Convention) and removal directions have been set, all legal avenues in the country have been exhausted, and the person has strong grounds as to why the removal/deportation/extradition should not take place. If the applicant can demonstrate a real risk for his life (Article 2) or a real risk to be subjected to torture, or inhuman or degrading treatment (Article 3) upon return in the country of origin the applicant can request the Court under “Rule 39” to stay his/her removal until the Court examines the admissibility/merits of the case.

B- General Presentation

1. What are interim measures?

The Court may, under Rule 39 of its Rules of Court, indicate interim measures to any State party to the Convention.

Interim measures are urgent measures which, in accordance with the established practice of the Court, apply only where there is an imminent risk of irreparable damage (see Mamatkulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, § 104, 4 February 2005 and Paladi v. Moldova [GC], no. 39806/05, §§ 86-90, 10 March 2009)

Interim measures are applied only in limited situations: the most typical cases are ones in which there are fears of

- a threat to life (situation falling under Article 2 of the Convention) or
- ill-treatment prohibited by Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment).

In highly exceptional cases they can also be applied in respect of certain requests relating to the right to respect for private and family life (Article 8 of the Convention).

The vast majority of interim measures indicated concern deportation and extradition cases. In these cases, the Court can request the State concerned to suspend a deportation order against the applicant.

In accordance with the Court’s practice, requests that clearly fall outside the scope of Rule 39 are not submitted to the President of the Chamber for a decision and are immediately rejected.

2. Requests’ processing

Every request is examined individually. The procedure is a written one.
Every request for interim measures is dealt with as a matter of priority, unless the request is manifestly intended as a delaying tactic.

Applicants are informed of the decisions of the Court regarding requests for interim measures by letter (sent by fax and by post).

3. Absence of appeal
No appeal lies against decisions refusing application of Rule 39.

4. Duration and lifting of orders under Rule 39
Interim measures may be indicated for the duration of the proceedings before the Court or for a more limited period of time.

An order under Rule 39 may be lifted at any time by a decision of the Court.

In particular, as an order under Rule 39 is linked to the proceedings before the Court the measure may be lifted if the application is not maintained.

5. Deportation of a person to a member State
Where a person whose request for an interim measure has been refused is deported to another member State, he or she can, if necessary, introduce a fresh request against that State under Rule 39 of the Rules of Court or an application under Article 34 of the Convention.

Factsheet ECHR

I-Children’s Rights

A-The concept of private and family life, article 8

B-Education

Belgian Linguistic Case (nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64) 23.7.1968 Case “relating to certain aspects of the laws on the use of languages in education in Belgium” v. BELGIUM

The applicants, parents of more than 800 Francophone children, living in certain (mostly Dutch-speaking) parts of Belgium, complained that their children were denied access to an education in French.

The European Court of Human Rights found that, denying certain children access to the French-language schools with a special status in the six districts on the outskirts of Brussels because their parents lived outside those districts was in violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights and Article 2 of Protocol No. 1 (right to education). However, the Court also held that the Convention did not guarantee a child the right to state or state-subsidised education in the language of her/his parents.

The full text of the judgment is available under: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695402&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

Timishevv. Russia (nos. 55762/00 and 55974/00) 13.12.2005

The applicant’s children, aged seven and nine, were excluded from a school they had attended for two years because their father, a Chechen, was not registered as a resident of the city where they lived and no longer had a migrant’s card, which he had been obliged to surrender in exchange for compensation for property he had lost in Chechnya.

As Russian law did not allow children’s access to education to be made conditional on the registration of their parent’s place of residence, the Court found a violation of Article 2 of Protocol No. 1.

For the full text of the judgment: http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=801685&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

7 http://www.echr.coe.int/NR/rdonlyres/F6DC7D2E-1668-491E-817A- D0E29F094E14/0/COURT_n1883413_v1_Key_caselaw_issues__Art_8__The_Concepts_of_Private_and_Family_ Life.pdf
D.H. v. Czech Republic (no. 57325/00) 13.11.2007

The case concerned 18 Roma children, all Czech nationals, who were placed in schools for children with special needs, including those with a mental or social handicap, from 1996-9. The applicants claimed that a two-tier educational system was in place in which the segregation of Roma children into such schools – which followed a simplified curriculum – was quasi-automatic.

The Court noted that, at the relevant time, the majority of children in special schools in the Czech Republic were of Roma origin. Roma children of average/above average intellect were often placed in those schools on the basis of psychological tests which were not adapted to people of their ethnic origin. The Court concluded that the law at that time had a disproportionately prejudicial effect on Roma children, in violation of Article 14 and Article 2 of Protocol No. 1. However, new legislation had abolished the special schools and required ordinary schools to provide both for children with special educational needs and socially disadvantaged children. Execution of this judgment is ongoing.

Sampanis and Others v. Greece (no. 32526/05) 5.6.2008

The Greek authorities failed to enroll in school a group of Greek children of Roma origin – who were receiving no formal education – for an entire academic year. Over 50 children were subsequently placed in special classes in a school annex which was supposed to prepare the pupils concerned for reintegration into mainstream classes.

The Court noted that the Roma children were not suitably tested either initially, to see if they needed to go into the preparatory classes or later, to see if they had progressed sufficiently to join the main school. It found a violation of Article 2 of Protocol No. 1 and Article 14, concerning both the enrolment procedure and the placement of the children in special classes, as well as Article 13 (right to an effective remedy). Execution of this judgment is ongoing.

Oršuš and Others v. Croatia (no. 15766/03) 16.3.2010

Fifteen Croatians of Roma origin complained that they were victims of racial discrimination in that they were segregated into Roma-only classes and consequently suffered educational, psychological and emotional damage.

The Court observed that only Roma children had been placed in the special classes in the schools concerned. The Government attributed the separation to the pupils’ lack of proficiency in Croatian; however, the tests determining their placement in such classes did not focus specifically on language skills, the educational programme subsequently followed did not target language problems and the children’s progress was not clearly monitored. The placement of the applicants in Roma-only classes
was therefore unjustified, in violation of Article 2 of Protocol No. 1 and Article 14. Execution of this judgment is ongoing.


Horváth és Vadázi v. Hungary (no. 2351/06) 09.11.2010
Two children with minor intellectual disabilities, and both of Roma origin, were placed in a remedial school class with a teacher without a degree in special educational needs. They complained that the decision to place them in a special class was based on their ethnic origin and therefore discriminatory. They brought unsuccessful legal proceedings.

The Court declared the case inadmissible because: the applicants had not brought a civil claim under section 77 of the Public Education Act; they had not met the requirement to lodge a complaint before the European Court of Human Rights within six months of the final decision delivered by the Hungarian legal authorities concerning one set of proceedings and they had not raised the issue of discrimination in the other national proceeding.


C- Inheritance and Affiliation

Marckx v. Belgium (no. 6833/74) 13.6.1979 final
A single Belgian mother complained that she and her daughter Alexandra were denied the same rights which are enjoying married mothers and their children: among other things, she had to recognize her child (or bring legal proceedings) to establish affiliation (married mothers could rely on the birth certificate); recognition restricted her capacity to leave property to her child and did not create a legal bond between the child and her mother’s family, her grandmother and aunt. According to the Belgian legislation, a single mother and her child would have the same rights as married women and their legitimate children only if the applicant is getting married or is undergoing through a legal procedure to adopt her own child. The Court found violations of Article 8 (right to respect of one’s family and private life) and 14 (prohibition of discrimination) regarding both applicants concerning the establishment of Alexandra’s maternal affiliation, the lack of a legal bond with her mother’s family and her inheritance rights and her mother’s freedom to choose how to dispose of her property. A draft law which eradicates differences in treatment between children of married and unmarried parents was going through the Belgian Parliament at the time of the judgment.

**Inze v. Austria (no. 8695/79) 28.10.1987 final**

The applicant was not legally entitled to inherit his mother’s farm when she died intestate because he was born out of wedlock. Although he had worked in the farm until he was 23, his younger half-brother inherited the entire farm. The applicant ultimately received a small section of land from his brother that his mother had wanted to leave to him.

The Court – noting that the applicant had only accepted the settlement because he had had no hope of obtaining more – found that there had been a violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property).

The text of the judgment:


**Mazurek v. France (no. 34406/97) 1.2.2000**

The applicant, born from an adulterous relationship, had his entitlement to inherit reduced by half because a legitimated child also had a claim to their mother’s estate, according to the law in force at that time (1990). The Court noted a clear trend in Europe towards the abolition of discrimination in relation to children in the applicant’s situation. Such a child could not be reproached for events outside her/his control. There had therefore been a violation of Article 1 of Protocol No. 1 in conjunction with Article 14.


