

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Rights of persons with disabilities

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention") relating to the rights of persons with disabilities. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

*. The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.
Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

1. Although no provision of the Convention and its Protocols explicitly refers to disability, in practice almost all Articles of the Convention or its Protocols are relevant to the rights of persons with disabilities. The present Guide provides an overview of the Court's case-law related to disability matters. It contains a transversal analysis of the Court's case-law, referencing any relevant rules and principles of international law applicable in relations between the Contracting Parties. In this matter, the Court has notably relied on Recommendation 1592 (2003) towards full inclusion of people with disabilities (see for example *Arnar Helgi Lárusson v. Iceland*, 2022, § 20), in which the Parliamentary Assembly of the Council of Europe stated that some of the fundamental rights contained in the Convention were still inaccessible to many people with disabilities, including the right to private and family life, and emphasized that guaranteeing access to equal political, social, economic and cultural rights should be a common political objective in the decade that followed. It has also often relied on the United Nations Convention on the Rights of Persons with Disabilities (2008) (see, for example, *Stanev v. Bulgaria* [GC], 2012, § 244).

2. Throughout its case-law, the Court has taken any disability of applicants into account to protect their autonomy, their independence as well as their specific needs. In this context, the Court has held that, if a restriction on fundamental rights applies to someone belonging to a particularly vulnerable group in society that has suffered considerable discrimination in the past (such as persons with mental disabilities), then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question. In this respect, the Court has protected the right to one's physical, moral, and psychological integrity, as well as the right to respect for private and family life, being mindful of the special needs of persons with disabilities. In particular, the effective enjoyment of many of the Convention rights by people with disabilities may require the adoption of various positive measures by the relevant State authorities. This Guide is divided in twelve chapters, each of them referring to one or more areas where rights of persons with disabilities come into play.

I. Admissibility and procedural issues[1]

A. Locus standi

Article 34 of the Convention

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

1. Persons under legal protection measure

3. The consent of the applicant's guardian is not required for a person with a disability or restricted legal capacity to lodge an application with the Court (whether or not they are represented), even if that is the case under the domestic legal framework (*Stanev v. Bulgaria* [GC], 2012, § 43, where it appeared that domestic law required that a person under partial guardianship may instruct a lawyer

[1] For further details see the Practical guide on admissibility criteria.

provided that the form of authority was signed by the guardian, but for the procedure before the Court such an authority was not required; see also *Anatoliy Marinov v. Bulgaria*, 2022, § 24). There is indeed no obligation in general, or for persons lacking legal capacity in particular, to be represented at the initial stage of the proceedings (*Zehentner v. Austria*, 2009, §§ 39-40, for an application lodged without the consent of the applicant's guardian).

2. Persons unable to lodge an application

a. Vulnerable applicants

4. A third party might, in exceptional circumstances, act in the name and on behalf of a vulnerable person without a duly signed written authority to act, where the following two main criteria are satisfied: the risk that the direct victim would be deprived of effective protection of his or her Convention rights; and the absence of a conflict of interests between the victim and the applicant. In *Lambert and Others v. France* [GC], 2015, the Court noted certain factors capable of rendering a person vulnerable, namely, "on account of his or her age, sex or disability" (§ 92), which is, however, not exhaustive.

5. In *Calvi and G.C. v. Italy,* 2023, the Court accepted that the cousin of a person with a disability placed in a social care home could lodge an application in the name of his relative to challenge his placement. The Court considered it relevant that the person was placed under legal protection measure and, as a consequence, his decisions were substituted by his administrative supporter, and that there was disagreement between him and his support administrator as to the necessity of the placement measure, indicating therefore a risk of the applicant being deprived of effective Convention protection (§ 68). In comparison, the Court held that any risk of a failure to protect a person's rights had been reduced as far as possible, where the person had been represented by an independent, professional, court appointed guardian, who had been active in the legal proceedings throughout the domestic procedures (*Gard and Others v. the United Kingdom* (dec.), 2017, §§ 64-65).

6. The Court found that a detainee held incommunicado might be regarded as a vulnerable person who was at risk of being deprived of effective Convention protection and that that might also be the case for a person suffering from mental health problems. The cumulative effect of serious mental health issues, as well as the situation during detention and confinement, may entail a vulnerability that renders him or her unable to lodge a complaint with the Court. These exceptional circumstances allow third parties, such as the person's parents to have standing to lodge an application (*Ghazaryan and Bayramyan v. Azerbaijan,* 2023, §§ 74-80).

7. Where a person with a disability is unable to lodge an application, the Court has established that, in exceptional circumstances, an association can act as a representative of a direct victim, in the absence of a power of attorney and notwithstanding that the victim died before the application was lodged, due regard also being paid to the connections between the person lodging the application and the victim (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 112). It considered that to find otherwise would amount to preventing serious allegations of a violation of the Convention from being examined at international level, with the risk that the respondent State might escape accountability (see also *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, 2015, § 42).

8. Hence, in the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, which concerned the failure of the State to provide adequate care for a HIV positive patient with a mental disability, the Court accepted the association's standing to bring proceedings without a power of attorney for the following reasons: the vulnerability of Valentin Câmpeanu, who had a serious mental disability; the seriousness of the allegations made under Articles 2 and 3 of the Convention; the absence of heirs, next of kin or legal representatives and guardians, to bring Convention proceedings on his behalf; the contacts which the applicant association had with Valentin

Câmpeanu and its involvement in the domestic proceedings following his death, during which it had not been contested that it had standing to act on his behalf (§§ 104-111).

9. The Court has reached a similar conclusion in the case of *L.R. v. North Macedonia,* 2020, which concerned a minor abandoned at birth and placed in a social care home. It considered that there was no evidence that the applicant's parents, having a mental disability, or any other next of kin, had showed any interest in the applicant's situation. Whilst the applicant had a State-appointed legal guardian, he had failed in his responsibility to protect the applicant's interests whereas the organisation seeking to represent the applicant had visited him a number of times and had pursued his case before a number of authorities (§§ 49-54). The standing of a non-governmental organisation to lodge an application on behalf of a person with a severe intellectual disability who died in a State-run social care was also recognised in *Validity Foundation on behalf of T.J. v. Hungary,* 2024. In the specific circumstances of that case the State-appointed guardian failed to pursue any available remedy to protect the direct victim's interests before the domestic authorities and was not legally entitled to lodge an application with the Court after the direct victim's death (§§ 43-51).

10. In contrast, in *Bulgarian Helsinki Committee v. Bulgaria* (dec.), 2016, the Court found that the association did not have standing to lodge an application on behalf of two adolescent children with mental disabilities who died while in State care. Applying the criteria set out in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, the Court noted that the applicant association had not had any contact with the adolescent children and had not taken an interest in their case prior to their deaths (§ 56), that the association had not had domestic procedural status encompassing all the rights enjoyed by parties to criminal proceedings (§ 58) and that its intervention in the criminal proceedings following the discontinuance orders had been delayed (§ 59).

11. In a similar vein, in *Nencheva and Others v. Bulgaria,* 2013, while the Court accepted the victim status of the parents of children deceased in a social care, it held that the application of an association was incompatible *ratione personae* with the provisions of the Convention and had to be rejected pursuant to Article 35 §§ 3 and 4 of the Convention as the association had not demonstrated any attempt to raise the issues with the national authorities before doing so before the Court (§§ 92-93).

b. Applicants who died in the course of the proceedings

12. In several cases, where an applicant with a disability died in the course of the proceedings before the Court and no close relative wished to pursue the application, the Court decided that respect for human rights required it to continue the examination of the application in accordance with Article 37 § 1 *in fine* of the Convention. In *Kaganovskyy v. Ukraine*, 2022, the Court held that it was not necessary to examine the *locus standi* of the organisation which had voiced its wish to pursue the application following the applicant's death: in any event, the case involved a question of general interest about the conditions and lawfulness of confinement at a psychoneurological residential institution (§§ 68-72). Similarly, in *Delecolle v. France*, 2018 (concerning the standing of the applicant's partner who was not his heir), the Court held the right to marry of persons placed under a legal protection regime raised an important general question which transcended the person and the interests of the applicant and his heirs in that it might have affected other persons (§§ 38-40).

13. In *Vilela and Others v. Portugal*, 2021, the Court accepted the parents' *locus standi* to pursue the application of their deceased child. In contrast, it rejected the application in so far as it concerned the parents themselves, finding that they had no victim status because they had not been party to the domestic proceedings (§§ 59-60).

c. Indirect victims

14. In *Caamaño Valle v. Spain*, 2021, the Court noted that the application had been brought by the applicant in her own name, acting on behalf of her daughter with disability. The judicial process at each domestic instance concerned proceedings initiated by the mother with the intention of

extending her custody over her daughter with disability. The Court therefore considered that the applicant had the required standing to lodge the application. It proceeded, however, with the assumption that the actual victim of the alleged violation in the case was the applicant's daughter (§§ 33-34).

d. Lack of victim status

15. In *Ada Rossi and Others v. Italy* (dec.), 2008, persons with severe disabilities and associations defending their interests complained of the potential adverse effects on them of the execution of a domestic-court decision allowing the discontinuation of the artificial nutrition and hydration of a young woman who had been in a vegetative state for several years. The Court dismissed the application on account of the applicants' lack of victim status: they had no direct family ties with the young woman; the domestic proceedings the outcome of which they criticised and feared the consequences had not affected them directly; and, in so far as they feared a future violation of their rights, they had not produced reasonable and convincing evidence of the likelihood that a violation affecting them personally would occur.

16. The same applied in *Kátai v. Hungary* (dec.), 2014, which the Court declared inadmissible an application by a pensioner with disability about new legislation that required him to undergo a fresh assessment to qualify for an allowance. The reassessment of his condition with a view to establishing any new entitlement had yet to take place and in the meantime, he continued to receive his former entitlements. Under these circumstances, the Court was satisfied that the applicant could not claim to be a victim of a violation of his rights under the Convention.

17. The applicant was also found to lack victim status in respect of a complaint under Article 6 § 1 about the alleged shortcomings of the guardianship proceedings which, although initiated by the applicant, only concerned her mother (*M.T.S. and M.J.S. v. Portugal,* 2024, §§ 92-93).

e. Loss of victim status

18. As to the question whether an applicant can claim to be the victim of the violation alleged, despite compensation received at national level, the Court has generally considered that the appropriateness and sufficiency of the redress depends on all the circumstances of the case, having regard, in particular, to the nature of the Convention violation at stake. A further element the Court factored in its assessment is the applicant's status as a vulnerable person having, for example, intellectual and physical disabilities (*İ.G. v. Türkiye*, 2024, §§ 42 and 48).

B. Exhaustion of domestic remedies

Article 35 § 1 of the Convention

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law (...)."

19. When examining the exhaustion of domestic remedies by people with mental disabilities, consideration has to be given to their vulnerability and, in particular, their inability in some cases to plead their case coherently (*B. v. Romania (no. 2)*, 2013, § 78, see also *M.S. v. Croatia (no. 2),* 2015, § 128).

20. In making use of a domestic remedy, the applicant must raise the complaint, if not by express reference to the Convention, then "at least in substance". This means that the applicant must raise legal arguments to the same or like effect on the basis of domestic law, in order to give the national

courts the opportunity to redress the alleged breach. A complaint is not inadmissible when an applicant does not expressly refer to the relevant provisions of the Convention (rather to the United Nations Convention on the Rights of Persons with Disabilities (CRPD)) before all levels of domestic courts, but invokes in substance the rights he relies on before the Court (*Arnar Helgi Lárusson v. Iceland*, 2022, §§ 35-37).

1. Domestic remedies to be exhausted

21. In a case concerning the applicant's alleged inability to pursue his academic studies under the same conditions as other students on account of the lack of suitable facilities accommodating his locomotor disabilities in the buildings housing the lecture rooms (Article 2 of Protocol No. 1), the Court considered that, for the remedies to be deemed "effective" for the purposes of Article 35 § 1 of the Convention, they must have been capable, primarily, of preventing or putting a swift end to the alleged violations and, secondarily, of affording adequate redress for any violation that had already occurred (*Gherghina v. Romania* (dec.) [GC], 2015, § 91).

22. In *Gherghina v. Romania*, the above-noted considerations meant that the applicant needed, first and foremost, to be able to avail himself of a remedy capable of leading to the swift adoption of decisions requiring the universities concerned to install suitable facilities for people with locomotor impairments or to make reasonable accommodation to enable him to continue his studies. As a secondary consideration, he needed to have reasonable prospects of obtaining redress for any non-pecuniary or pecuniary damage he might have sustained through being unable to pursue his university studies under the same conditions as other students (*ibid*, § 92). As the applicant had failed to apply to the civil courts for an order requiring the universities concerned to install an access ramp and other facilities accommodating his needs, to bring an action in tort or to use the remedies in respect of the successive decisions to exclude him from university, the Court declared the application inadmissible for non-exhaustion of domestic remedies.