**Camp and Bourimi v. the Netherlands (no. 28369/95) 3.10.2000**

Eveline Camp and her baby son Sofian had to move out of their family home after Sofian’s father Abbi Bourimi died intestate, without recognizing Sofian and marrying Ms Camp (as had been his stated intention). Under Dutch law at the time Mr. Bourimi’s parents and siblings inherited his estate. They then moved into his house. Sofian was later declared legitimate, but as the decision was not retroactive, he was not made his father’s heir.

Noting that Mr. Bourimi had intended to marry Ms Camp and to recognise Sofian, the Court found Sofian’s exclusion from his father’s inheritance to be disproportionate, in violation of Articles 8 and 14.

Pla and Puncernau v. Andorra (no. 69498/01) 13.7.2004
Antoni, an adopted child, was disinherited and his mother consequently lost her right to the life tenancy of the family estate after the Andorran courts interpreted a clause in a will – stipulating that the heir must be born of a “legitimate and canonical marriage” – as referring only to biological children.

The Court noted that Antoni’s parents had a “legitimate and canonical marriage” and there was nothing in the will in question to suggest that adopted children were excluded.

The courts’ decision amounted to “judicial deprivation of an adopted child’s inheritance rights” which was “blatantly inconsistent with the prohibition of discrimination”, in violation of Articles 14 & 8. Execution of this judgment is ongoing.

Judgment in French only:
http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=PLA%20|%20PUNCERNAU%20|%20v.%20|%20ANDORRA%20|%2069498/01&sessionid=64498479&skin=hudoc-fr

Press release in English:
http://cmiskp.echr.coe.int/tkp197/view.asp?item=5&portal=hbkm&action=html&highlight=69498/01&sessionid=64498547&skin=hudoc-pr-fr

Merger and Cros v. France (no. 68864/01) 22.12.2004
Brauer v. Germany (no. 3545/04) 28.5.2009
The applicant was unable to inherit from her father who had recognised her under a law affecting children born outside marriage before 1 July 1949. The equal inheritance rights available under the law of the former German Democratic Republic (where she had lived for much of her life) did not apply because her father had lived in the Federal Republic of Germany when Germany was unified.

The Court found violations of Articles 8 and 14. Execution of this judgment is ongoing.


Zaunegger v. Germany, 03.12.09 (judgment)
Concerns: impossibility of securing judicial review of custody of a child born out of wedlock discriminates against father.

Violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for family life)
Principal facts: the applicant, Horst Zaunegger, is a German national who was born in 1964 and lives in Pulheim (Germany). He has a daughter born out of wedlock in 1995, who grew up with both parents until their separation in August 1998 and from that time until January 2001 lived with the applicant. After the child had moved to live with the mother, the parents reached an agreement with the help of the Youth Welfare Office, according to which the applicant would have contact with the child on a regular basis. Pursuant to the relevant provisions of domestic law, the mother held sole custody for the child. As she was not willing to agree on a joint custody declaration, the applicant applied for a joint custody order. The Cologne District Court dismissed the application, holding that under German law joint custody for parents of children born out of wedlock could only be obtained through a joint declaration, marriage or a court order, the latter requiring the consent of the other parent. The decision was upheld by the Cologne Court of Appeal in October 2003.

Both courts referred to a leading judgment of the Federal Constitutional Court of 29 January 2003, which had found that the relevant provision of the Civil Code was constitutional with regard to the situation of parents of children born out of wedlock who had separated after 1 July 1998, the date an amended Law on Family Matters entered into force.

On 15 December 2003 the Federal Constitutional Court declined to consider the applicant’s constitutional complaint.

Decision of the Court: the Court noted that by dismissing the applicant’s request for joint custody without examining whether it would be in the child’s interest – the only possible decision under national law – the domestic courts had afforded him a different treatment in comparison with the mother and in comparison with married fathers. To assess whether this treatment was discriminatory for the purposes of Article 14, the Court first considered that the provisions on which the domestic courts’ decisions had been based were aimed at protecting the welfare of a child born out of wedlock by determining its legal representative and avoiding disputes between the parents over custody questions. The decisions had therefore pursued a legitimate aim.

It further considered that there could be valid reasons to deny the father of a child born out of wedlock participation in parental authority, for example if a lack of communication between the parents risked harming the welfare of the child. These considerations did not apply in the present case, however, as the applicant continued to take care of the child on a regular basis.

The Court did not share the Federal Constitutional Court’s assessment that joint custody against the mother’s will could from the outset be assumed to be contrary to the child’s interest. While it was true that legal proceedings on the attribution of parental authority could unsettle a child, domestic law provided for judicial review of the attribution of parental authority in cases where the parents were or had been married or had opted for joint parental authority. The Court did not see sufficient reasons why the situation of the present case should allow for less judicial scrutiny.

Consequently there was not a reasonable relationship of proportionality between the general exclusion of judicial review of the initial attribution of sole custody to the mother and the aim pursued, namely the protection of the best interests of a child born out of wedlock. The Court therefore held by 6 votes to 1 that there had been a violation of Article 14 taken together with Article 8.
The Court further held unanimously that the finding of a violation constituted sufficient just satisfaction for any non-pecuniary damage suffered by the applicant.


Mustafa and Armagan v. Turkey 6.4.2010 (judgment)

Domestic courts’ custody arrangements should not have prevented brother and sister from seeing each other.

Concerns: relying in particular on Article 8, the applicants complain that the brother and sister were prevented from seeing each other.

Principal facts: the applicants, Mustafa Akın, and his son, Armağan Akın, are Turkish nationals who were born in 1957 and 1988 respectively and live in Ödemiş(Turkey). When Mustafa Akın and his wife divorced in 2000, the civil court awarded custody of their son to him and custody of their daughter to the mother. By the same decision, the parents were to exchange the children during certain fixed periods of time. Mr. Akın requested the court to grant an interim measure to the effect that he would have both children one weekend and his former wife would have them the next, arguing that this way the children would not lose contact with each other and he would have the opportunity to spend time with both of them together. The court rejected both this request and Mr. Akın’s appeal against the custody decision.

In September 2001, Mr. Akın brought proceedings against his former wife, requesting that the children be able to see each other every weekend. He claimed that the court’s custody decision, preventing the two children from seeing each other and him from spending time with both of them, was causing irreversible psychological problems for the children. He also claimed that when the children saw each other in the street, their mother prevented them from speaking to each other.

The request was refused in February 2002. A subsequent appeal to the Court of Cassation, in which the applicants referred to previous decisions by that court according to which access arrangements should not prevent children of divorced parents from seeing each other, was rejected in April 2002. The Court of Cassation also rejected the applicants’ rectification request against this decision in July 2002.

Decision of the Court: the Court first noted that the custody arrangements separating the two siblings had been determined by the domestic court of its own motion, as neither parent had requested such an arrangement and the mother had asked for the custody of both children. The absence of reasoning to justify the separation of the children was therefore striking. The Court was not convinced by the Turkish government’s argument that the children were not prevented from seeing each other, as they lived in the same neighbourhood. Maintaining the ties between the children was too important to be left to the parents’ discretion, in particular since the mother had prevented the siblings from speaking to each other in the street.

The Court could not concur with the reasoning that contact arrangements as requested by the applicants would confront Mr. Akın’s daughter with “variations in discipline”, as the domestic court
had not given any precise explanations in this regard. Even if those arrangements had been unsuitable, the domestic court could have considered finding another agreement to ensure that brother and sister could see each other on a regular basis. The Court further observed with regret that despite the significance of the case before it, the Court of Cassation had not addressed the detailed submissions of the applicants, which included references to its own decisions concerning the need for siblings to keep in contact.

The Court concluded that the domestic courts’ handling of the case had fallen short of the state’s obligation to protect family life, in violation of Article 8.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicants jointly 15,000 Euros in respect of non-pecuniary damage.


**Syngelidis v. Greece (application no. 24895/07) 11.2.2010**

Parliament’s refusal to waive MP’s immunity in child custody case unjustified.

Principal facts: the applicant, Polychronis Syngelidis, is a Greek national who lives in Athens. He was married to M.A., a Member of the Greek Parliament. After their marriage broke down in late 2004, the applicant and M.A. concluded an agreement on custody and access in relation to their son, born in the same year. The arrangements were endorsed by a court decision in January 2005. The child was to live with his mother and the applicant was entitled to open access and minimum periods and certain days of contact with his son. Two months later, M.A. brought criminal proceedings against the applicant for placing a security guard outside her building. These proceedings were dismissed both at first instance and on appeal.

As the applicant had been unable to have contact with his son in accordance with the court’s decision on a number of occasions, he lodged criminal proceedings against M.A. in October 2005, requesting the sum of ten Euros (EUR) as compensation for the non-pecuniary damage which her breach of the decision had caused him. The Supreme Court’s prosecutor eventually referred the matter to the President of the Greek Parliament, seeking to have M.A.’s immunity lifted. In November 2006, the Parliament’s Ethics Committee gave the opinion that the request should be denied, stating that one of the grounds provided by the relevant provision of the Parliament’s regulations applied, without further specifying. In December 2006 a majority of Parliament refused to lift the immunity, without giving any reasons. In 2007 the applicant lodged two more indictments against M.A. following alleged breaches of a new court decision on custody arrangements, which provided for payment of a fine, should she breach any of its provisions. A request for M.A.’s immunity to be lifted was again referred to the Parliament’s Ethics Committee, which rejected it in May 2008 on the grounds that it was essentially the same as the first request.

Complaints procedure: the applicant complained, relying in particular on Article 6 § 1, that the Greek Parliament’s refusal to waive his former wife’s parliamentary immunity had breached his right of access to a court.
The application was lodged with the European Court of Human Rights on 1 June 2007.

Decision of the Court: Violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights

First, the Court disagreed with the argument, brought forward by the Greek Government, that there could not have been a breach of the applicant’s right of access to a court, given that there were other legal remedies available than lodging a criminal indictment against his former wife seeking compensation for her allegedly illegal behaviour. The Court reiterated that when the domestic legal order provided an individual with a remedy, the State has a duty to ensure that the person using it enjoys the fundamental rights guaranteed under Article 6.

The Court further noted that in the light of that Article, the Greek Constitution entitles the Parliament to refuse lifting immunity for a prosecution only where the acts on which prosecution was based were clearly connected with parliamentary activity. In the present case, there had been no conceivable link between M.A.’s alleged failure to comply with the custody arrangements with her former husband ordered by the domestic court and her functions as a Member of Parliament. Moreover, the Parliament’s Ethics Committee had not specified which of the conditions for a refusal to waive immunity, as provided for by the Parliament’s regulations, was met. The absence of any argument showing the reasoning of the Committee made it impossible for the applicant to learn about the basis of the decision. The Court further attached some significance to the fact that the impugned approach of the Parliament had created an imbalance in treatment between the applicant and M.A., since the latter was able to bring criminal proceedings against the applicant.

The Court therefore concluded, by six votes to one, that the applicant’s right under Article 6 § 1 had been violated.

Under Article 41 (just satisfaction) of the Convention, the Court, by five votes to two, awarded the applicant EUR 12,000 in respect of non-pecuniary damage.


D- Personal Identity

ADOPTION: Odièvre v. France (no. 42326/98) 13.2.2003

The applicant, who was adopted, found out that she had three biological brothers. Her request for access to information to identify them was rejected because she had been born under (born under “X”) a special procedure which allowed mothers to remain anonymous. In addition, she could not inherit from her natural mother.

A French law allowing births under “X” (identity of the mother is unknown or kept confidential) has the following particularity:

In France, according to the Civil Code (Art 341-1, law n° 93-22 from the 8th of January 1993 - Art .27), when a mother is about to give birth to a child, she has the right to express the will to abandon her
child by requesting that her admission is kept secret and without disclosing her identity. The mother has the right to remain anonymous.

As a consequence, there is no affiliation links between the mother and the child.

Art. 348.3 of the Civil Code, law from the 5th of July 1996 provides that the mother has a two months retraction period at the expiration of which the child can be submitted for adoption.

This law came from the idea that in some extreme cases, motherhood cannot be assumed neither accepted by the woman, therefore the institutions have the duty to organize her giving birth respectfully of her decision.

The child is then given to the DASS (French social services) and then submitted for adoption.

Unless, the mother has left relevant information in a folder addressed to the child, the child will never be able to know about his/her origins. The right to the secrecy of the mother prevails on the right to identity of the child in this special case.

The Court found that there had been no violation of Articles 8 or 14 in that France had struck a fair balance between the various competing interests at stake: the public interest (the prevention of abortions – especially illegal abortions – and the abandonment of babies); a child’s personal development and right to know her/his origins; a mother’s right to protect her health by giving birth in appropriate medical circumstances; and, the protection of other members of the various families involved. It would also have been possible for the applicant to request disclosure of her mother’s identity with her consent. In addition, the applicant could inherit from her adoptive parents and was not in the same position as her mother’s other natural children.

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=ODI%C8VRE%20%7C%20v.%20%7C%20FRANCE&sessionid=64499052&skin=hudoc-fr

Jäggi v. Switzerland (no. 58757/00) 13.7.2006
The applicant was not allowed to have DNA tests performed on the body of a deceased man whom he believed to be his biological father. He was therefore unable to establish paternity.

The Court found that there had been a violation Article 8; the DNA test was not particularly intrusive, the family had cited no philosophical or religious objections and, if the applicant had not renewed the lease on the deceased man’s tomb, his body would already have been exhumed.

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=J%C4GGI%20%7C%20v.%20%7C%20SWITZERLAND&sessionid=64499052&skin=hudoc-fr

E- Adoption

Moretti and Benedetti v. Italy 27.04.2010
Shortcomings in adoption proceedings: failure to respect foster parents’ rights
Concerns: Relying on Article 8 in particular, the applicants alleged that the relevant law and procedural rules had been wrongly applied in respect of their adoption request.

Principal facts: the applicants, Luigi Moretti and his wife, Maria Brunella Benedetti, are Italian nationals who live in Lugo di Ravenna (Italy). They lived with their daughter and a child adopted by Mrs. Benedetti. They had previously fostered children subsequently adopted by other families. By an emergency order of 20 May 2004, a newborn baby, A., whose mother had ceased looking after her a few days after her birth, was provisionally placed with them by court decision for a period of five months that was subsequently extended until December 2005. In the meantime, proceedings were instituted to declare A. free for adoption.

On 26 October 2004, the applicants sought a special adoption order in respect of A. When they received no response they repeated their request in March 2005. In the meantime the court had declared the child free for adoption. On 19 December 2005 a new family was given custody of A. in a decision that was not served on the applicants. On the same day the child was removed from the applicants’ home with the assistance of the police.

The court dismissed a request for adoption submitted by Mr. Moretti and Mrs. Benedetti on the ground that another family had been chosen in the meantime in the “child’s best interests”. On appeal by the applicants, the Court of Appeal set aside the lower court’s decision on grounds of lack of reasoning and held that the request for adoption should have been examined before the child was declared free for adoption and a new family chosen. An expert opinion requested by the Court of Appeal found that the child appeared to be attached to both couples in question but seemed to be well integrated into her new family. On 27 October 2006 the Court of Appeal held that a further separation would risk traumatising the child. The adoption order in respect of A. became final on an unspecified date.

Decision of the Court: with regard to the applicants’ standing to apply to the Court on behalf of A., the Court noted that Mr. Moretti and Mrs. Benedetti did not exercise any parental responsibility over the child, that the steps they took to adopt her had been unsuccessful and that they had no power of attorney to represent A.’s interests. Accordingly, they did not have the necessary legal powers to represent the child’s interests. The part of the application submitted on behalf of A. was therefore dismissed as being incompatible with the provisions of the Convention.

The Court reiterated that the notion of “family life” in Article 8 was not confined solely to marriage-based relationships but could also encompass other de facto “family ties” where further elements of dependency were present involving more than emotional ties. The determination of the family nature of such a relationship had to take account of a number of factors, such as the length of time the persons in question had been living together, the quality of the relationship and the adult’s role in respect of the child.

The Court noted that the applicants had lived with A. during the important stages of the first 19 months of her life and that she had been well integrated into the family, which had fostered her social development. Having regard to the strength of the relationship that had been developed between the applicants and the child, the Court found that this had amounted to family life for the purposes of Article 8. Whilst Article 8 did not guarantee a right to adopt, it did not prevent an obligation arising on states, in certain circumstances, to allow family ties to be formed. In the present
case it had been of primary importance that the request for a special adoption order lodged by the applicants be examined carefully and speedily. The Court reiterated that where cases concerning family life were concerned the delays in processing with adoption cases could have irremediable consequences. It was regrettable that the request for adoption lodged by the applicants had not been examined before declaring A. free for adoption and that it had been dismissed with no reasons being stated.

It was not for the Court to substitute its own reasoning for that of the national authorities regarding the measures that should have been taken, and the good faith on the part of the courts in securing A.’s well-being was not in doubt. However, the shortcomings observed in the proceedings in question have had a direct impact on the applicants’ right to family life, and the authorities had failed to ensure effective respect for that right. Accordingly, the Court held, by six votes to one, that there had been a violation of Article 8.

Under Article 41 (just satisfaction), the Court held that Italy was to pay jointly to the first two applicants 10 000 Euros for non-pecuniary damage, and 5 000 Euros for costs and expenses.