23. In *Dumpe v. Latvia* (dec.), 2018, which concerned the applicant's son's death during his placement in a social care institution, allegedly due to the lack of adequate medical assistance, the Court declared the application inadmissible for failure to exhaust domestic remedies as the applicant had failed to have recourse to the civil-law remedy, despite the fact that she had instituted criminal proceedings. The Court found that the civil-law remedy was effective in theory and in practice and that it did not pursue the same objective as the criminal-law remedy.

2. Obstacles preventing the use of effective domestic remedies

24. In *Gherghina v. Romania* (dec.) [GC], 2015, the Court verified whether there were any circumstances capable of exempting the applicant, a person with physical disabilities, from the obligation to exhaust domestic remedies. It found that the inaccessibility of the buildings housing the courts did not form an insurmountable obstacle preventing the applicant from using remedies open to him since he could have still applied to the courts in writing or through a representative, such as a lawyer or his aunt, who had acted as his personal assistant on other occasions (§ 113).

C. Significant disadvantage

25. The severity of a violation should be assessed, taking account of both the applicant's subjective perceptions and what is objectively at stake in a particular case. In the context of allegations of discrimination, the question of what amounts to a 'significant disadvantage' for an applicant requires particularly careful scrutiny. It may also be that, even in the absence of a "significant disadvantage", a question of principle raised by an application is of a general character affecting the observance of the Convention. In *J.D. and A. v. the United Kingdom,* 2019, the Court held that the applicant's allegation of discrimination raised general questions which warranted its Consideration (§§ 65-66).

D. Hinder to the exercise of the right of petition

26. Given the lack of specific measures to enable persons with reduced mobility to use public postal services, positive measures can be expected from the State under Article 34 (*Farcaş v. Romania* (dec.), 2010, § 49). However, in the *Farcaş v. Romania* case, the Court concluded that, in the circumstances, neither the right of access to a court nor the right of individual petition had been hindered by insurmountable obstacles preventing the applicant from bringing proceedings, lodging an application or from communicating with the Court (§§ 50-54).

E. Strike out of applications

Article 37 § 1 of the Convention

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; (...)
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

27. Where applicants with mental disorders informed the Court of their wish to withdraw their application, the Court has taken their disability into account when deciding to strike out the case or to pursue its examination pursuant to Article 37 § 1 *in fine* of the Convention.

28. The case of *Tehrani and Others v. Turkey*, 2010, concerned, *inter alia*, the removal of Iranian nationals recognised as refugees by UNHCR. After one of the applicants had written to the Court that he wished to withdraw his application, his representative informed the Court that he nevertheless wished to pursue the application and that the applicant was in poor mental health and needed treatment. The Government stated that the applicant did not suffer from a psychotic illness but that further diagnosis could not be carried out due to his lack of cooperation. The Court noted that one of the applicant's allegations concerned the possible risk of death or ill-treatment and considered that striking the case out of its list would lift the protection afforded by the Court on a subject as important as the right to life and physical well-being of an individual and that there were doubts about the applicant's mental state as well as discrepancies in the medical reports. It therefore concluded that respect for human rights required the examination of the application to continue (§§ 56-57).

29. By contrast, the Court struck out the case of *Benazet v. France* (dec.), 2007, in which the applicant died while his application was pending before the Court. His daughter and sole heir was placed under the State-supervised guardianship of an association for adults with disabilities and young people. The association responsible for her care, having consulted the guardianship judge, had not considered it judicious for her to take over and continue her father's application.

30. The Court rejected the Government's unilateral declaration in *V.I. v. the Republic of Moldova*, 2024. The application raised serious issues, which had not already been determined, as regards a minor's involuntary placement in the adult section of psychiatric hospital and the unilateral declaration submitted by the Government did not offer a sufficient basis for striking out the application (§§ 78-79).

F. Restoration of a case to the list

Article 37 § 2 of the Convention

"The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course."

31. The fact that the applicants are persons with mental disorders is an element that the Court can take into account when deciding whether to restore a case to its list of cases pursuant to Article 37 § 2 of the Convention.

32. For example, the case of *Katić v. Serbia* (dec.), 2009, concerned two applicants with mental disabilities who were deprived of their legal capacity and had a guardian to look after their interests. During the initial proceedings before the Court in which they had complained about the length of civil proceedings against their insurance company, they had accepted a friendly settlement offer made by the Government and the Court struck the case out of its list on that basis. Six months later the applicants' representative informed the Court about problems with the settlement. The Court noted that the Government had transferred the settlement sum to the applicants' account in a timely manner and, in different circumstances, that would have generally satisfied the terms of a friendly settlement. However, given the applicants' disability and legal status, the fact that only a small part of the awarded amount had been spent for their subsistence and that their housing situation remained difficult, indicated that the interim guardian and/or the competent social care centre had failed to make sure that the settlement sum was being used in the applicants' best interests. The Court therefore considered it justified to restore the case to its list of cases.

II. Autonomy[2]

A. Legal capacity and independence

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. Legal capacity

33. Article 8 secures to the individual a sphere within which he can freely pursue the development and fulfilment of his personality. The complete removal of legal capacity deprives a person of his capacity to act independently in almost all areas of life (*Shtukaturov v. Russia*, 2008, § 83). The person concerned is not able to take any legal action and is thus deprived of his or her independence in all legal spheres. Such persons are put in a situation where they depend on others to take decisions

[2] For further details see the Article 8 of the European Convention on Human Rights.

concerning various aspects of their private life, such as, for example, where to live or how to dispose of their assets and income. Numerous rights of such persons are extinguished or restricted. For example, such a person is not able to make a will, cannot be employed and cannot marry or form any other relationship creating consequences for their legal status etc (*X and Y v. Croatia*, 2012, 90). Deprivation of legal capacity thus undeniably constitutes a serious interference with the right to respect for a person's private life protected by Article 8 (*N. v. Romania (no. 2)*, 2021, § 53; *A.N. v. Lithuania*, 2016, § 111).

34. Even a partial deprivation of legal capacity, stopping the applicant from making independent decisions in certain areas of life (e.g. disposing of money and other assets and deciding on medical treatment) has serious consequences on private life and may amount to an interference with the latter (*Ivinović v. Croatia*, 2014, §§ 35 and 38). Similarly, the temporary removal of a person's legal capacity has serious consequences for him, as his confinement and treatment will depend on the consent of his guardian (*Sýkora v. the Czech Republic*, 2012).

35. Accordingly, the Court has examined cases concerning the complete and partial deprivation of legal capacity, as well as restrictions on the exercise of legal capacity.

a. Justification for restriction of legal capacity

36. The Court has held that deprivation of legal capacity may be justified for the person's own protection, the protection of the interests of others and the proper administration of justice (*Stanev v. Bulgaria* [GC], 2012, § 241). It has accepted that the partial deprivation of legal capacity to prevent a person from falling into a state of need pursued the legitimate aims of protecting society from the risk of having to provide financially for that person and of protecting him or her from hardship (*M.K. v. Luxembourg,* 2021, § 61). Nonetheless, while it is legitimate to provide care for sick or elderly, or persons with diminished capacity who could not take care of themselves, State authorities should have other means to ensure that the sick and elderly are properly cared for other than divesting such persons of their legal capacity (*X and Y v. Croatia*, 2011, §§ 90-91).

37. The existence of a mental disorder, even a serious one, cannot be the sole reason to justify full incapacitation (*Nikolyan v. Armenia,* 2019, § 122).

b. Assessment of mental capacity

38. As a rule, domestic authorities should enjoy a wide margin of appreciation in such a complex matter as determining a person's mental capacity. The national authorities have the benefit of direct contact with the people concerned and are particularly well placed to determine such issues: the task of the Court is rather to review under the Convention the decisions taken by the national authorities in the exercise of their powers in this regard (*A.N. v. Lithuania*, 2016, § 116; *N. v. Romania (no. 2)*, 2021, § 54).

39. Any deprivation or limitation of legal capacity must be based on sufficiently reliable and conclusive evidence. An expert medical report should explain what kind of actions the applicant is unable to understand or control and what the consequences of his illness are for his social life, health, pecuniary interests, and so on. The degree of the applicant's incapacity should be addressed in sufficient detail in those medical reports (*Sýkora v. the Czech Republic*, 2012, § 103**;** *Shtukaturov v. Russia*, 2008, §93).

40. The medical expert opinion should also be sufficiently recent (*Nikolyan v. Armenia*, 2019, § 124): that was the case where the expert opinion, on which the first-instance court based its decision, had been issued three months and one week before the adoption of the judgment (*A.A.K. v. Türkiye*, 2023, § 78).

41. By analogy with cases concerning deprivation of liberty, in order to justify full incapacitation the mental disorder must be "of a kind or degree" warranting such a measure (*Shtukaturov v. Russia*, 2008, § 94). Hence the Court has ruled that the deprivation of legal capacity was disproportionate

where the applicant had a serious and persistent mental disorder, had delusory ideas and was a vexatious litigant but it was not demonstrated that he was violent, self-destructive, otherwise grossly irresponsible or completely unable to take care of himself (*Lashin v. Russia,* 2013, § 91). Similarly, the Court found it insufficient when an expert report referred to the applicant's aggressive behaviour, incoherent thoughts, negative attitudes and "antisocial" lifestyle without explaining what kind of actions he was incapable of understanding and controlling (*Nikolyan v. Armenia,* 2019, § 123).

42. The Court has also emphasised that, while the applicant's mental health is a matter of medical assessment, to reduce any risk of arbitrariness, it is the function of the judge and not of the physician to assess the relevant facts and personal circumstances and to decide whether such an extreme measure is necessary or whether a less stringent measure might suffice (*Ivinović v. Croatia*, 2014, § 40). When such an important interest for an individual's private life is at stake, a judge has to balance carefully all relevant factors in order to assess the proportionality of the measure to be taken (*X and Y v. Croatia,* 2011, 85).

43. The Court found that the domestic courts struck a fair balance between the interests at stake when, instead of taking a decision merely based on a finding of impairment of the applicant's mental faculties by doctors, they analysed the applicant's personal and financial situation, based on the doubts expressed by the social worker as to her capacity, given her age and a certain weakness, to make judgments, and on questions raised by the social worker as to whether she might be fragile, easily influenced and manipulated (*M.K. v. Luxembourg,* 2021).

c. Proportionality

44. As divesting someone of their legal capacity is a very serious measure, it should be saved for exceptional circumstances given the consequences it entails for the person concerned (*X and Y v. Croatia*, 2011, § 90). Deprivation of legal capacity, even if partial, should be a measure of last resort, applied only where the national authorities, after carrying out a careful consideration of possible alternatives, have concluded that no other, less restrictive, measure would serve the purpose or where other, less restrictive measure, have been unsuccessfully attempted (*Ivinović v. Croatia*, 2014, § 44). Furthermore, referring to the General Comment No. 1 and General Comment No. 5 adopted by the Committee on the Rights of Persons with Disabilities, the Court held that any protective measure imposed in respect of a person able to express his or her wishes should, in so far as possible, reflect those wishes (*Calvi and G.C. v. Italy,* 2023, § 96).

45. When restricting a person's legal capacity, States need to reach a fair balance between respect for the dignity and self-determination of the individual and to protect and safeguard his or her interests, especially where the individual's capacities or situation place him or her in a particularly vulnerable position (*A.A.K. v. Türkiye,* 2023, § 86).

46. While States have a wide margin of appreciation in assessing one's mental capacity, the Court has held that if a restriction on fundamental rights applies to someone belonging to a particularly vulnerable group in society that has suffered considerable discrimination in the past, such as persons with mental disabilities, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question (*A.A.K. v. Türkiye*., 2023, § 55). The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion. Such prejudice could entail legislative stereotyping which prohibits the individualised evaluation of their capacities and needs[3] (*A.N. v. Lithuania,* 2016, § 125). Moreover, a stricter scrutiny is called for in respect of very

[3] The Court has often found a violation of Article 8 of the Convention where the existing legislative framework did not leave the judges or the forensic experts any room for an individualised assessment of the person's situation and a tailor-made solution, but merely distinguished between full capacity and full incapacity (*N. v. Romania (no. 2)*, 2021, §§ 63-65; *A.N. v. Lithuania,* 2016, § 124; *Nikolyan v. Armenia,* 2019, § 123). Where a

serious limitations in the sphere of private life (*Salontaji-Drobnjak v. Serbia,* 2009, § 142) and in respect of measures that have such adverse effect on one's personal autonomy (*X and Y v. Croatia,* 2011, § 109).