Judgment only available in French:

Press release in English:
http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=16318/07&sessionid=64499438&skin=hudoc-pr-fr

Schwizgebel v. Switzerland 10.06.2010
Refusal to authorize adoption, mainly on account of applicant’s age, was not discriminatory

Principal facts

The applicant, Ariane Schwizgebel, is a Swiss national who was born in 1957 and lives in Geneva. She is single. In 1996 she filed her first application for authorisation to take in a child with a view to adoption (adoption by a single parent being possible under Swiss law) with the authorities of the Canton of Geneva. However, after being informed that she would probably receive an unfavourable response, she withdrew that application. She filed a new application in 1998 with the authorities of the Republic and Canton of the Jura, the area to which she had moved. She obtained the necessary authorisation from the social services and in 2000 took in a Vietnamese child, whom she adopted in June 2002.

From July 2002 onwards Ms Schwizgebel sought authorisation to take in a second child for adoption, this time a three-year-old from South America. The social services refused to grant authorisation and their refusal was upheld by the courts. After moving back to Geneva, the applicant twice requested authorisation from the authorities of that Canton in respect of a second child. Her applications were
again rejected, in July 2004 and September 2005, and she was unsuccessful in appeals to the courts. In connection with the second of those applications, she appeared in person before the cantonal authority and stated that she wished to adopt a five-year-old child, if possible from Vietnam like her first child. In dismissing her appeal, on 24 April 2006, the Court of Justice of the Canton of Geneva did not call into question her child-raising capacities or her financial resources. It took the view, however, that the adoption of a second child could entail an unfair interference with the situation of the first and that the applicant had underestimated the difficulties of her new plan for international adoption. It further expressed reservations about her availability for another child. In the last instance, in a judgment of 5 December 2006, the Federal Court dismissed the applicant’s administrative appeal. It had regarded in particular to what would be in the child’s best interests, together with Ms Schwizgebel’s age and her age-difference in relation to the child (between 46 and 48 years, which was regarded as excessive).

Complaints, procedure and composition of the Court

Ms Schwizgebel complained that the Swiss authorities had prevented her from adopting because of her age (47 and a half at the time of her last application). She claimed among other things that she had been discriminated against in comparison with other women of her age, who were able nowadays to give birth to children of their own. She relied in substance on Article 14, taken together with Article 8 of the Convention.

The application was lodged with the European Court of Human Rights on 15 June 2007.

Decision of the Court

The Court first examined whether the applicant had been subjected to a difference of treatment by the Swiss authorities in relation to persons in a comparable situation. It found that this was not the case in relation to women who were able to give birth at that age (the State having no influence as regards the possibility for a woman to have genetically-related children or the contrary). It would be different, however, if her situation was compared with that of a younger unmarried woman, who, in the same circumstances, might succeed in obtaining authorisation to take in a second child for adoption. The applicant could therefore claim that she was a victim of a difference of treatment between persons in a comparable situation.

The Court then examined whether that difference of treatment had had an objective and reasonable justification. In the proceedings for the adoption of a second child, the authorities had in particular based their refusal on Ms Schwizgebel’s age-difference with the child to be adopted (between 46 and 48 years), which was regarded as excessive and contrary to the child’s interests. The Court sought to ascertain whether, in this area, there was a common denominator among the legal systems of the member States of the Council of Europe. It concluded that this was not so: a single person’s right to adopt was not guaranteed in all States – in any event, not absolutely – and as regards the age of the adopter or the age-difference between the adopter and the child, the solutions differed considerably from one State to another. The Court thus took the view that, in the absence of any consensus, the Swiss authorities had considerable discretion to decide on such matters, and that both the domestic legislation and the decisions taken in the present case seemed to be consonant with the solutions adopted by the majority of the member States of the Council of Europe and, moreover, to be compliant with the applicable international law. Nor could any arbitrariness be detected in the
present case: the authorities had taken their decisions in the context of adversarial proceedings allowing Ms Schwizgebel to submit her arguments, which had been duly taken into account by those authorities. Their decisions, containing ample reasoning, had been based in particular on the comprehensive enquiries by the cantonal authorities. They had considered not only the best interests of the child to be adopted, but also those of the child already adopted. Moreover, the Court emphasised that the criterion of the age-difference between the adopter and the child had been applied by the Federal Court flexibly and having regard to the circumstances of the situation. Lastly, the other arguments given in support of the decisions, i.e. those not based on age, had not been unreasonable or arbitrary.

In those circumstances, the difference of treatment imposed on Ms Schwizgebel had not been discriminatory. There had not therefore been a violation of Article 14 taken together with Article 8.

F- Health

Oyal v. Turkey 23.03.2010
Turkish government to provide lifetime medical cover to teenager infected as a new-born with HIV virus during blood transfusions

Concerns: relying on Article 2 (right to life), the applicants alleged that the national authorities were responsible for Yiğit’s life-threatening condition as they had failed to sufficiently train, supervise and inspect the work of the medical staff involved in his blood transfusions. Further, relying on Article 6 §1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy), they also complained about the excessive length of the administrative proceedings they had brought for compensation and that the compensation finally awarded did not even cover the costs of Yiğit’s medication.

Principal facts: the applicants, Yiğit Turhan Oyal, born on 6 May 1996, and his parents, Neşe Oyal and Nazif Oyal, are Turkish nationals who live in Izmir (Turkey).

The first applicant was infected with the HIV virus when, born prematurely, he had to have a number of blood transfusions for an inguinal and umbilical hernia. His parents learnt about the infection when he was about four months old; they were also told that the virus could develop into the more severe Acquired Immune Deficiency Syndrome (AIDS). In May 1997, the applicants brought criminal proceedings for medical negligence against the doctors involved in the blood transfusions, the Director General of the Turkish Red Cross in Izmir (the “Kızılay”, from where the transfused blood had been obtained) and the Ministry of Health. Those proceedings were rejected on the ground that no fault could be attributed directly to those persons.

On 19 December 1997, the applicants brought civil proceedings against the Kızılay and the Ministry of Health and, on 13 October 1998, administrative proceedings against the Ministry of Health. Both the civil and administrative courts ruled that the Kızılay was at fault for supplying HIV-infected blood and that the Ministry of Health was to be held responsible for the negligence of its staff in the performance of their duties. Furthermore, the Ankara Civil Court of First Instance established that the HIV-infected blood given to the first applicant had not been detected because the medical staff had not done the requisite test on the blood in question, considering that it would be too costly. That court found moreover that, prior to the first applicant’s infection, there was no regulation requiring
blood donors to give information about their sexual history which could help determine their eligibility to give blood. Following these deficiencies, and the defendants’ failure to comply with the already existing regulations, the civil and administrative courts awarded the applicants non-pecuniary damages plus statutory interest.

Following those judgments the special card (the “green card”), issued by the Ministry of Health to provide those on borderline incomes with access to free health care and medicine, was withdrawn from the applicants.

Despite promises made by the authorities to pay the first applicant’s medical expenses, both the Kızılay and the Ministry of Health rejected the applicants’ claims for healthcare and medication amounting to 6 800 Euros per month.

The third applicant has been severely affected by the reactions of other children’s parents to his son’s condition and the school administration’s refusal to admit the first applicant to school. Due to his medical situation and health conditions, he is currently unable to work. In serious economic difficulty, the applicants’ family is trying to pay medical expenses with the help of family friends. The first applicant, although ultimately admitted to a public school, has no close friends and stammers. He has to have weekly psychotherapy.

Decision of the Court

Article 2: the applicants had had access to civil and administrative courts which established liability for the first applicant’s infection with the HIV virus and awarded damages.

The Court found, however, that that redress had been far from satisfactory. The compensation awarded only covered one year’s healthcare and medication for the applicant. With the applicants’ claims to the Kızılay and the Ministry of Health rejected and their green card, strikingly, withdrawn, the family – already in debt and living in poverty – had been left to their own devices to meet the high costs (6 800 Euros per month) of the first applicant’s continued treatment. Even though the national courts had adopted a sensitive and positive approach in determining the responsibility of the Kızılay and the Ministry of Health and in ordering them to pay damages to the applicants, the Court considered that the most appropriate remedy in the circumstances would have been to have ordered, in addition to the payment of non-pecuniary damages, lifetime payment of the first applicant’s healthcare and medication expenses.

Also bearing in mind the excessive length – nine years, four months and 17 days – of the administrative proceedings, which were of consequence to the more general considerations of public health and safety and the prevention of similar errors, the Court held unanimously that there had been a violation of Article 2.

Article 6 § 1 and Article 13: the Court considered that the case had not been complex, the issues at stake – negligence and liability – already having been established during the civil proceedings. Given the gravity of the situation and what was at stake for the applicants, the courts should have acted with “exceptional diligence” in deciding upon the case. The Court therefore held unanimously that the length of the administrative proceedings had been excessive, in violation of Article 6 § 1. The Court, recalling that it had already found in a previous case that the Turkish legal system had not
provided an effective remedy whereby the length of proceedings could be successfully challenged, further found, unanimously, that there had also been a violation of Article 13.

Article 41 (just satisfaction) The Court held that the applicants were to be paid 300 000 Euros in respect of pecuniary damage, 78 000 Euros in respect of non-pecuniary damage and 3 000 Euros for costs and expenses. In addition to that award, the Turkish government was to provide free and full medical cover to the first applicant for the rest of his life. [link]

G- Reproductive Rights

Prenatal Medical Tests: Draon v. France (no. 1513/03), Draon & Maurice v. France (no. 11810/03) both 16.10.2005

The applicants are parents of children with severe congenital disabilities which, due to medical errors, were not discovered during prenatal medical examinations. They brought proceedings against the hospitals concerned. A new law of 4 March 2002, introduced while their proceedings were pending, meant that it was no longer possible to claim compensation from the hospital/doctor responsible for life-long “special burdens” resulting from the child’s disability. The compensation they were awarded did not therefore cover those “special burdens”.

The Court found that the law in question was in violation of Article 1 of Protocol No. 1 (protection of property) to the Convention concerning proceedings which were pending when the law came into force. [link]

H- Forced Sterilisation


Three Slovak women of Roma origin, two of whom were minors at the relevant time, claim they were segregated in so-called “gypsy rooms” and sterilised without their knowledge or consent while having a caesarean section in an East Slovak hospital. They also claim a loss of social status, problems with their partners and serious medical side effects as a result.

The Court has declared the case admissible. [link]
I- Medical negligence

Yardımcı v. Turkey (no. 25266/05) 5.1.2010

The applicants, Necdet Yardımcı and his wife Özden Yardımcı, are two Turkish nationals who live in Ankara. During pregnancy Mrs. Yardımcı suffered bleeding from the placenta; she was admitted to hospital and gave birth by Caesarean section. Relying on Article 2 (right to life), the applicants complain of medical negligence during the operation following which their son was born suffering from respiratory and cardiac insufficiency, causing irreversible brain damage. Under Article 6 § 1 (right to a fair hearing within a reasonable time), they alleged, among other things, that the medical expert examinations were not conducted by competent experts, and complain of the excessive length of the civil proceedings which they instituted.

Length of the civil proceedings concerning the action for damages for the harm sustained, brought by the applicants before the domestic courts, which is based on the parents’ allegations concerning the inappropriate medical treatment of their child during childbirth (Art. 6 § 1 ECHR) – [violation].

Judgment only available in French:

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Yard%u0131mc%u0131%20v.%20Turkey%2025266/05&sessionid=64499728&skin=hudoc-fr

J- Citizenship

Pending case, Genovese v. Malta (no. 53124/09)

Refusal to grant Maltese citizenship to a British applicant – born in Scotland (United Kingdom) out-of-wedlock from a British mother and a Maltese father – on the ground that he is an illegitimate child. A child born in wedlock or from a Maltese mother would have been entitled to Maltese citizenship.


II- Mental Health

A- “Private Life” (Article 8) covers a person’s physical and moral integrity

X. and Y. v. the Netherlands, 26.03.1985

16-year-old girl, mentally handicapped, had been sexually abused by the son-in-law of the directress of the privately-run home for mentally handicapped children where she was living.

Violation of Article 8: Dutch law did not allow for proceedings to be brought in the event of sexual violence against mentally handicapped minors of 16 or more.

http://cmiskp.echr.coe.int/tkp197/portal.action?sessionid=64499497&skin=hudoc-fr&action=request
**K. and T. v. Finland, 12.07.2001**
Placement in care of the children of the first applicant, who had been hospitalised several times for schizophrenia.

Violation of Article 8 in respect of the placement of one of the children, and no violation in respect of the other child, who had previously been placed in a home with the applicants’ consent; his need for special care justified an emergency care order.


**B- Confinement**

**Nielsen v. Denmark, 28.11.1998**
The hospitalisation in a Child Psychiatric Ward of the applicant, who was suffering from nervous disorders and whose custody was in dispute between his parents had been “a responsible exercise by his mother of her custodial rights in the interest of the child”.

No violation of Article 5 § 1


**III- Protection of personal data**

**A- Files and access to data**

**Gaskin v. the United Kingdom, 07.07.1989**
Access to data (social services, national security). After having reached the age of majority, the applicant, who had been taken into care as a child, wished to find out about his past in order to overcome his personal problems. He was refused access to his file on the ground that it contained confidential information.

Violation of Article 8, not because of the system of non-disclosure of confidential information but because the final decision following the denial of access to the applicant had not been taken by an independent authority.

B- Files kept by the judicial authorities


The applicants are three French nationals who live in France. They were sentenced, in 1996, 2003 and 2001 respectively, to terms of imprisonment for rape of 15 year old minors by a person in a position of authority. On 9 March 2004 Law no. 2004-204 "adapting the judicial system to the evolution of criminality" created a national judicial database of sex offenders (later extended to include violent offenders). The provisions of the Code of Criminal Procedure concerning this Sex Offender Database entered into force on 30 June 2005. In August 2005, November 2005 and February 2006, respectively, the applicants were notified of their inclusion in this database on account of their convictions and on the basis of the transitional provisions of the Law of 9 March 2004.

Relying on Article 7 (no punishment without law) and Article 8 (right to respect for private and family life), the applicants complained, in particular, about their inclusion in the Sex Offender Database and the retroactive application of the legislation under which it was created.

**Article 7**

The obligation arising from registration in the national Sex Offender Database pursued a purely preventive and dissuasive aim and could not be regarded as punitive in nature or as constituting a criminal sanction. The fact of having to prove one's address every year and to declare changes of address within a fortnight, albeit for a period of thirty years, was not serious enough for it to be treated as a "penalty".

The Court thus took the view that inclusion in the national Sex Offender Database and the corresponding obligations for those concerned did not constitute a "penalty" within the meaning of Article 7 § 1 of the Convention and that they had to be regarded as a preventive measure to which the principle of non-retrospective legislation, as provided for in that Article, did not apply. This complaint was thus rejected.

**Article 8**

The protection of personal data was of fundamental importance to a person's enjoyment of respect for his or her private and family life, all the more so where such data underwent automatic processing, not least when such data were used for police purposes.

The Court could not call into question the prevention-related objectives of the database. Sexual offences were clearly a particularly reprehensible form of criminal activity from which children and other vulnerable people had the right to be protected effectively by the State.

Moreover, as the applicants had an effective possibility of submitting a request for the deletion of the data, the Court took the view that the length of the data conservation - thirty years maximum - was not disproportionate in relation to the aim pursued by the retention of the information.

Lastly, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances.
The Court concluded that the system of inclusion in the national judicial database of sex offenders, as applied to the applicants, had struck a fair balance between the competing private and public interests at stake, and held unanimously that there had been no violation of Article 8.

While reaffirming the fundamental role of protection of personal data undergoing automatic processing, particularly where such data were used for police purposes, the Court concluded that in the applicants’ case their inscription in the national sex offenders’ database had not breached Article 8.

Judgment only available in French:

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Bouchacourt%20|%20v.%20|%20France%20|%205335/06&sessionid=64514347&skin=hudoc-en

IV-Expulsions and extraditions

A- Risks of ill treatment by third parties

Collins and Akaziebie v. Sweden 8.3.2007
Application inadmissible

The applicants did not substantiate their allegation that they would face a real and concrete risk of being subjected to female genital mutilation upon return to Nigeria.


B- Pending cases: risk of female genital mutilation in Nigeria

Izevbekhai v. Ireland (no. 43408/08) concerning a mother and her two daughters and Omeredo v. Austria (no. 8969/10)

C- Recently adopted similar cases: conditions of detention of persons removed or pending their removal

Before removal Muskhadzhiyeva and Others v. Belgium 19/01/2010
Detention of Chechen children pending their removal was unlawful and their conditions of detention unacceptable.

Only available in French:
V- CHILD PROTECTION

A- Corporal punishment

Tyrer v. United Kingdom (application no. 5856/72) 25.4.1978
In the Isle of Man, a 15-year-old boy was subjected to judicial corporal punishment for assault causing actual bodily harm of a senior pupil at his school. He was required to take off his trousers and underpants and bend over a table. He was then held down by two police officers while a third police officer struck him three times with a birch.

The European Court of Human Rights considered such punishment to be “institutionalised violence”, in violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) of the European Convention on Human Rights.

A v. United Kingdom (no. 25599/94) 23.9.1998
A supposedly “difficult” nine-year-old was caned several times and with considerable force by his step-father, causing bruising and suffering. His step-father was tried for assault causing actual bodily harm, but acquitted, as English law at the time allowed for a defense of “reasonable punishment”.