47. The Court found a restriction of legal capacity proportionate, where it only concerned the management of her assets and financial affairs on the basis of an inventory of assets, and was accompanied by a ban on concluding land and banking transactions without the court's approval (*A.A.K. v. Türkiye*, 2023, § 81).

48. As regards the appointment of guardians, the Court has emphasised that the only proper and effective means of protection of a person's legal interests before the courts is through a conflict-free guardianship. It referred to Principle 8 of Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe and to Article 12 § 4 of the CRPD requiring appropriate and effective safeguards ensuring that measures relating to the exercise of legal capacity by persons with disabilities be free of conflict of interest and undue influence (*Nikolyan v. Armenia,* 2019, § 95).

d. Decision-making process

49. In addition, the Court assesses the reasoning of the domestic decisions ordering the deprivation of legal capacity and the procedural safeguards in the decision-making process (*Shtukaturov v. Russia*, 2008, §§ 92-94; *X and Y v. Croatia*, 2011, § 93). In this regard, see Chapter on Legal protection.

2. Independence

50. *Choice of residence*. In *A.-M.V. v. Finland*, 2017, the Court considered substituted decision-making without restricting a person's legal capacity, its impact on the person's right to live independently and choose his or her place of residence as well as the possibility to give precedence to the "best interests" of the person instead of his wishes . The case concerned a refusal to comply with the wishes of an adult with mental disability regarding his education and place of residence. The Court noted the need to reach a fair balance between respect for the dignity and self-determination of the individual with the need to protect and safeguard his or her interests, especially where the individual's capacities or situation place him or her in a particularly vulnerable position. Given that there was an effective safeguard in the domestic proceedings to prevent abuse, ensuring that the applicant's rights, will and preferences were taken into account, the fact that the authorities did not comply with the applicant's wishes, in the interests of protecting his health and well-being, did not breach Article 8 of the Convention.

51. *Institutionalisation*. The Court addressed institutionalisation and its impact on the individual in *Calvi and G.C. v. Italy,* 2023. It held that, from the time of his placement in a social care institution, the applicant remained isolated from the outside world, with all visits and telephone call requests being vetted by his guardian or the guardianship judge without any demonstrated necessity. No measures were taken to prepare the applicant to return to his own home despite the finding that his capacity for social integration was not impaired. The Court acknowledged the difficulties faced by the national authorities in reconciling the right to respect for the dignity and self-determination of an individual with the requirement to protect and safeguard that individual's interests. It, nonetheless, pointed to the absence of safeguards in domestic proceedings to prevent abuse, to ensure that the person's rights, wishes and preferences are taken into account and that they are involved in the decisions taken at the various stages of the proceedings. The Court was of the view that States were required to facilitate the participation of persons with disabilities, or older "dependent" persons, in the life of the community and to prevent their isolation or segregation.

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measure of protection is necessary it should be proportionate to the degree of capacity of the person concerned and tailored to his individual circumstances and needs (*A.N. v. Lithuania*, 2016, § 124).

52. *Access to social services.* The Court has also assessed the effect of denial or withdrawal of social services on a person's autonomy and access to the outside word. It held that in circumstances where, because of their health and living arrangements, persons needed constant support, decisions pertaining to the provision of social and health care services impacted their autonomy and dignity and their enjoyment of their right to respect for private life guaranteed by Article 8 § 1 of the Convention (*Diaconeasa v. Romania,* 2024, §§ 32-33; *Jivan v. Romania,* 2022, § 34; *McDonald v. the United Kingdom,* 2012, §§ 46-47). The Court distinguished these cases, which concerned the severe loss of autonomy, from cases where a choice between basic care or additional care was at stake, the latter being a matter of allocation of limited State resources (*Sentges v. the Netherlands* (dec.), 2003); *Pentiacova and Others v. Moldova* (dec.), 2005.

53. A wide margin is usually allowed to the State under the Convention in issues of general policy, including social, economic, and healthcare policies (*McDonald v. the United Kingdom,* 2012, § 54). However, if a restriction on fundamental rights applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, such as persons with disabilities or elderly dependent people, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question (*Jivan v. Romania,* 2022, § 42). Furthermore, the Court has had regard to the principles reflected in Articles 19, 20 and 28 of the CRPD, in particular the equal rights of all persons with disabilities and their right to an adequate standard of living and social protection, and has committed itself to take effective and appropriate measures to help persons with disabilities to live independently and be included in the community and to ensure their personal mobility (*Diaconeasa v. Romania,* 2024, § 57).

54. It found that where a person was in complete dependency, States were to ensure him the appropriate level of care and dignity (*Diaconeasa v. Romania,* 2024 §§ 58 and 63) and to take into account the right to autonomy and respect for dignity in the domestic assessments (*Jivan v. Romania,* 2022, 49).

55. However, in *Berisha v. Switzerland* (dec.), 2023, the Court found that the disability benefit, in the form of the statutory reimbursement of illness and disability-related expenses, did not seek to promote family life and did not necessarily affect the way in which it was organised. Therefore, the case did not come within the ambit of "family life" (§§ 40-45). The Court, however, found that the wish of persons with a severe disability to be cared for at home by their family could in principle come within the scope of their right to respect for private life, especially from the standpoint of personal development and autonomy. Nevertheless, in view of the applicant's specific situation, the Court considered that the difficulties experienced by the applicant were of a purely financial nature, an aspect that was not, as such, encompassed in the right to respect for private life (§ 48).

56. *Exploitation.* The Court examined the consequences of the inadequate legal and administrative framework and policy to manage the deinstitutionalisation of persons in the case of *I.C. v. the Republic of Moldova,* 2025. It highlighted that deinstitutionalisation required a systemic transformation that went beyond the closure of institutional settings and provided for individualised support services and inclusive mainstream services, as well as monitoring mechanisms (§ 155). In the circumstances of this case, where the applicant with intellectual disability was taken out of an institution to carry out unremunerated domestic and agriculture work and was subjected to sexual violence, the Court explained that, in the absence of a framework for systemic transformation, the end result of deinstitutionalisation may be a newer form of institutionalisation which led to a risk of abuse and exploitation. The legal framework pertaining to deinstitutionalisation must afford practical and effective protection against trafficking and/or other forms of treatment contrary to Article 4 of the Convention. In addition, the authorities are under a positive obligation to take necessary operational measures as regards a person with a disability where there is a credible suspicion that she might be trafficked or exploited having regard tothe person's potential inability to assess the implications of her decision on her placement, her isolation, her lack of legal capacity, but also the supposed carers' attitude to explicitly seek persons in institutions for work (§§ 160-165).

B. Deprivation of liberty of "persons of unsound mind"[4]

Article 5 of the Convention

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

(e) the lawful detention of (...) persons of unsound mind (...).

57. The Court has examined cases under Article 5 § 1 (e) about placements in compulsory confinement, as a "preventive measure", of applicants who had been found to have physically committed acts, punishable under criminal law, but who had been suffering from a mental condition which destroyed or seriously affected their discernment or their ability to control their actions (*Denis and Irvine v. Belgium* [GC], 2021,§ 139), placements in "preventive detention" of persons with mental disorder found guilty by final judgment of certain serious offences (*Ilnseher v. Germany* [GC], 2018), placement of adults and children in social care homes, (*Shtukaturov v. Russia*, 2008; *Stanev v. Bulgaria* [GC], 2012; *D.D. v. Lithuania*, 2012; *Sýkora v. the Czech Republic*, 2012) and placement in psychiatric facilities (*Plesó v. Hungary,* 2012).

58. The Court has considered that Article 5 of the Convention, as currently interpreted, did not contain a prohibition on detention on the basis of impairment, in contrast to what is proposed by the UN Committee on the Rights of Persons with Disabilities (*Rooman v. Belgium* [GC], 2019, § 205).

1. The notion of deprivation of liberty

a. Objective element

59. In deciding whether someone has been deprived of their liberty, the Court has held that the starting point must be their concrete situation and account must be taken of a range of criteria such as the type, duration, effects and manner of implementation of the restrictive measure in question. For a person to be deprived of their liberty for the purposes of Article 5, they must be confined to a particular restricted place for a non-negligible period of time (*Stanev v. Bulgaria* [GC], 2012, § 117). Where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the detention does not affect this conclusion. Thus, the applicant's placement in a psychiatric hospital for twenty-four hours, after having had all his personal belongings removed, having been locked in a room with barred windows and given sedatives against his will constituted deprivation of liberty for the purposes of the Convention (*Cristian Teodorescu v. Romania,* 2012, § 57).

60. The Court has emphasised that the question whether the building was locked was not decisive and that a person could be regarded as having been "detained" even during a period when he was in an open hospital ward with regular unescorted access to the unsecured hospital grounds and the possibility of unescorted leave outside the hospital (*Ashingdane v. the United Kingdom*, 1985, § 42). The Court has examined circumstances where, although the applicant could leave with permission the social care home where he was placed for an indefinite period, his leaves were entirely at the discretion of the home's management in that the time he spent away and the places where he could go were always subject to controls and restrictions, his identity papers were held and his finances were managed by the home. The Court concluded that the applicant was under constant supervision, was not free to leave the home whenever he wished and was therefore deprived of his liberty (*Stanev*

[4] For further details see the Guide on Article 5 - Right to liberty and security.

v. Bulgaria [GC], 2012, §§ 124-26, 129). It reached the same conclusion where the applicant could not leave the social care home on his own during the day without being accompanied or without the psychiatrist's approval (*Červenka v. the Czech Republic*, 2016, §§ 103-104).

61. The Court considered, in *D.D. v. Lithuania,* 2012, that the key factor in determining whether Article 5 § 1 applies to a patient's situation in a social care home for individuals with general learning disabilities was that the management had exercised complete and effective control by medication and supervision over her assessment, treatment, care, residence, movement and her contacts (a patient was not free to leave the institution without the management's permission and was brought back by the police to the institution when she did so (§ 146).

b. Subjective element

62. The Court has held that the notion of deprivation of liberty does not only comprise the objective element of a person's confinement in a particular restricted space for a non-negligible length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question (*Storck v. Germany*, 2005, § 74; *Stanev v. Bulgaria* [GC], 2012, § 117). A person can only give valid consent to being subject to circumstances amounting to a deprivation of their liberty if they have the mental capacity to do so (*H.L. v. the United Kingdom*, 2004, § 90). However, the fact that a person *de jure* lacked legal capacity does not necessarily mean that he is *de facto* unable to understand their situation (*Shtukaturov v. Russia* [GC], 2008, § 108).

63. The Court has considered that a person's consent to admission to a mental health facility for in-patient treatment could be regarded as valid for the purposes of the Convention only where there was sufficient and reliable evidence suggesting that the person's mental ability to consent and comprehend the consequences thereof had been objectively established in the course of a fair and proper procedure and that all the necessary information concerning placement and intended treatment had been adequately provided to him (*M. v. Ukraine*, 2012, § 77). A person cannot be considered to have voluntarily consented to his transfer to a psychiatric hospital if his consent was based on misleading information from the investigation authorities about the purpose of his placement (*Cristian Teodorescu v. Romania,* 2012, § 57).

64. The Court has found that there was a deprivation of liberty in the following circumstances: where the applicant, who was declared legally incapable and admitted to a psychiatric hospital at his legal representative's request, unsuccessfully attempted to leave the hospital (*Shtukaturov v. Russia*, 2008, § 108); where the applicant initially consented to her admission to a clinic but subsequently attempted to escape (*Storck v. Germany*, 2005, § 76); where the applicant never regarded her admission to the home for adults with disabilities as consensual and unequivocally objected to her stay by requesting her discharge by submitting numerous pleas to the authorities and by attempting to escape (*D.D. v. Lithuania*, 2012, § 150); where the applicant was of age and had legal capacity, but lacked insight and did not have the ability to recognise the need for her hospitalisation and treatment, and consent to her treatment was given by her mother (*Atudorei v. Romania,* 2014, § 135-37); and where the incapacitated applicant did not show clear disagreement on the day of his admission to the social care home requested by his public guardian home, but subsequently approached the management of the social care home several times and also submitted a request to the court to leave (*Červenka v. the Czech Republic*, 2016, §§ 103-104).

65. Moreover, the Court considered that right to liberty is too important in a democratic society for a person to lose the benefit of Convention protection for the single reason that he may have given himself up to be taken into detention: it has therefore found that the situation of an adult, who was incapable of giving his consent to admission to a psychiatric institution but was otherwise compliant and never attempted to leave, constituted deprivation of liberty (*H.L. v. the United Kingdom*, 2004, §§ 89-94).

c. The nature of the State responsibility

66. The Court has held that the applicant's placement in a social care home was a result of various steps taken by the public authorities and institutions through their officials, as the request for his placement in an institution was made by a State official guardian and the measure was implemented in a State-run institution (*Stanev v. Bulgaria* [GC], 2012, § 122). Even where the applicant's placement was requested by a private person (guardian) but was implemented by a State-run institution (*Shtukaturov v. Russia*, 2008, § 110; *D.D. v. Lithuania*, 2012, § 151) or where the placement was requested by a public guardian but implemented in a private institution (*Červenka v. the Czech Republic*, 2016, §§ 103-4), the detention engaged the direct responsibility of the authorities.

67. The Court has also found that the State breached a positive obligation to protect the applicant against interferences with her liberty by private persons: the Court found a violation of Article 5 § 1 where the State failed to exercise competent and regular supervisory control in respect of the applicant's deprivation of liberty a private clinic (*Storck v. Germany*, 2005, §§ 104,106 and 108).

2. Legality of deprivation of liberty

68. Article 5 § 1 requires that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness. For this reason, the permissible grounds for a deprivation of liberty listed in Article 5 § 1 are to be interpreted narrowly (*Ilnseher v. Germany* [GC], 2018, § 129). In the context of Article 5 § 1 (e), the Court has further affirmed that the notion of arbitrariness also includes an assessment of whether detention was necessary to achieve the stated aim and that the detention of an individual is such a serious measure that it is justified only as a last resort (*B.M. v. Spain*, 2025, § 43; *Witold Litwa v. Poland*, 2000, § 78).[5] The case-law also underlines the close link between the "lawfulness" of the detention of persons with mental disorder and the appropriateness of the treatment provided for their mental condition (*Rooman v. Belgium* [GC], 2019, § 208).

a. A person of unsound mind

69. The notion of "persons of unsound" mind must be given an autonomous meaning (*Ilnseher v. Germany* [GC], 2018, § 127). In deciding whether an individual should be detained as a "person of unsound mind", the national authorities are to be recognised as having a certain margin of appreciation since it is in the first place for the national authorities to evaluate the evidence before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (*Denis and Irvine v. Belgium* [GC], 2021, § 136).

70. There is no requirement imposed by Article 5 § 1 (e) that the detention of a person of unsound mind was conditional on the illness or conditional on being of a nature and degree amenable to medical treatment (*Hutchison Reid v. the United Kingdom*, 2003, § 52). It is not a requirement either that the person concerned suffered from a condition which would be such as to exclude or diminish his criminal responsibility under domestic criminal law when committing an offence (*Ilnseher v. Germany* [GC], 2018, § 149). Furthermore, Article 5 § 1 (e) does not specify the possible acts, punishable under criminal law, for which an individual may be detained as being "of unsound mind". The question whether the person committed a minor offence is not decisive when examining the compliance of a person's deprivation of liberty with Article 5 § 1 (e) of the Convention and the authorities are not required to take into account the nature of the acts committed by the individual concerned which gave rise to his or her compulsory confinement (*P.W. v. Austria*, 2022, § 66). Article 5 § 1 (e) does not identify either the commission of a previous offence as a precondition for detention (*Denis and Irvine v. Belgium* [GC], 2021, § 168).

[5] For further details see the Guide on Article 5 - Right to liberty and security.

71. It merely requires that three minimum conditions are satisfied: it has reliably been established that the individual is of unsound mind, that the disorder is of a kind or degree warranting compulsory confinement and that the disorder persists throughout the entire period of the confinement (*Winterwerp v. the Netherlands*, 1979, § 39; *Ilnseher v. Germany* [GC], 2018, § 127; *Rooman v. Belgium* [GC], 2019, § 192; *Denis and Irvine v. Belgium* [GC], 2021, § 135).

i. A true mental disorder established on the basis of objective medical expertise

72. As regards the first condition for a person to be deprived of his liberty as being of "unsound mind", namely that a true mental disorder must have been established before a competent authority on the basis of objective medical expertise, the permissible grounds for deprivation of liberty listed in Article 5 § 1 are to be interpreted narrowly, despite the fact that the national authorities have a certain discretion, in particular on the merits of clinical diagnoses. A mental condition has to be of a certain severity in order to be considered as a "true" mental disorder for the purposes of sub-paragraph (e) of Article 5 § 1, as it has to be so serious as to necessitate treatment in an institution for mental health patients (*Ilnseher v. Germany* [GC], 2018, § 129; and *Denis and Irvine v. Belgium* [GC], 2021, § 136).

73. No deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert (*Kadusic v. Switzerland*, 2018, § 43, with further references). The particular form and procedure in this respect may vary depending on the circumstances. It may be acceptable, in urgent cases or where a person is arrested or committed because of his violent behaviour, that such an opinion be obtained immediately after arrest (*Herz v. Germany*, 2003, § 54) or after the deprivation of liberty occurred (*B.M. v. Spain,* 2025, § 51). In all other cases, a prior consultation is necessary. Where no other possibility exists, for instance owing to a refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind (*Varbanov v. Bulgaria*, 2000, § 47; *Constancia v. the Netherlands* (dec.), 2015, § 26; *Lorenz v. Austria*, 2017, § 57; *D.C. v. Belgium*, 2021, §§ 87 and 99-100).

74. As for the requirements to be met by an "objective medical expertise", the national authorities are in general better placed than the Court to evaluate the qualifications of the medical expert in question (*Ilnseher v. Germany* [GC], 2018, § 130). However, it can be necessary for the medical experts in question to have a specific qualification. For example, where the person confined had no history of mental disorder, the Court has required that the initial medical assessment prior to ordering the deprivation of liberty should be carried out by a psychiatric expert (*C.B. v. Romania*, 2010, § 56; *Ťupa v. the Czech Republic*, 2011, § 47; *Vogt v. Switzerland* (dec.), 2014, § 36). Where there was a breakdown in the relationship of trust between the person confined and the staff of the institution in which he was placed, the Court has also required the medical assessment for continued deprivation of liberty to be made by an external medical expert (*Ruiz Rivera* v. *Switzerland*, 2014, § 64). However, this was not the case where the applicant had not contested his diagnosis, the suitability of his treatment, the impartiality and ethical conduct of the medical staff of the institution where he was treated (*C.W. v. Switzerland,* 2014, § 47). Similarly, even if various psychiatrists and psychologists were unable to establish the applicant's precise diagnosis, faced with the applicant's complete refusal to cooperate in any examination of his mental state, the domestic court was entitled to conclude from the information obtained that the applicant was suffering from a genuine mental disorder (*Constancia v. the Netherlands* (dec.), 2015, § 30).

75. It is primarily for the domestic courts to assess the scientific quality of different psychiatric opinions and, in that respect, they have a certain margin of appreciation. When the national courts have examined all aspects of different expert reports on the necessity of an individual's psychiatric internment, the Court will not intervene unless their findings are arbitrary or unscientific (*Ruiz Rivera*

v. *Switzerland*, 2014, § 62; *Hodžić v. Croatia*, 2019, § 63; *P.W. v. Austria*, 2022, § 57). The Court had doubts as to the medical examination where the court-appointed doctor prepared a medical report after an online hearing without meeting the patient in person and without addressing any question to him (*B.M. v. Spain,* 2025, § 53) or where the key medical opinion was drawn up by an expert during a forty-minute court session break (*Plesó v. Hungary,* 2012, § 64).

76. Moreover, the objectivity of the medical expertise entails a requirement that it was sufficiently recent. The question whether the medical expertise was sufficiently recent depends on the specific circumstances of the case before it (*Ilnseher v. Germany* [GC], 2018, § 131). In a number of cases, the Court has emphasised that the medical assessment must be based on the actual state of mental health of the person concerned and that therefore a medical opinion could not be considered sufficient to justify deprivation of liberty if a significant period of time had elapsed (*ibid.,* § 131; *Tim Henrik Bruun Hansen v. Denmark*, 2019; *D.C. v. Belgium*, 2021, § 86; *M.B. v. Poland*, 2021; *Miklić v. Croatia*, 2022). For example, the Court has held that a medical expertise dating back from a year and a half could not, in and of itself, justify a person's deprivation of liberty for the purposes of Article 5 § 1 (e) (*Herz v. Germany*, 2003, § 50; *D.C. v. Belgium*, 2021, § 104; *Yaikov v. Russia*, 2014, § 64).

ii. Mental disorder of a kind or degree warranting compulsory confinement

77. As regards the second requirement, a mental disorder being of a degree warranting compulsory confinement, the Court considers that the confinement of the person concerned is necessary because the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him from, for example, causing harm to himself or other persons (*Ilnseher v. Germany* [GC], 2018, § 133; see also *Stanev v. Bulgaria* [GC], 2012, § 146, *Hutchison Reid v. the United Kingdom*, 2003, § 52). However, a requirement of continued psychiatric supervision does not in itself justify continued detention (*Johnson v. the United Kingdom*, 1997, § 65).

78. In determining whether the mental disorder is of a kind or degree warranting compulsory confinement, the Court finds it usually necessary to assess the danger a person poses to the public at the time of the order and in the future (*Ilnseher v. Germany* [GC], 2018, § 157), especially where the national law prescribes "dangerousness" as precondition of deprivation of liberty (*Gajcsi v. Hungary,* 2006, §§ 20-21).

79. Examining whether a person needed supervision to prevent him from causing harm, domestic authorities are to establish that there is high risk that the applicant, as a result of this disorder, would again commit another serious offence similar to the one of which he had been found guilty (*Ilnseher v. Germany* [GC], 2018, § 158). Thus, the Court has considered that the applicant's continued confinement was manifestly disproportionate to his state of mind at that time, where there was no objective sign that the applicant presented a threat or danger to the community and there was no evidence before the domestic courts of a risk that the applicant would reoffend if released (*Trajče Stojanovski v. the former Yugoslav Republic of Macedonia*, 2009, §§ 34-36).

80. As regards the risk of self-harm, the issue is not whether there is an imminent danger to the person's health but rather whether medical treatment would improve his condition or the absence of such treatment would lead to a deterioration in that condition. The domestic courts' reliance on the applicant's unconventional lifestyle and refusal to undergo hospitalisation, without any consideration of the medical benefits of involuntary treatment, did not show that the applicant's mental disorder was of a kind or degree warranting compulsory confinement (*Plesó v. Hungary*, 2012, §§ 67-69)

81. In certain circumstances, the welfare of a person with mental disorders might be a further factor to take into account, in addition to medical evidence, in assessing whether it is necessary to place the person in an institution. However, the objective need for accommodation and social assistance must not automatically lead to the imposition of measures involving the deprivation of liberty (*Stanev v. Bulgaria* [GC], 2012, § 153). In *D.D. v. Lithuania*, 2012, the Court held that the applicant's inability

to live on her own and to take care of herself, her lack of understanding of the value of money, her not cleaning her apartment and wandering about hungry as well as her history of serious mental health problems reliably showed a mental disorder of a kind and degree warranting compulsory confinement (§ 157).

82. Any protective measure should reflect as far as possible the wishes of persons capable of expressing their will. Failure to seek their opinion could give rise to situations of abuse and hamper the exercise of the rights of vulnerable persons. Therefore, any measure taken without prior consultation of the interested person will as a rule require careful scrutiny (*Stanev v. Bulgaria* [GC], 2012, § 153; *N v. Romania,* 2017, § 146).

iii. Persistence of the mental disorder

83. The relevant time at which a person must be reliably established to be of unsound mind, for the requirements of sub-paragraph (e) of Article 5 § 1, is the date of adoption of the measure depriving that person of his or her liberty as a result of that condition. However, as shown by the third minimum condition for the detention of a person as being of unsound mind to be justified – namely that the validity of continued confinement must depend on the persistence of the mental disorder – changes, if any, to the mental condition of the detainee following the adoption of the detention order must be taken into account (*M.B. v. Poland,* 2021, § 59).

84. A failure to consider whether a person's mental disorder has persisted and whether his or her involuntary hospitalisation is necessary when committing him or her to a psychiatric hospital could raise an issue of arbitrariness (*Hodžić v. Croatia,* 2019, § 64).