The Court considered that children and other vulnerable individuals in particular were entitled to protection, in the form of effective deterrence, from such forms of illtreatment. It found a violation of Article 3, as English law did not adequately protect the boy.

Following these and a series of other judgments and decisions, corporal punishment was banned in all United Kingdom schools.

B- Internet

K.U. v. Finland (no. 2872/02) 2.12.2008
In March 1999 an advertisement was posted on an Internet dating site on behalf of a 12-year-old boy, with a link to the boy’s web page, stating that he was looking for an intimate relationship with a boy of his age or older “to show him the way”. The boy only found out about the ad when he received an e-mail from an interested man. The service provider refused to identify the person responsible, claiming it would constitute a breach of confidentiality. The Finnish courts held that the service provider could not be legally obliged to disclose the information in question.
The Court considered that posting the ad was a criminal act which made a minor a target for pedophiles. The Finnish State had failed in its duty to put in place a system to protect children and other vulnerable individuals in such circumstances, in violation of Article 8. (A legal framework had been introduced by the time of the Court’s judgment under the Exercise of Freedom of Expression in Mass Media Act.).


C- Risk of abuse in child care

Scozzari and Giunta v. Italy (nos 39221/98 & 41963/98) 13.7.2000
In September 1997 the applicants’ two sons/grandsons, born in 1987 and 1994, were placed by court order in the “Il Forteto” children’s home, where – as the national court was aware – two of the principal leaders and co-founders had been convicted of sexual abuse of three handicapped people in their care. Prior to his placement in the home, the eldest boy had been a victim of sexual abuse by a pedophile social worker.

The Court found that the two leaders played a “very active role” in the care of the two children and that there had been a violation of Article 8 (right to respect for private and family life) of the Convention, concerning, among other things, the uninterrupted placement of the boys in “Il Forteto”.


D- Domestic violence & abuse

Z and Others v. United Kingdom (no. 29392/95) 10.5.2001
Four very young children/babies were only taken into care four-and-a-half years after concerns about their family were reported to social services. The children were subjected to appalling long-term neglect and emotional abuse by their parents during that time and suffered physical and psychological injury. They were variously found, for example, locked in their rooms smearing excrement on the walls and stealing food from bins.

The Court found that the system in place failed to protect the children and that there was no effective remedy, in violation of Articles 3 and 13 (right to an effective remedy).


D.P. & J.C. v. United Kingdom (no. 38719/97) 10.10.2002
A sister and brother were both sexually abused by their step-father from the age of around eight and ten respectively. They claimed they informed the local authority social services of the abuse, but that
the authorities failed to protect them. The girl also attempted to commit suicide after being raped by her stepfather. She developed a personality disorder and the boy later suffered from epilepsy. Both experienced long-term depression and trauma.

Article 3: The Court concludes that it has not been shown that the local authority should have been aware of the sexual abuse inflicted by N.C. on the applicants in their home. In those circumstances, the authorities cannot be regarded as having failed in any positive obligation to take effective steps to protect them from that abuse. There has, accordingly, been no violation of Article 3 of the Convention.

Article 8: Article 8 of the Convention may impose positive obligations to protect the physical and moral integrity of an individual from other persons (see the X. and Y. v. the Netherlands judgment of 26 March 1985, Series A no. 91, p. 11, § 22, and Costello-Roberts v. the United Kingdom judgment of 25 March 1993, Series A no. 247-C, p. 61, § 36). While the seriousness of the abuse and its effects on the applicants are not in doubt, the Court has found above, in the context of Article 3 of the Convention that the social services were not aware, and were not in a position that they ought to have been aware, that their stepfather was abusing them sexually. In so far as the social services were aware that the family situation was difficult, the records show that they provided practical and financial assistance, were in frequent contact with the family and took steps to remove the children into temporary care when this appeared necessary.

The Court does not find therefore that in the circumstances of this case the authorities failed in any positive obligation to protect the applicants’ physical or moral integrity. Consequently, there has been no violation of Article 8 of the Convention.

Article 6: no violation of the Convention

Article 13: The Court reiterates that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. Thus, the remedy required by Article 13 must be “effective” in practice.

Application in the present case

The complaints under article 3 and 8 were not declared inadmissible as manifestly ill-founded and necessitated an examination on the merits. It is not disputed that the applicants did suffer appalling abuse at a time when they were under the supervision of the local authorities. The issue as to whether the local authority should have been aware of what was going on and taken steps to safeguard the applicants required consideration of documentary records going back over thirty years. While the Court was not persuaded on the materials available before it that these disclosed a situation where the local authorities knew of, or had reason to suspect, the sexual abuse, this Court’s role is essentially subsidiary to that of the domestic courts who are better placed and equipped as fact-finding tribunals. An effective domestic procedure of enquiry would have offered more prospects of establishing the facts and throwing light on the conduct reasonably to be expected from
the social services in a situation where the applicants demonstrated long-term and serious problems that arguably might have called for additional efforts of investigation to uncover the reality of the family dynamics.

The applicants did not however have available to them appropriate means of obtaining a determination of their allegations that the local authority failed to protect them from serious ill-treatment or the possibility of obtaining an enforceable award of compensation for the damage suffered thereby. Consequently, they were not afforded an effective remedy in respect of their claims of a breach of Articles 3 or 8 and there has, accordingly, been a violation of Article 13 of the Convention.

E & Others v. United Kingdom (no. 33218/96) 26.11.2002
Three sisters and their brother were for many years abused physically (all four children) and sexually (the girls) by their mother’s boyfriend, including after his conviction for assaulting two of the girls, when he came back to live with the family, in breach of his probation conditions. The man forced the children, among other things, to hit each other with chains and whips in front of and sometimes with him. The girls all suffered severe post-traumatic stress disorder and the boy had personality problems as a result.

The Court found that social services failed to protect the children, in violation of Article 3, and that there was no effective remedy, in violation of Article 13.

Siliadin v. France (no. 73316/01) 26.7.2005
A 15-year-old Togolese girl was made to work as a slave; she had her passport removed and was forced to work 15-hours day doing housework and childcare without pay or holidays.

The Court found that French criminal law did not provide the girl with sufficiently specific or effective protection, in violation of Article 4 (prohibition of servitude).

Kontrovà v. Slovakia (no. 7510/04) 31.5.2007
On 2 November 2002 the applicant filed a criminal complaint against her husband for assaulting her and beating her with an electric cable. The police later assisted her in withdrawing her complaint when she returned to the police station accompanied by her husband. On 31 December 2002 her husband shot dead their daughter and son, born in 1997 and 2001.
The Court found a violation of Article 2 (right to life) concerning the authorities’ failure to protect the children’s lives and Article 13 concerning the impossibility for their mother to obtain compensation.

E.S. and Others v. Slovakia (no. 8227/04) 15.9.2009
In 2001 the applicant left her husband and lodged a criminal complaint against him for ill-treating her and her children (born in 1986, 1988 and 1989) and sexually abusing one of their daughters. He was convicted of violence and sexual abuse two years later. Her request for her husband to be ordered to leave their home was dismissed since the court found that it did not have the power to restrict her husband’s access to the property (she could only end the tenancy when divorced). The applicant and her children were therefore forced to move away from their friends and family and two of the children had to change schools.

The Court found that Slovakia had failed to provide the applicant and her children with the immediate protection required against her husband’s violence, in violation of Articles 3 and 8.

E- Sexual abusers of minors

Gardel c. France 17.11.2009
Inclusion in the national database of sexual offenders did not infringe the right to respect for private life. No Violation of Article 8 (right to respect for private and family life)

Principal facts: the applicant, Fabrice Gardel, is a French national who lives in France and is currently held in Monmédy Prison. He was sentenced in 2003 and imprisoned for the rape of 15 years old minors by a person in a position of authority.

On 9 March 2004 Law no. 2004-204 “adapting the judicial system to the evolution of criminality” created a national judicial database of sex offenders (later extended to include violent offenders). The provisions of the Code of Criminal Procedure concerning this Sex Offender Database entered into force on 30 June 2005.

In November 2005, the applicant was notified of his inclusion in the database of Sex Offenders in respect of his convictions and on the basis of the transitional provisions of the Law of 9 March 2004.

Decision of the Court: Article 7- the obligation arising from inclusion in the national Sexual Offenders Database pursued a purely preventive and dissuasive aim and could not be regarded as punitive in nature or as constituting a criminal sanction. The fact of having to prove one’s address every year and to declare changes of address within a fortnight, albeit for a period of thirty years, was not serious enough for it to be treated as a “penalty”. The Court thus took the view that inclusion in the national Sexual Offenders Database/Register and the corresponding obligations for those concerned
did not constitute a “penalty” within the meaning of Article 7 § 1 of the Convention and that they had to be regarded as preventive measures to which the principle of non-retrospective legislation, as provided for in that Article, did not apply. This complaint was thus rejected.