85. One of the relevant elements in assessing whether a person's detention must be considered arbitrary for the purposes of Article 5 § 1 is the speed with which the domestic courts replaced a detention order which had either expired or had been found to be defective (*H.W. v. Germany,* 2013, § 68). The following delays were considered to be inconsistent with the requirements of Article 5 § 1: a delay of eighty-two days, between the expiry of the initial order of detention in a psychiatric institution and its renewal (*Erkalo* v. *the Netherlands,* 1998, §§ 56-60); a delay of some nine and a half months between the date on which the applicant had fully served his term of imprisonment and the decision that the preventive detention order (*Schönbrod v. Germany,* 2011, §§ 103-109); and a delay of twenty-seven days during which the applicant was remanded in preventive detention without the necessary decision on the continuation of his detention and the absence of clear safeguards (*H.W. v. Germany,* 2013, §§ 83-89) In contrast, an interval of two weeks between the expiry of the earlier order of detention in a psychiatric hospital and the making of the succeeding renewal order (*Winterwerp v. the Netherlands,* 1979, § 49) and a delay of approximately one month between the expiry of an order to confine the applicant to a secure institution and its extension (*Rutten v. the Netherlands*, 2001 §§ 39-47), did not involve an arbitrary deprivation of liberty.

b. Place and conditions of detention

86. The deprivation of liberty contemplated by Article 5 § 1 (e) has a dual function: on the one hand, the social function of protection, and on the other, a therapeutic function that is related to the individual interest of the person of unsound mind in receiving an appropriate and individualised form of therapy or course of treatment. The need to ensure the first function should not, *a priori*, justify the absence of measures aimed at discharging the second. It follows that, under Article 5 § 1 (e), a decision refusing to release an individual from compulsory confinement may become incompatible with the initial objective of preventive detention contained in the conviction judgment if the person concerned is detained due to the risk that he or she may reoffend, but at the same time is deprived of the measures - such as appropriate therapy - that are necessary in order to demonstrate that he or she is no longer dangerous (*Rooman v. Belgium* [GC], 2019, § 210; *Lorenz v. Austria*, 2017, § 58).

87. The administration of suitable therapy has become a requirement in the context of the wider concept of the "lawfulness" of the deprivation of liberty. Any detention of mentally-ill persons must have a therapeutic purpose, aimed specifically, and in so far as possible, at curing or alleviating their mental-health condition, including, where appropriate, bringing about a reduction in or control over their dangerousness. Irrespective of the facility in which those persons are placed, they are entitled to be provided with a suitable medical environment accompanied by real therapeutic measures, with a view to preparing them for their eventual release (*Rooman v. Belgium* [GC], 2019, § 208).

88. The "lawfulness" of detention requires that that there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the "detention" of a person as a mental-health patient will be "lawful" for the purposes of Article 5 § 1 (e) only if it takes place in a hospital, clinic or other appropriate institution authorised for that purpose (*Ilnseher v. Germany* [GC], 2018, § 138; *Rooman v. Belgium* [GC], 2019, §§ 190 and 193; and *Stanev v. Bulgaria* [GC], 2012, § 147). This rule applies even where the illness or condition is not curable or where the person concerned is not amenable to treatment (*Rooman v. Belgium* [GC], 2019, § 193; *Hutchison Reid v. the United Kingdom*, 2003, §§ 52 and 55).

89. The assessment of whether a specific facility is "appropriate" must include an examination of the specific conditions of detention prevailing in it and particularly of the treatment provided to individuals suffering from psychological disorders (*Rooman v. Belgium* [GC], 2019, § 210).

90. The Court accepted, in the case of an applicant placed in the psychiatric unit of the prison hospital primarily aimed at serving the ordinary prison community suffering from mental illness, that the mere fact that the applicant was not placed in an appropriate facility did not, *per se*, render his detention unlawful. However, keeping detainees with mental illnesses in the psychiatric ward of ordinary prisons pending their placement in a proper mental health establishment, without the provision of sufficient and appropriate care, was not compatible with the Convention protection required for such individuals and constituted an unlawful deprivation of liberty (*Miranda Magro v. Portugal,* 2024, §§ 93-95).

91. On the contrary, the Court found that, where the applicant received treatment in prison aimed at reducing his dangerousness which could objectively be considered as equally suitable as external therapy, the decision to extend his preventive detention was consistent with the objectives of detention (*D.J. v. Germany,* 2017, § 17).

92. As to the scope of the treatment provided, the level of care required for this category of detainees must go beyond basic care. Mere access to health professionals, consultations and the provision of medication cannot suffice for a treatment to be considered appropriate and thus satisfactory under Article 5 of the Convention. However, the Court's role is not to analyse the content of the treatment that is offered and administered. What is important is that the Court is able to verify whether an individualised programme has been put in place, taking account of the specific details of the detainee's mental health with a view to preparing him or her for possible future reintegration into society. The Court affords the authorities a certain latitude with regard both to the form and the content of the therapeutic care or of the medical programme in question (*Rooman v. Belgium* [GC], 2019, § 209).

93. As regards delays in the transfer of detainees to appropriate facilities, the Court emphasised, in a case about being held in regular a detention centre without adequate medical facilities, that the delay in admission to a psychiatric hospital and the ensuing delay in the beginning of the treatment is obviously harmful to persons recommended to receive psychiatric treatment (*Pankiewicz v. Poland*, 2008, §§ 44-45). A lack of available spaces in a suitable institution cannot justify the continued detention in an ordinary prison of a person suffering from psychiatric disorders: while the delay in transferring a detainee from a prison facility to a therapeutic environment can initially be considered acceptable given the lack of available places, such delay cannot last indefinitely and it is up to the authorities to demonstrate that they did not remain passive but actively sought a solution (*Sy v. Italy*, 2022, § 135).

94. By contrast, for reasons linked to the efficient management of public funds, a certain friction between available and required capacity in custodial clinics is inevitable and must be regarded as acceptable. Thus, a person can be placed temporarily in an establishment not specifically designed for the detention of mental health patients before being transferred to the appropriate institution, provided that the waiting period is not excessively long (*Brand v. the Netherlands*, 2004, §§ 64-66).

c. Obligation to release

95. It follows from the case-law under Article 5 of the Convention that a deprivation of liberty must be lifted immediately if the circumstances necessitating it cease to exist or change (see, for example, *Winterwerp v. the Netherlands*, 1979, § 39; and *Stanev v. Bulgaria* [GC], 2012, § 145). Any delay in release must be consonant with the purpose of Article 5 § 1 and with the aim of the restriction in sub-paragraph (e) and, in particular, that discharge must not be unreasonably delayed (*Johnson v. the United Kingdom*, 1997, § 63).

3. Complaints about an absence of "appropriate treatment" under both Article 3 and Article 5 § 1

96. In verifying the provision of medical therapy, the intensity of the Court's scrutiny may differ depending on whether the allegations are submitted under Article 3 or Article 5 § 1. The difference between the question of a continued link between the purpose of detention and the conditions in which it is carried out, and the question of whether those conditions attain a particular threshold of gravity, is one of intensity. Accordingly, a care path may correspond to the requirements of Article 3 (namely, does not attain a certain level of severity) but it may nevertheless not justify a need to maintain compulsory confinement: a finding that there has been no violation of Article 3 does not automatically lead to a finding that there has been no violation of Article 5 § 1, although a finding of a violation of Article 3 on account of a lack of appropriate treatment may also result in a finding that there has been a violation of Article 5 § 1 on the same grounds (*Rooman v. Belgium* [GC], 2019, § 213).

C. Consent in health care

1. Involuntary psychiatric treatment

97. The distinction between voluntary and involuntary hospitalisation is an important factor in assessing the scope of the State's obligations under the Convention. Voluntary patients are generally presumed to have consented to treatment and to retain a greater degree of autonomy than those who are involuntarily detained. However, this voluntary status does not relieve the State of its duty to protect persons in vulnerable situations. Mental health patients, even when admitted voluntarily, may still be in a fragile state due to the very nature of their illness (*Clipea and Grosu v. the Republic of Moldova*, 2024, § 67*)*. When examining the voluntary or involuntary nature of a hospitalisation the Court will look beyond the question whether a formal decision was taken about the applicant's treatment. In *Clipea and Grosu v. the Republic of Moldova*, 2024, the Court found that in circumstances where the applicants who were presumably admitted on a voluntary basis to psychiatric care but then subsequently were denied access to outside walks, were sometimes tied to their bed, were subjected to an injection of a sedative or face possible use of force and where the hospital put in place a general policy of restricting certain rights, the applicants lost control over their treatment choices and had no means of challenging these practices. These elements of coercion were sufficient for the Court to conclude that the applicants' stay and treatment in the psychiatric hospital was *de facto* involuntary (§§ 64-66).

98. Cases concerning medical interventions, including administration of medication and admission to a psychiatric hospital carried out without the consent of the patient, will generally lend themselves to

be examined under Article 8 of the Convention (*X v. Finland*, 2012, § 212; *B. v. Romania (no. 2)*, 2013, § 75). In a number of cases the Court has nonetheless accepted that under certain conditions, medical interventions can reach the threshold of severity to be regarded as treatment prohibited by Article 3 of the Convention (*V.I. v. the Republic of Moldova,* 2024, § 94). The legal instruments and reports adopted by the United Nations indicate that forced placement in a psychiatric hospital and forced psychiatric treatment, especially in respect of persons with existent or perceived intellectual disability, as well as the administration of neuroleptics without medical necessity may amount to ill-treatment prohibited under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*ibid,* § 97).

a. Cases examined under Article 3[6]

99. The position of inferiority and powerlessness, typical of patients confined in psychiatric hospitals, calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3 of the Convention (*Herczegfalvy v. Austria*, 1992, § 82).

100. The starting point of the Court's analysis is whether the involuntary treatment of persons with a mental disorder corresponded to a medical necessity. It is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves, and for whom they are therefore responsible. The established principles of medicine are admittedly, in principle, decisive in such cases: as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court nevertheless examines whether the medical necessity has been convincingly shown to exist (*Herczegfalvy v. Austria*, 1992, § 82; *M.S. v. Croatia (no. 2),* 2015, § 98; *Aggerholm v. Denmark,* 2020, § 83).

101. Furthermore, the Court has regard to the particular vulnerability of persons with mental disorder when placed in the sole charge of the public authorities. In view of their control over the person in their charge, the burden of proof is on the Government to provide a satisfactory and convincing explanation for the therapeutic purpose of placement in psychiatric facilities and psychiatric treatment (*V.I. v. the Republic of Moldova*, 2024, §§ 131 and 141).

102. In *Naumenko v. Ukraine*, 2004, the Court did not find evidence establishing beyond reasonable doubt that the treatment given to the applicant in prison, even if forced, was contrary to Article 3, having regard, notably, to the fact that the applicant was suffering from serious mental disorders, had twice made attempts on his life and that he had been put on medication to relieve his symptoms.

103. On the contrary, in *V.I. v. the Republic of Moldova,* 2024, the placement of a 15 year old child diagnosed with an intellectual disability in a psychiatric hospital, including his subsequent placement in the adults' section and the material conditions there, the psychiatric treatment with neuroleptics and the delayed discharge from the hospital concern combined with the applicant's vulnerability (given his age, disability and the absence of parental care or institutionalisation) were considered sufficiently serious to fall within the scope of Article 3 of the Convention.

104. Besides the question of medical necessity, the Court must satisfy itself that procedural guarantees for the decision exist and are complied with (*Gorobet v. Moldova,* 2011, § 51). In *Gorobet v. Moldova*, 2011, the Court found that, where the applicant's compulsory confinement in a medical institution was unlawful, the ensuing forced medical treatment could not be regarded as responding to a medical necessity, but rather it was unlawful and arbitrary treatment without procedural

[6] For further details see the Guide on Article 3 - Prohibition of torture.

guarantees, which had aroused in the applicant feelings of fear, anguish and inferiority amounting to degrading treatment. Likewise, in *Bataliny v. Russia*, 2015, while the initial involuntary hospitalisation of the applicant was justified, the Court found that his further stay in the psychiatric hospital had not been shown to correspond to a medical necessity as his mental health had not required compulsory treatment. Furthermore, his continued stay had not been in compliance with the procedure prescribed by domestic law.

b. Cases examined under Article 8[7]

105. The Court has stated that mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. The preservation of mental stability is, in that context, an indispensable precondition to the effective enjoyment of the right to respect for private life (*Bensaid v. the United Kingdom*, 2001, § 47).

106. This said, as a person's body concerns the most intimate aspect of private life, the Court has stated that compulsory medical treatment, even if it is of minor importance, constitutes an interference with that person's right to physical integrity (*X v. Finland*, 2012, § 212; *Atudorei v. Romania*, 2014, § 160). Furthermore, treatment which does not reach the relevant level of severity for the purposes of Article 3 may nonetheless breach Article 8 in its private-life aspect where there are sufficiently adverse effects on the physical and moral integrity (*Bensaid v. the United Kingdom*, 2001, § 46). Likewise, imposing psychiatric treatment to a person without their consent constitutes an interference with their right to respect for private life (*Shopov v. Bulgaria*, 2010, § 41). As usual, the lawfulness of such an interference will be analysed as well as whether it pursues one of the legitimate aims and is "necessary in a democratic society" in pursuit of that aim.

107. As to lawfulness, the Court has held that the expression "in accordance with the law" not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects. Article 8 § 2 also requires the law in question to be "compatible with the rule of law": forced administration of medication, which is a serious interference with a person's physical integrity, must be based on a "law" that guarantees proper safeguards against arbitrariness (*X v. Finland*, 2012, § 220).

108. The Court found that there had not been proper safeguards against arbitrariness for the applicant's forced administration of medication in *X v. Finland*, 2012. In particular, the Court took into account the following elements: the decision to confine the applicant for involuntary treatment included an automatic authorisation to proceed to forcible administration of medication if the applicant refused the treatment; the decision-making was solely in the hands of the doctors treating the patient, regardless of the applicant's wishes; moreover, the decision-making was free from any kind of immediate judicial scrutiny: the applicant did not have any remedy available whereby she could require a court to rule on the forced administration of medication, or to have it discontinued (see also, to similar effect, *R.D. and I.M.D. v. Romania* [Committee], 2021, §§ 76-79).

109. The Court also considered that the psychiatric treatment administered to the applicants without their consent had not been "in accordance with the law" where the procedural safeguards provided for by domestic law had not been respected (*Shopov v. Bulgaria*, 2010, §§ 46-47; *Atudorei v. Romania*, 2014, §§ 146-149).

110. The State's responsibility can be at stake even where confinement in private psychiatric hospitals is at issue since the State remains under a duty to exercise supervision and control over such private institutions (*Storck v. Germany*, 2005). In *Storck v. Germany*, 2005, which concerned the applicant's confinement and her forced medical treatment in several private psychiatric hospitals, the lack of effective State control over private psychiatric institutions resulted in a finding as to the State's failure

[7] For further details see the Article 8 of the European Convention on Human Rights.

to comply with its positive obligation to protect the applicant and of a violation of Article 8 of the Convention.

111. Where the doctors and the parents of a patient, who is unable to express his consent, disagree about the administration of medication, there should be an opportunity for judicial review of the doctor's decision. The case of *Glass v. the United Kingdom*, 2004, concerned the administration of diamorphine to a child with a severe mental and physical disability contrary to his parent's express wishes. The Court did not consider that the UK regulatory framework for resolving conflicts over proposed medical treatment of a child was inconsistent on the question of consent with the standards laid down in the Council of Europe's Convention on Human Rights and Biomedicine. What was at stake was whether the decision to administer the diamorphine should have been referred to the competent court given that the mother had not given her free, express and informed consent. The Court found that the decision of the authorities to override the applicant's objection to the proposed treatment had, in the absence of authorisation by a court, resulted in a breach of Article 8 of the Convention.

2. Involuntary examination of mental health

112. The involuntary examination of a person by a psychiatrist from a State-run clinic or a hospital also amounts to an interference with their right to respect for their private life (*Matter v. Slovakia*, 1999, § 64; *Fyodorov and Fyodorova v. Ukraine*, 2011, § 82; *Pranjić-M-Lukić v. Bosnia and Herzegovina*, 2020, § 63). Such interference will also be analysed under the usual "in accordance with the law", "legitimate aim" and "necessity" tests.

113. "In accordance with the law" refers, in particular, to a requirement of reasonable clarity concerning the scope and manner of exercise of discretion conferred on the public authorities (*Fyodorov and Fyodorova v. Ukraine*, 2011, § 83). For instance, the Court found that the involuntary examination and diagnosis of the applicants' mental health had not been "in accordance with the law" where it had not been possible to establish the legal ground for the applicant's psychiatric examination and where the examination was carried out as an informal conversation in the hospital yard in breach of the applicable medical guidelines (*ibid.*). Similarly, the Court found that the interference had not been in accordance with the law where he had been repeatedly forcibly escorted to involuntary psychiatric and psychological examinations during criminal proceedings which were found to be unlawful (*Pranjić-M-Lukić v. Bosnia and Herzegovina*, 2020).

114. The forcible examination of a person in a psychiatric hospital, following his refusal to be examined by the expert who had been appointed by a court to determine whether it was justified to continue to deprive the applicant of his legal capacity, was found to pursue the legitimate aim of protecting that person's own rights and health. Such a measure was considered to be "necessary in a democratic society" and a proportionate interference with the applicant's right to private life, since it was appropriate for the domestic authorities to verify, after a certain lapse of time, whether the deprivation of a person's legal capacity continued to be justified (*Matter v. Slovakia*, 1999, § 65).

115. The Court has also examined the applicant's internment in a psychiatric hospital for an inpatient forensic psychiatric examination during a pre-trial investigation under Article 5 § 1 (b). It held that the court order authorising the internment had been arbitrary as the applicant had neither been notified nor heard regarding the measure and the court had given no consideration to the evident consequence of the order namely, the applicant's deprivation of liberty (*Trutko v. Russia,* 2016).

3. Consent to medical treatment[8]

116. The Court has interpreted the right to respect for private life guaranteed by Article 8 as covering the right to the protection of one's physical, moral and psychological integrity, as well as the right to choose or to exercise one's personal autonomy (for example, to refuse medical treatment or to

[8] For further details see the Guide on Article 8 - Right to respect for private and family life.

request a particular form of medical treatment, *Glass v. the United Kingdom*, 2004, §§ 74-83; *Tysiąc v. Poland*, 2007, § 106).

a. Contraception and abortion

117. The case of *G.M. and Others v. the Republic of Moldova*, 2022, concerned three women with intellectual disabilities living in psychiatric institutions but who had not been deprived of their legal capacity. They claimed to have been subjected to forced abortions and that, subsequently, intrauterine contraceptive devices were implanted without their consent. Besides concluding the forced abortion and forced contraception constituted a violation of Article 3, the Court also assessed whether the State fulfilled its positive obligation to establish and apply effectively a system providing protection to women living in psychiatric institutions against serious breaches of their integrity. It concluded that this was not the case as the existing legal framework lacked the safeguard of obtaining a valid, free and prior consent for medical interventions from persons with intellectual disabilities. Moreover, there was no adequate criminal legislation to dissuade the practice of non-consensual medical interventions on persons with intellectual disabilities or other mechanisms to prevent this abuse of such persons.

b. Participation at medical trials

118. In view of their vulnerability, it is important that mentally-ill patients enjoy heightened protection and notably that their participation in clinical trials be accompanied by particularly strong safeguards, with due account given to the particularities of their mental condition and its evolution over time. It is essential, in particular, that such patients' decision-making capacity be objectively established in order to remove the risk that they have given their consent without a full understanding of what was involved (*Traskunova v. Russia*, 2022, § 79, which concerned the applicant's daughter's death while she participated in two clinical trials of a new medicine relating to her schizophrenia). In that case, the Court noted that a mental illness such as schizophrenia could manifest itself, among other things, by disordered thinking and difficulties in communicating with others. Yet there was no evidence in the case file that, when inviting her to take part in the clinical trial and accepting her consent thereto, the doctors in charge duly assessed whether the applicant's daughter was indeed able to take rational decisions regarding her continued participation in the trial (§ 79).

119. In *Bataliny v. Russia* (2015) the Court considered that the applicant's inclusion in scientific research, entailing treatment with a new antipsychotic medication while he was undergoing compulsory psychiatric treatment, must have aroused in him feelings of fear, anguish, and inferiority capable of humiliating and debasing him which amounted to a violation of Article 3 of the Convention.

c. Right to refuse treatment

120. In the ordinary health care context, a competent, adult patient has the right to refuse, freely and consciously, medical treatment notwithstanding the very serious, even fatal, consequences that such a decision might have (*Pindo Mulla v. Spain* [GC], 2024, §146).

121. In an emergency situation, where the right to life would also be in play along with an individual's right to decide autonomously on medical treatment, the Court has held that: (i) a decision to refuse life-saving treatment must be made freely and autonomously by a person with the requisite legal capacity who was conscious of the implications of such decision; (ii) it must also be ensured that that decision – the existence of which must be known to the medical personnel – was applicable in the circumstances, in the sense that it was clear, specific and unambiguous in refusing treatment and represented the current position of the patient on the matter; and (iii) where doubts existed regarding any of the said aspects, "reasonable efforts" should be made to dispel those doubts or uncertainty surrounding the refusal of treatment and, where despite such efforts it was impossible to establish to the extent necessary the patient's will, it was the duty to protect that patient's life by providing

essential care - that should prevail (*Pindo Mulla v. Spain* [GC], 2024, §§ 147-150). The Court has considered that Contracting States have considerable discretion as regards advance medical directives and similar instruments in the medical sphere: whether to give binding legal effect to such instruments, and the related formal and practical modalities, comes within their margin of appreciation (*ibid*, §§ 151-153).

122. The Court assessed the element of requisite capacity to refuse treatment in *Arskaya v. Ukraine*, 2013, where the doctors took the patient's refusal to consent to vitally important treatment at face value without questioning his capacity to take rational decisions concerning his treatment. They disregarded the fact that the patient showed symptoms of mental illness (e.g. he appeared psychologically and emotionally unstable, excitable, displayed an aggressive attitude towards medical staff and had visual hallucinations), leading the Court to conclude that there had been a violation of Article 2 of the Convention.

D. End of life

123. In *Pretty v. the United Kingdom*, 2002, the first case concerning assisted suicide, the applicant at an advanced stage of motor neurone disease intended to commit suicide to avoid what she considered an undignified and distressing end to her life. As she needed her husband's assistance, she applied for immunity from prosecution for her husband, which was not granted. In subsequent cases, the Court was called upon to examine the refusal to make a lethal dose of sodium pentobarbital available to an applicant, who was suffering from a serious bipolar affective disorder (*Haas v. Switzerland*, 2011), the death by euthanasia authorised by domestic law of a person having depression for forty years (*Mortier v. Belgium*, 2022), the refusal of a lethal dose of sodium pentobarbital to a person having quadriplegia (*Koch v. Germany*, 2012) and the impossibility for a patient with an uncurable progressive neurodegenerative disease, to be assisted in dying, by virtue of a blanket ban (*Dániel Karsai v. Hungary*, 2024).

124. The Court has underlined that the very essence of the Convention is respect of human dignity and human freedom. Without in any way negating the principle of the sanctity of life protected under the Convention, the Court has considered that it is under Article 8 that notions of the quality of life take on significance. In an era of growing medical sophistication, combined with longer life expectancies, many people are concerned that they should not be forced to linger on in old age or in states of advanced physical or mental decrepitude which conflict with strongly held ideas of self and personal identity (*Pretty v. the United Kingdom*, 2002, § 65). It acknowledged that an individual's right to decide in which way and at which time his or her life should end, provided that he or she was in a position freely to form his or her own will and to act accordingly, was one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention (*Koch v. Germany*, 2012, §§ 51-52). However, there is no support in the Court's case-law for concluding that a right to assisted suicide exists under the Convention (*Lings v. Denmark*, 2022, § 52).

125. The Court has accepted that a ban on assisted suicide was designed to safeguard life by protecting the weak and vulnerable and especially those not in a position to take informed decisions against acts intended to end life or to assist in ending life (*Pretty v. the United Kingdom*, 2002). It also had regard to Article 2 of the Convention, which imposes on the authorities a duty to protect vulnerable persons, even against actions by which they endanger their own lives. This provision obliges the national authorities to prevent an individual from taking his or her own life if the decision had not been taken freely and with a full understanding of what was involved (*Haas v. Switzerland*, 2011, §§ 54 and 58). Furthermore, given that end-of-life issues raise complex legal, social, moral and ethical questions and since the responses among States are very diverse, the Court has found that States have a wide margin of appreciation when striking a balance between the protection of the right to life of a patient and of the right to respect for the patient's private life and personal autonomy (*Mortier v. Belgium*, 2022, §§ 142-43).

III. Equality[9]

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 12 to the Convention

"1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

A. Discrimination based on disability

126. While the Court has established in its case-law that only differences in treatment based on an identifiable characteristic or "status" are capable of amounting to discrimination (*Guberina v. Croatia*, 2016, § 68), disability is not one of the prohibited grounds specifically mentioned in Article 14 of the Convention nor in Article 1 of Protocol No. 12 to the Convention[10]. However, the list set out in these Articles is illustrative and not exhaustive, as is shown by the inclusion of the phrase "any other status" (see generally Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination). The words "other status" have generally been given a wide meaning and their interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (*ibid*, § 78).

127. The Court explicitly confirmed that the scope of Article 14 includes discrimination based on disability (*Glor v. Switzerland*, 2009, § 80). In anterior cases, the Court might have implicitly considered disability as a potential ground under Article 14. However, some of those cases were only examined under substantive Articles of the Convention and, consequently, no separate issue was considered to arise under Article 14 (*X and Y v. the Netherlands*, 1985, § 34; *Kjartan Ásmundsson v. Iceland*, 2004, § 47; *Maurice v France*, GC, 2005, § 100).

128. As to whether a person is considered to have a disability, the Court has regard to the definition of person with disability in Article 1 of the CRPD. The State obligation to take a person's disability into account and to provide tailored support measures, including reasonable accommodation, should not in itself be subject to any formal recognition or classification of that disability once the national authorities become sufficiently aware of it (*Á.F.L. v. Iceland*, 2025, §§ 61-62).