Article 8- the protection of personal data is of a fundamental importance to one’s right to respect for his or her private and family life, all the more so where such data underwent automatic processing, not least when such data were used for police purposes. The Court could not call into question the prevention-related objectives of the database. Sexual offences were clearly a particularly reprehensible form of criminal activity from which children and other vulnerable people had the right to be protected effectively by the State.

Moreover, as the applicant had an effective possibility of submitting a request for the deletion of the data, the Court took the view that the length of the data conservation – thirty years maximum – was not disproportionate in relation to the aim pursued by the retention of the information. Lastly, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances. The Court concluded that the system of inclusion in the national judicial database of sex offenders, as applied to the applicants, had struck a fair balance between the competing private and public interests at stake, and held unanimously that there had been no violation of Article 8.

Judgment only available in French:

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Gardel%20v.%20France%2016428/05&sessionid=64613609&skin=hudoc-fr

Press release in English:

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=16428/05&sessionid=64613583&skin=hudoc-pr-fr

A.D. and O.D. v. United Kingdom, 16.3.2010
“Placement of children in public care, in the United Kingdom”. Placement of a child owing to suspicions of ill-treatment by his parents, suspicions which were subsequently shown to be unfounded (Art. 8 ECHR) – violation.

Lack of an effective remedy concerning the complaints of the applicant mother (Art. 13 ECHR + Art. 8 ECHR) – violation.

Lack of an effective remedy concerning the complaints of the applicant child (Art. 13 ECHR – Art. 8 ECHR) – no violation.


M.A.K. and R.K. v. United Kingdom, 23.3.2010
“Suspicion of sexual abuse of a child by her father, subsequently shown to be unfounded, in the United Kingdom”. Restrictions on contacts between a father and his daughter while the daughter was in hospital because of suspicions of sexual abuse by the father, which were subsequently shown to be unfounded (Art. 8 ECHR) – [violation].

Medical tests carried out on the child without parental consent (Art. 8 ECHR) – violation.

Lack of an effective remedy in relation to the complaints of the applicant father (Art. 13 ECHR) – violation.


F- Forced labour and trafficking

Military service or substitute civilian service. Four boys aged 15 and 16 years enlisted in the British navy for a period of nine years. Their requests to be discharged from service for different personal reasons were refused by the authorities following which they complained that they were held in servitude. The Commission found that the applicants’ military service did not amount to servitude in the sense of Article 4 (1) and declared the applications inadmissible.

**G- Ill-treatment by police**

**Okkali v. Turkey (no. 52067/99) 17.10.2006**

A 12-year-old boy was beaten by police officers to induce him to confess that he has stolen money from his employer (the accusation of theft was subsequently withdrawn). He left the police station staggering and vomiting, with severe bruising (as large as 30x17 cm). A stay of execution was ordered concerning the convictions of the police officers responsible and they were later promoted.

The Court found a violation of Article 3 concerning the impunity of the police officers and the absence of special protection for a minor. The Court regretted that nothing in the proceedings indicated concern for the protection of a minor; there was no reference to the applicant’s age as an aggravating factor or to any domestic legislation on the protection of minors. The impunity of those responsible also cast into doubt the dissuasive effect of the judicial system and its capacity to protect anyone.


**Stoica v. Romania (no. 42722/02) 4.3.2008**

A 14-year-old youth claimed he was beaten up by the police because he was of Roma origin. No prosecution was brought and the police were not prosecuted.

The Court found that the applicant’s injuries were the result of inhuman and degrading treatment, that there had been no proper investigation and that the police officers’ behavior had clearly been motivated by racism, in violation of Articles 3 and 14.


**Alkes v. Turkey 02.03.2010**

The applicant, Ali Umit Alkes, is a Turkish national who was born in 1980 and lives in Istanbul. While still a minor he was arrested during the search of his home on suspicion of having taken part in an armed robbery on behalf of an illegal organization.

Relying in particular on article 3 (prohibition of inhuman and degrading treatment), he alleged that he had been subjected to ill-treatment while in police custody (including, beating, squeezing of the testicles, electric shocks, hosing with cold water, “Palestinian” hanging and psychological harassment) and that the police officers involved had gone unpunished.(Case referred to the grand chamber).

Judgment only available in French:

Ciğerhun Öner v. Turkey (no. 2) (application no. 2858/07) 23.11.2010
A 12-year-old boy was ill-treated by police officers while being held in police custody (not registered), after he refused to give his name in an identity check, leaving him with bruises on his thigh and near his right eye.

The Court found that the boy had been subjected to inhuman and degrading treatment in violation of Article 3 and that there had been no effective punishment of the police officer responsible, in further violation of Article 3. The court decision: Violation of Article 3 (treatment and investigation), just satisfaction: EUR. 15,600 (non-pecuniary damage).

Judgment only available in French:


---

H- Children in court

T. v. United Kingdom (no. 24724/94) & V. v. United Kingdom (no. 24888/94) 16.12.1999
Two boys, aged 11, were tried in public over three weeks in an adult court – with extremely high levels of press and public interest – for the murder of a toddler (Jamie Bulger) which they had committed aged 10. They were convicted of murder.

Among other things, the Court found that the boys did not have a fair trial, in violation of Article 6 §1. A child charged with an offence had to be dealt with in a way which took full account of her/his age, level of maturity and intellectual and emotional capacities.

Both boys were suffering from post-traumatic stress disorder following their crime and both found the trial distressing and frightening and were unable to concentrate. The formality and ritual of the Crown Court must have been intimidating and the raised dock in which they had to stand must have increased their discomfort. It was unlikely that they would have felt able to co-operate with their lawyers inside or outside the court room.

The Court found no violation of Article 3 either concerning the applicants’ age (there was no clear common standard in Europe on the minimum age of criminal responsibility) or the length and public nature of the trial.
S.C. v. United Kingdom (no. 60958/00) 15.6.2004

An 11-year-old boy, with a very low intellectual level for his age, was tried in an adult court and sentenced to two-and-a-half year's detention for attempting to steal a bag from a woman aged 87, who fell and fractured her arm.

The Court considers it noteworthy, however, that the two experts who assessed the applicant before the hearing formed the view that he had a very low intellectual level for his age. The applicant's performance in various tests showed "a significant degree of learning difficulty" and that his ability to reason was "noticeably restricted", equivalent to that of an average child aged between 6 and 8, depending on the precise nature of the cognitive skill being tested.

While the court process had been explained carefully in a manner commensurate with the applicant's learning difficulties, at least by the social worker who was with the applicant in the Crown Court, the former recounts in his statement that "despite my efforts to explain the situation to him [the applicant] did not comprehend the situation he was in". Thus, the applicant seems to have had little comprehension of the role of the jury in the proceedings or of the importance of making a good impression on them. Even more strikingly, he does not seem to have grasped the fact that he risked a custodial sentence and, even once sentence had been passed and he had been taken down to the holding cells, he appeared confused and expected to be able to go home with his foster father.

In the light of this evidence, the Court cannot conclude that the applicant was capable of participating effectively in his trial.

The Court considers that, when the decision is taken to deal with a child, such as the applicant, who risks not being able to participate effectively because of his young age and limited intellectual capacity, by way of criminal proceedings rather than some other form of disposal directed primarily at determining the child's best interests and those of the community, it is essential that he is tried in a specialised tribunal which is able to give full consideration to, and make proper allowance for, the handicaps under which he labours, and adapt its procedure accordingly.

It is true that it was not contended on behalf of the applicant during the domestic proceedings that he was unfit to plead. However, the Court observes that in T. and V. v. the United Kingdom, cited above, it rejected the Government's preliminary objections that the applications should be declared inadmissible for non-exhaustion of domestic remedies because of the failure to claim at trial that the applicants were unfit to plead. The Court observed in those judgments that in order to obtain a stay of proceedings on this ground it was necessary to persuade the jury, on the basis of firm medical evidence, that the accused was so intellectually impaired that he was unable even to understand whether or not he was guilty. Dr Brennan found that, "on balance", the applicant probably did have sufficient intelligence to understand that what he had done was wrong, and that he was therefore fit to plead. The Court is not, however, convinced, in the circumstances of the present case, that it follows that the applicant was capable of participating effectively in his trial to the extent required by Article 6 § 1 of the Convention.
The Court found a violation of **Article 6 § 1**, in that the boy was not capable of fully participating in his trial; he did not understand the role of the jury and his need to make a good impression on them or that he risked going to prison; he expected to go home with his foster father. It was essential that a young applicant of limited intellectual ability be tried by a specialized tribunal.


Stagno v. Belgium (no. 1062/07) 7.7.2009
Two sisters complained that they were denied access to a court to bring proceedings against their mother for maladministration of their estate because it was impossible for minors to bring such proceedings and, once they had reached majority, the proceedings were time-barred.