129. The Court emphasised that a disability may consist of, or result from, not only a physical impairment but also a mental or behavioural one (*T.H. v. Bulgaria*, 2023, § 105; *Djeri and Others v. Latvia*, 2024, § 159). It also recognised that various health impairments fall within the scope of Article 14, so that the term "other status" is interpreted to cover an individual's health status, including such conditions as genetic disease (*G.N. v. Italy*, 2009, § 119) or HIV infection, either as a disability or a form thereof (*Kiyutin v. Russia*, 2011, § 57, *I.B. v. Greece*, 2013, § 73). The notion of

[9] For further details see the Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination.

[10] It should be noted that notwithstanding the difference in scope between Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, the meaning of the notion of "discrimination" in Article 1 of Protocol No. 12 was intended to be identical to that in Article 14. It can be inferred that, in principle, the same standards developed by the Court in its case-law concerning the protection afforded by Article 14 are applicable to cases brought under Article 1 of Protocol No. 12 (*Napotnik v. Romania*, 2020, §§ 71-72).

disability is extensive and includes, for example, neurodegenerative diseases (*Pretty v. the United Kingdom*, 2002; *Daniel Karsai v. Hungary*, 2024), reduced mobility (*Arnar Helgi Lárusson v. Iceland*, 2022; *D.H. and Others v. Sweden*, 2024), intellectual disabilities (*Caamaño Valle v. Spain*, 2021), or blindness (*Çam v. Turkey,* 2016; *Negovanović v. Serbia*, 2022).

130. The Court also confirmed that Article 14 prohibits discrimination by association. In the light of its objective and the nature of the rights which it seeks to safeguard, Article 14 of the Convention covers instances in which an individual is treated less favourably on the basis of another person's status or protected characteristics. Therefore, in *Guberina v. Croatia*, 2016, the Court found that the alleged discriminatory treatment of the applicant parent on account of the disability of his child, with whom he has close personal links and for whom he provides care, was a form of disability-based discrimination covered by Article 14 of the Convention (§ 79). In *Belli and Arquier-Martinez v. Switzerland,* 2018, the Court accepted that, although the first applicant was not a person with a disability, she was a victim of unfavourable treatment on the grounds of the type of disability affecting her daughter, with whom she lived, for whom she provided healthcare and who was under her guardianship. Since her daughter had no capacity of discernment, the applicant initiated domestic proceedings. Thus, she could claim to be a victim of the alleged discrimination, at least indirectly or by association (§ 97).

131. The Court takes into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (*Caamaño Valle v. Spain*, 2021, § 52). The Convention should, as far as possible, be interpreted in harmony with other rules of international law of which it forms part (*Enver Sahin v. Turkey*, 2018, § 60) and in the light of present-day conditions (*Glor v. Switzerland*, 2009, § 53).

132. Therefore, the Court has considered that there is a European and worldwide consensus on the need to protect people with disabilities from discriminatory treatment. With the aim of establishing this consensus, the Court relied on Recommendation 1592 (2003) towards full inclusion of people with disabilities, in which the Parliamentary Assembly of the Council of Europe stated that some of the fundamental rights contained in the Convention were still inaccessible to many people with disabilities, including the right to private and family life, and emphasized that guaranteeing access to equal political, social, economic and cultural rights should be a common political objective in the decade that followed. It also relied on the CRPD (*Glor v. Switzerland,* 2009, § 53), the Court considering that the CRPD provisions should, along with other relevant material, be taken into consideration (*Arnar Helgi Larusson v. Iceland*, 2022, § 57).

133. In this context, the Court has notably referred to Article 4 of the CRPD on the need to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination, Article 9 of the CRPD on independent living and Article 19 of the CRPD on full inclusion and participation in the community (*Guberina v. Croatia*, 2016, § 34). Regarding the interpretation of those provisions, the Court has referred to General Comment No. 1 (2014) on equal recognition before the law (*Cînța v. Romania,* 2020, § 31; *Caamaño Valle v. Spain,* 2021, § 24; *V.I. v. the Republic of Moldova*, 2024, § 63), General Comment No. 2 on accessibility (2014) (*Guberina v. Croatia*, 2016, § 35; *Toplak and Mrak v. Slovenia*, 2021, § 55; *Arnar Helgi Larusson v. Iceland*, 2022, § 26) and to General Comment No. 6 on equality and non-discrimination (2018) (*Toplak and Mrak v. Slovenia*, 2021, § 56; *Arnar Helgi Larusson v. Iceland*, 2022, § 27), adopted by the United Nations Committee on the Rights of Persons with Disabilities.

B. Applicability

134. Since Article 14 of the Convention has no independent existence, it has to be read in conjunction with another substantive provision of the Convention and the Protocols thereto. However, the application of Article 14 does not necessarily presuppose the violation of one of the substantive rights

guaranteed by the Convention, and to this extent it is autonomous. A measure which, in itself, is in conformity with the requirements of the Article enshrining the right or freedom in question may, however, infringe that Article when read in conjunction with Article 14 for the reason that it is of a discriminatory nature. Accordingly, for Article 14 to apply, it is enough that the facts of the case fall "within the ambit" of another substantive provision of the Convention or the Protocols thereto (*Arnar Helgi Lárusson v. Iceland*, 2022, § 40).

135. The Court held that the factual circumstances of certain cases did not fall under the ambit of the substantive Article, rendering Article 14 inapplicable:

- *Access to the physical environment*: Article 8 was not applicable in circumstances where the applicants have not demonstrated a special link between the lack of access to public buildings and the particular needs of their private life (*Zehnalová and Zehnal v. the Czech Republic* (dec.), 2002), where the right of access concerned interpersonal relations of a broad and indeterminate scope (relying on *Botta v. Italy*, 1998); or *Glaisen v. Switzerland* (dec.), 2019 where it was considered that Article 8 could not be construed as conferring a right of access to a particular cinema to watch a specific film. See also the Chapter on Accessibility). Similarly, Article 14 did not apply to the applicant's complaint the about the lack of access to polling stations, as Article 3 of Protocol No. 1 was not applicable to elections to municipal councils, district councils and regional assemblies (*Mółka v. Poland* (dec.), 2006).
- *Denial of career advancement*: in *Briani and Briani v. Italy* (dec.), 2014, the Court decided that the lower ranking of the applicant to obtain a higher grade in employment, allegedly based on the disability of the applicant, could not, in itself, affect the development of his personality or ability to establish contacts with the outside world in such a way as to affect his right to private and family life guaranteed by Article 8 of the Convention.
- *Disability benefits:* In *Rał v. Poland* (dec.), 2018, where the applicant was complaining about the calculation of disability benefits, the Court concluded that he had neither shown that he had a "possession" or at least a "legitimate expectation", so that Article 1 of Protocol No.1 to the Convention is not applicable. In *Berisha v. Switzerland* (dec.), 2023, the Court decided that the upper limit imposed on reimbursement of home-care expenses for a person with disability did not fall within the scope of either family life or private life within the meaning of Article 8 of the Convention.

C. Different treatment

136. The Court's approach to direct discrimination is outlined in the Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination: in order for an issue to arise under Article 14 of the Convention there must be a difference in treatment of persons in analogous or relevantly similar situations and, once an applicant has shown that there has been a difference in treatment, it is then for the respondent Government to show that that difference in treatment could be justified (*V.I. v. the Republic of Moldova*, 2024, §§ 168-169).

137. A difference in treatment is discriminatory within the meaning of Article 14 if it has no objective and reasonable justification. The existence of such a justification must be assessed in relation to the aim of the impugned measure, having regard to the principles which normally prevail in democratic societies. A difference in treatment in the exercise of a right laid down by the Convention must not only pursue a legitimate aim: Article 14 will be violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (*Glor v. Switzerland*, 2009, § 72; *Belli and Arquier-Martinez v. Switzerland*, 2018, § 90). Article 14 does not prohibit distinctions in treatment which are founded on an objective assessment of essentially different factual circumstances (*Glor v. Switzerland*, 2009, § 73; *Belli and Arquier-Martinez v. Switzerland*, 2018, § 91).

138. There must be a difference in the treatment of persons in analogous, or relevantly similar, situations. It is not necessary for the Court to examine whether the measure has an objective and reasonable justification if the two groups are not in analogous or relevantly similar situations (*Popović and Others v. Serbia*, 2020, § 75; *Dániel Karsai v. Hungary*, 2024, § 174). In *Milivojević v. Serbia*, 2022, the applicant complained that, unlike old-age pensioners, he could not have his disability pension recalculated. The Court held that the purpose of the measure was to reflect the different nature of the two pensions, and to carefully balance the amounts of benefits provided to the various groups of beneficiaries in the State's social security system. Thus, the applicant was not in a relevantly similar or analogous position to the group with which he sought to compare himself (§ 37). In *E.T. v. the Republic of Moldova,* 2024, the Court accepted the applicant's argument that he had been treated differently due to his mental illness in that he was deprived of his legal capacity, in comparison to others who were temporarily unable to fully control all their actions and who were only restricted in deciding in their financial matters (§§ 64-65).

139. The applicant must then show that there has been a difference in treatment and, in certain cases, the applicants could not demonstrate an appearance of discrimination based on their disability (*Donát v. the Czech Republic* (dec.) 1999; *Glass v. the United Kingdom* (dec.), 2003; *Vincent v. France*, 2006, § 145).

140. Contracting States enjoy a margin of appreciation in assessing whether, and to what extent, differences in otherwise similar situations justify a different treatment. Relying on the existence of a consensus on the need to protect people with disabilities from discrimination, the Court has reiterated that, if a restriction on fundamental rights applies to someone belonging to a particularly vulnerable group in society that has suffered considerable discrimination in the past, then the State's margin of appreciation is substantially narrower and it must have very weighty reasons for the restrictions in question. The reason for this approach, which questions certain classifications *per se*, is that such groups were historically subject to prejudice with lasting consequences, resulting in their social exclusion (*Kiyutin v. Russia*, 2011, § 63; *Cînța v. Romania*, 2020, § 41; *V.I. v. the Republic of Moldova*, 2024, § 170). Such prejudice could entail legislative stereotyping which prohibits the individualised evaluation of their capacities and needs (*Kiyutin v. Russia*, 2011, § 63; *Guberina v. Croatia*, 2016, § 73). Thus, the Court has identified vulnerable groups that suffered different treatment on account of their disability (*Glor v. Switzerland*, 2009, § 84).

141. The Court ruled that the difference in treatment was not justified in the following cases:

- In *Glor v. Switzerland*, 2009, the applicant claimed that, although prevented by disability from doing his military service, he was obliged to pay an exemption tax. The Court considered that obliging the applicant to pay the disputed tax after denying him the opportunity to do his military (or civilian) service might prove to be in contradiction with the need to prevent discrimination against people with disabilities and foster their full participation and integration in society.
- In *G.N. v. Italy*, 2009, the Court has held that a difference, based on pathology type, in compensation arrangements between persons contaminated with HIV during blood transfusions was not justified by need to use public funds wisely.
- In *Kiyutin v. Russia*, 2011, the Court held that, by putting in place a difference in treatment of an HIV-positive alien regarding application for residence permit, the Government had overstepped their narrow margin of appreciation and the applicant had been a victim of discrimination on account of his health status, as the Government were unable to adduce compelling and objective arguments to show that the aim of protecting public health could be attained by the refusal to issue the applicant a residence permit on account of his health status (§ 72).
- In *Cînța v. Romania*, 2020, the Court considered that regarding the restriction on applicant's contact rights based on his mental disorder, without assessing the latter's impact on his

caring skills or child's safety, the domestic courts had not properly assessed the applicant's mental health, nor provided relevant and sufficient reasons (§ 78).

- In *Negovanović v. Serbia*, 2022, the denial to blind chess players of financial awards granted to sighted players as a national sporting recognition for winning similar international accolades was found to be discriminatory. In particular, the Court held that it was unconceivable that the "prestige" of a game or a sport should depend merely on whether it was practised by persons with or without a disability.
- In *E.T. v. the Republic of Moldova*, 2024 the deprivation of the applicant's legal capacity excluded the applicant from decision-making processes concerning every aspect of her life and did not provide her with reasonable accommodation in the form of supporting her in the decision-making process for an indefinite time, constituting thereby a disproportionate means of achieving the otherwise acceptable aim of protecting the rights of persons with disabilities (§§ 71-76).
- In *Clipea and Grosu v. the Republic of Moldova*, 2024, the national prosecution services and courts discontinued the investigation into the applicants' complaints of ill-treatment on the sole basis of their intellectual disability, finding that they were "persons with limited legal capacity , [who] in these circumstances, ... [were] not always able to fully and correctly understand the things that happen[ed] in certain circumstances", which constituted discriminatory treatment.