The Court decision: The Court reiterated that statutory limitation periods pursued the legitimate aim of ensuring legal certainty, as a time-bar on claims protected potential defendants from belated complaints and meant that the courts would not have to give judgments based on evidence that had become uncertain or incomplete with the passing of time.

However, it had been practically impossible for the Stagno sisters to defend their property rights against the company Fortis AG before reaching their majority, and when they did come of age, their claim against the company had become time-barred.

The Court took the view that the strict application of a statutory limitation period, without taking into account the particular circumstances of the case, had prevented the Stagno sisters from using a remedy that in principle was available to them. That limitation on their right of access to a court was disproportionate in relation to the aim of guaranteeing legal certainty and the proper administration of justice, in violation of Article 6 § 1.

The Court held that there had been a violation of **Article 6 § 1** (right to a fair hearing).

Judgment only available in French:

Press release:

Adamkiewicz v. Poland, 2.3.2010
“Conviction of a child of murder, in Poland”.

Mr. Paweł Adamkiewicz, born in 1982 in Poland was arrested in 1997 for the murder of a 12 years old boy whose body had been found next to Mr. Pawel Adamkiewicz’s building. The applicant confessed
his crime to the police and was sent to a family court judge who appointed a lawyer for his defense. He was then placed in a minor institute during the procedure.

The Court considered that the applicant faced a lack of adequate assistance by a lawyer during the judicial investigation. There has also been a use by the courts of evidence consisting of the statements taken from the applicant during the judicial investigation and a lack of impartiality of the juvenile court owing to the presence on the bench of the judge who carried out the judicial investigation.

The Court reminded that the protection of the best interests of the child must prevail while minors are confronted to justice. In addition to the idea of the child participation, some criteria must be taken into account:

- Age
- Maturity
- Emotional and intellectual capacities

The court concluded that there was a violation of Art. 6 § 3(c) ECHR + Art. 6 § 1 ECHR.

Judgment only available in French: [link](http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Adamkiewicz%20|%20v.%20|%20Poland%20|%2054729/00&sessionid=64614439&skin=hudoc-fr)

Press release: [link](http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=64614379&skin=hudoc-pr-fr&action=request)


I- Children in detention

Selçuk v. Turkey (no. 21768/02) 10.1.2006

A 16-year-old was held in pre-trial detention for almost four months before being released.

Having particular regard to the fact that the applicant was a minor at the relevant time, the Court found a violation of Article 5 § 3 (right to liberty and security).

[link](http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=Sel%E7uk%20|%207C%20v.%207C%20Turkey&sessionid=64613653&skin=hudoc-fr)

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium (no. 13178/03) 12.10.2006

Five-year-old Tabitha Kaniki Mitunga, a Congolese national, was detained, upon arrival at Brussels’ Airport on the ground that the child was not in a possession of the necessary travel documents. She had been due to be collected by her uncle, before joining her mother, a refugee living in Canada. In
the absence of more suitable accommodation, she was held in facilities for illegal adult immigrants for nearly two months, unaccompanied by her family and with no-one assigned to her to provide counseling or educational assistance, before being returned to the Democratic Republic of Congo. No-one from her family was there to meet her on arrival in Kinshasa. She finally joined her mother in Canada following the intervention of the Belgian and Canadian Prime Ministers.

The Court found violations of Article 3 and 8 concerning both Tabitha’s detention and deportation. Tabitha was in a very vulnerable situation, given her age and status as an illegal foreigner unaccompanied by her family. Both the conditions of her detention and deportation had caused her considerable distress and demonstrated a lack of humanity amounting to inhuman treatment. Despite its obligations to reunite an unaccompanied minor with her family, the Belgian authorities had hindered Tabitha’s reunion with her mother. In addition, detaining her had served no purpose as there was no risk of evasion. The authorities had also failed to ensure that Tabitha would be cared for on arriving in Kinshasa.


**Güveç v. Turkey (no. 70337/01) 20.1.2009**

**Article 3, 5 §§ 3 and 4, article 6 § 1 in conjunction with Article 6 § 3 (c) (violations)**

Concerns: the applicant complained, in particular, about his detention in an adult prison and his trial before the State Security Court instead of a juvenile court. He also complained that he had not been released pending trial and that he had not been tried fairly.

Facts and complaints

The applicant, Oktay Güveç, is a Turkish national who was born in 1980 and lives in Belgium. The case concerned in particular the applicant’s complaint that, although a juvenile, he had been placed in an adult prison, where he had remained for the next five years, and which had resulted in his repeated suicide attempts. On 30 September 1995 the applicant, 15 years old, was arrested on suspicion of membership of the PKK (Kurdistan’s Working Party). On 12 October 1995 he was taken to Istanbul State Security Court where a judge ordered his detention in prison pending the introduction of criminal proceedings against him. On 27 November 1995 the applicant was charged with undermining the territorial integrity of the state, an offence which was punishable by death at the time. In May 1997 his charge has been revised and, following a retrial, in May 2001 the court found the applicant guilty of membership of an illegal organisation and sentenced him to eight years and four months in prison. In May 2002 the Court of Cassation upheld the applicant’s conviction.

When questioned by the police, and subsequently by the prosecutor and the judge, the applicant was not represented by a lawyer. During the retrial, both the applicant and his lawyer were absent from most of the hearings.

In August 2000 the prison doctor reported that the applicant had been suffering from serious psychiatric problems in prison and had attempted to commit suicide twice in 1999. The doctor
concluded that the situation in the prison was not conducive to the applicant’s treatment and that he needed to be placed in a specialised hospital.

During his placement in a psychiatric hospital, another medical report was drawn up in April 2001; it noted that the applicant had made a third attempt to kill himself in September 1998 and had been treated for “major depression” at the hospital between June 2000 and July 2000. The report concluded that the applicant’s psychological complaints had started and worsened during his detention.

In addition, the applicant alleged before the Court that, while detained in police custody, he had been given electric shocks, sprayed with pressurised water and beaten with a truncheon, including on the soles of his feet. The applicant apparently left Turkey in 2002 for Belgium where he has since been granted refugee status.

Decision of the Court: Under Article 3, the Court first observed that the applicant’s detention in an adult prison had been in contravention with the regulations in force in Turkey at the time and of the country’s obligations under international treaties. It further noted that, according to the medical report of April 2001, the applicant’s psychological problems had begun during his detention in prison and had worsened there. While only 15 years old when put in detention, the applicant had spent the next five years of his life together with adult prisoners. For the first six and a half months of that period he had had no access to legal advice; nor had he had adequate legal representation until some five years after he had first been detained. Those circumstances, coupled with the fact that for a period of 18 months he had been tried for an offence carrying the death penalty, had to have created a situation of total uncertainty for him.

The Court considered that those aspects of the applicant’s detention had undoubtedly caused his psychological problems which, in turn, had tragically led to his repeated attempts to take his own life. What was more, the national authorities had not only directly been responsible for the applicant’s problems, but had also manifestly failed to provide adequate medical care for him.

Consequently, given the applicant’s age, the length of his detention in prison together with adults, the failure of the authorities to provide adequate medical care for his psychological problems, and, finally, the failure to take steps with a view to preventing his repeated suicide attempts, the Court entertained no doubts that the applicant had been subjected to inhuman and degrading treatment, in breach of Article 3.

Article 5 § 3, the Court recalled that, in at least three judgments concerning Turkey, it had previously criticised the practice of detaining children in pretrial detention and had found violations of Article 5 § 3 for considerably shorter periods of detention than that spent by the applicant in his case. The Court thus concluded that the length of the applicant’s detention on remand had been excessive, in violation of Article 5 § 3.

Article 5 § 4, the Court reiterated its findings in earlier cases, in which it had concluded that no real possibility for challenging the lawfulness of pretrial detention existed in Turkey at the relevant time, and found no reason to depart from its previous findings, thus finding a violation of Article 5 § 4.

Article 6 § 1 in conjunction with Article 6 § 3 (c), the Court considered that the applicant had not been able to effectively participate in the trial, given that he had not attended at least 14 of the 30
hearings both during the initial trial and at retrial. Having considered the entirety of the criminal proceedings against the applicant, and their shortcomings, in particular the lack of legal assistance for most of the proceedings, the Court concluded that there had been a violation of Article 6 § 1 in conjunction with Article 6 § 3 (c).

Articles 13 and 14, the Court held that there was no need to examine separately the complaints under Articles 13 and 14, in view of the violations found in respect of the other articles. Under Article 41 (just satisfaction), the Court awarded Mr. Güveç 45 000 euros in respect of no pecuniary damage and 4 150 Euros for costs and expenses.

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=G%C3%BCve%C7%20%7C%20Turkey&sessionid=64613653&skin=hudoc-fr