142. In other cases, the Court has considered that the difference in treatment, based on disability, was objectively and reasonably justified.

- In *R.P. and Others v. the United Kingdom*, 2012, concerning the appointment of an Official Solicitor to represent a mother with learning disabilities in child-care proceedings, the Court accepted that it was necessary for the State to take measures to protect litigants in the applicant's situation and that the Official Solicitor scheme was within the State's margin of appreciation.
- In *Belli and Arquier-Martinez v. Switzerland*, 2018, the discontinuation of non-contributory disability benefits owing to residence abroad was considered by the Court to be objectively and reasonably justified.
- In *Strøbye and Rosenlind v. Denmark*, 2021, the applicants were prevented from voting in general elections, owing to the restriction of their legal capacity. The Court ruled that the restriction on the applicants' voting rights had been proportionate as it had only affected a small group of persons, was the subject of a thorough parliamentary review and there was no automatic blanket restriction on voting. In the Court's view, the Supreme Court had not overstepped the margin of appreciation afforded to it (§ 120).
- In *Caamaño Valle v. Spain*, 2021, the Court held that the disenfranchisement of a person with an intellectual disability was based on a thorough, individualized assessment by the domestic courts, and that there was a reasonable relationship of proportionality between the means employed and the aim sought to be realized (§ 82).
- In *T.H. v. Bulgaria*, 2023, the Court ruled that it could not conclude that the primary school's response to aggressive and disruptive behaviour of a child diagnosed with hyperkinetic and scholastic-skills disorder had had no objective and reasonable justification (§ 117).

D. Failure to treat differently – indirect discrimination

143. The Court also considers that the right not to be discriminated against is violated when States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different (*J.D. and A v. the United Kingdom*, 2019, § 84). The Court has accepted that a general policy or measure that has disproportionate prejudicial effects on a particular group may be

considered discriminatory notwithstanding that it is not specifically aimed at that group (*D.H. and Others v. Sweden*, 2024, § 85). The prohibition deriving from Article 14 will therefore also give rise to positive obligations for the Contracting States to make necessary distinctions between persons or groups whose circumstances are relevantly and significantly different *(J.D. and A v. the United Kingdom*, 2019, § 84). The Court's approach to indirect discrimination is outlined in the Guide on Article 14 and Article 1 of Protocol No. 12 - Prohibition of discrimination.

144. The Court has ruled that Article 14 does not prohibit member States from treating differently groups whose situations are significantly different in order to correct "factual inequalities between them": indeed in certain circumstances a failure to attempt to correct inequality through different treatment may in itself give rise to a breach of the Article (*Çam v. Turkey,* 2016, § 54; *G.L. v. Italy*, 2020, § 52). The effective enjoyment of many of the Convention rights by people with disabilities may require the adoption of various positive measures by the relevant State authorities (*Toplak and Mrak v. Slovenia*, 2021, § 111; *Arnar Helgi Lárusson v. Iceland*, 2022, § 56). Once the applicant has demonstrated a failure on behalf of the Government to treat him/her differently because of his/her disability, it is for the Government to show that this failure was objectively and reasonably justified (*D.H. and Others v. Sweden,* 2024, §§ 85-90).

145. In *D.H. and Others v. Sweden,* 2024, the applicants complained that a decision to refuse family reunification had discriminated them on the basis of the first applicant's disability because it was impossible for her to fulfil the maintenance requirement owing her inability to find employment because of her disability. Given that the authorities supported the applicant in obtaining suitable employment to comply with the maintenance requirement, the Court found that the applicant had not demonstrated a failure on behalf of the Government to treat her differently because of her reduced mobility or her incapacity to perform in various types of jobs (§ 90).

146. In *J.D. and A v. the United Kingdom*, 2019, the applicants complained that they were adversely affected by the Housing Benefit Regulations. They claimed that they were in a significantly different situation and particularly prejudiced by the policy because they had a particular need to be able to remain in their specifically adapted homes for reasons directly related to their disability (§ 92). Having established that the applicants, who were treated in the same way as others even though their circumstances were significantly different, were particularly prejudiced by the impugned measures, the Court asked whether the failure to take account of that difference was discriminatory. The Court found that it would not be in fundamental opposition to the recognised needs of persons with disabilities in specially adapted accommodation but without a medical need for an 'extra' bedroom to move into smaller, appropriately adapted accommodation (§ 101). It was satisfied that the means employed to implement the measure had a reasonable relationship of proportionality to its legitimate aim (§ 102).

E. Reasonable accommodation and accessibility

1. Reasonable accommodation

147. The Court, referring to the CRPD, has found that Article 14 of the Convention has to be read in the light of the requirements of those texts regarding "reasonable accommodation" – understood as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case" – which people with disabilities are entitled to expect in order to ensure "the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (Article 2 of the CRPD). Such reasonable accommodation helps to correct factual inequalities which are unjustified and which therefore amount to discrimination. Article 14 of the Convention requires reasonable accommodation, rather than all possible adjustments which could be made to alleviate the disparities resulting from someone's disability regardless of their costs or the practicalities involved (*T.H. v. Bulgaria,* 2023, § 122).

a. Education

148. In the educational sphere, the Court has emphasised that every child has his or her specific needs, and this applies particularly to children with disabilities. The Court has considered that "reasonable accommodation" in the field of education can take different material or non-material forms – for instance, teacher training, curricular adaptation or appropriate facilities, depending in particular on the disability in question – and, while it is not for the Court to define the practical arrangements for this in a given case, the national authorities being much better placed to do so, those authorities must take great care with the choices they make in this regard (*T.H. v. Bulgaria*, 2023, § 104; *Djeri and Others v. Latvia*, 2024, § 158). The Court takes the view that it is important for the States to be particularly careful in making their choices in this sphere, having regard to the impact of the latter on children with disabilities, whose particular vulnerability cannot be overlooked (*Çam v. Turkey,* 2016, §§ 66-67; *Sanlısoy v. Turkey*, 2016, §§ 60-61). The Court has, for example, held that a refusal of admission of an applicant with disability by only one school could not constitute, in itself, a systemic failure to realise his right to education because of his disability (*Kalkanli v. Turkey* (dec.), 2009; *Sanlısoy v. Turkey, 20*16, § 68).

149. In *Çam v. Turkey,* 2016, the applicant, who was blind, passed the entrance examination for a music academy after having successfully taken the practical tests to master the Turkish lute. The Court held that the competent national authorities made no effort to identify the applicant's needs and failed to explain how or why her blindness could impede her access to musical education. Nor did they attempt to consider new amenities to meet the specific educational needs arising from the applicant's blindness (§§ 68-69).

150. In *Enver Sahin v. Turkey,* 2018, the applicant, who had paralysed lower limbs, requested alteration to make the teaching premises accessible. In the absence of necessary funds, he was offered the assistance of a support person. This measure was not shown to be based on an assessment of the applicant's actual needs or on an honest appraisal of the potential impact on his safety, dignity and independence. Therefore, the Government failed to demonstrate that the academic and judicial authorities reacted with the requisite diligence to ensure that the applicant could continue to exercise his right to education on an equal footing with other students and, consequently, to strike a fair balance between the competing interests at stake (§ 75).

151. In *G.L. v. Italy*, 2020, the applicant, a child with non-verbal autism, was not able to receive, in the first two years of primary school, the specialized assistance to which she was entitled under the relevant legislation. The Court held that the authorities had not sought to determine the applicant's real needs or the possible solutions to allow her to attend primary school in conditions that where equivalent as far as possible to those enjoyed by other pupils, whilst not imposing a disproportionate or undue burden to the administration (§ 70).

152. In T.*H. v. Bulgaria*, 2023, the applicant was a child who had behavioural difficulties in school, and who was diagnosed with a hyperkinetic disorder and a specific development disorder of scholastic skills. He complained that the school had failed to organize his education in a manner corresponding to his special educational needs. The Court considered that it could not be said that the head teacher and the applicant's teacher had turned a blind eye to his disability and his resulting special needs: it appeared that they had made a series of reasonable adjustments for him. The Court reiterated that Article 14 required reasonable accommodation, rather than all possible adjustments which could be made to alleviate the disparities resulting from someone's disability regardless of their costs or the practicalities involved (§ 122).

153. As to whether the necessary and appropriate modifications and adjustments have been made in favour of a pupil with an autism spectrum disorder, the relevant factors for the Court's assessment were outlined in *S. v. the Czech Republic,* 2024, namely, that the applicant has not been deprived of education, the applicant's parents have shown a lack of cooperation, and supportive measures have been adopted by the school once the applicant's educational needs have been identified. Although,

in the Court's assessment the school could have responded more promptly, it nonetheless acted with due diligence to enable the applicant to attend school in conditions equivalent, as far as possible, to those enjoyed by other children, without "disproportionate or undue burden" on the State authorities.

154. In *Djeri and Others v. Latvia*, 2024, the applicants complained that reducing the use of Russian as the language of instruction in Latvia allegedly discriminated between Russian-speaking children with special needs and Russian-speaking children without special needs (§ 160). The Court observed that the Latvian legal system secured the right of education for children with special needs in the form of inclusive education. The State had taken a number of steps to provide support mechanisms for children with special needs. Such mechanisms were not limited to general measures and forms of support, but also included individualized approaches (such as individual learning plans) to accommodate any specific educational needs (§ 166).

b. Family life

155. The State's positive obligation to provide persons with disabilities with reasonable accommodation, including support measures to facilitate the enjoyment of family life between parents and children, is recognized in the case-law. The scope and extent of that accommodation is necessarily shaped and limited, not only by the considerations relating to a "disproportionate or undue burden", but also and above all by the paramount consideration of the best interests of the child (*Á.F.L. v. Iceland,* 2025, § 84).

156. In *Á.F.L. v. Iceland,* 2025, the Court found justified the deprivation of custody of a person diagnosed with autism spectrum disorder, attention deficit hyperactivity disorder and a mild intellectual disability as the authorities' decision was not based on the parent's disability but on the child's best interest, in view of the negative impact of the parent's custody on the child's well-being. The Court found it relevant that the domestic authorities systematically recognised the applicant's impairment and his needs as a person with disability. The assistance provided to him was reasonable, focusing on his parenting skills. It was individualised and tailored to his needs to correct the factual inequality created by his disability. It was also flexible, and additional efforts were made when the usual level of assistance was not sufficient to ensure the well-being of the child.

2. Accessibility

157. The Court references in its case-law Article 30 of the CRPD which explicitly requires the State Parties to guarantee to people with disabilities the opportunity to take part on an equal basis with others in cultural life (*Toplak and Mrak v. Slovenia*, 2021, § 114, *Arnar Helgi Lárusson v. Iceland*, 2022, § 59). The test to be applied is limited to examining whether the State made the "necessary and appropriate modification and adjustments" to accommodate and facilitate persons with disabilities, which, at the same time, did not impose "a disproportionate or undue burden" on the State" *(Arnar Helgi Lárusson v. Iceland*, 2022, § 60).

a. Accessibility of the physical environment

158. In the context of accessibility, the Court has held that Article 8 of the Convention comes into play only in exceptional cases. The applicant needs first to demonstrate that he/she is unable to access the buildings in question, and that that inability to access public buildings affects his or her life in such a way as to interfere with his or her rights to personal development as well as to establish and develop relationships with other human beings and the outside world.

159. In a number of cases, the Court has found that the lack of access did not fall within the ambit of private life and therefore held that Article 14, read in conjunction with Article 8, was inapplicable:

160. In *Botta v. Italy*, 1998, the Court found that the lack of access a particular private beach in a municipality far from the applicant's normal place of residence concerned interpersonal relations of such a broad and indeterminate scope that there could be no conceivable direct link between the measures the State had been urged to take and the applicant's private life.

161. In *Zehnalova and Zehnal v. the Czech Republic* (dec.), 2002, the applicants complained that their municipality had failed to act to ensure access for the first applicant to 174 buildings which were either public or open to the public. The Court recognised that States might have a positive obligation to ensure access to public buildings or buildings open to the public if a lack of access affected a person's life in such a way as to interfere with his or her right to personal development and right to establish and develop relationships with other human beings and the outside world. However, noting the large number of buildings identified by the applicants, the Court found that they had failed to give precise details of the obstacles created by the lack of access, and that the first applicant had failed to demonstrate any special link between the lack of access and her private life.

162. In *Farcaş v. Romania* (dec.), 2010, the Court also noted the general character of the allegations and could identify no immediate link between the measures claimed and the private life of the applicant. In *Glaisen v. Switzerland* (dec), 2019, the applicant complained that he had been unable to access a particular cinema that was privately owned and operated. The Court found that, considering that only around 10% to 12% of films had been exclusively screened in the cinema in question and that other local cinemas had been accessible to the applicant, the matter had not affected his life in such a way as to interfere with his right to personal development or to establish and develop relationships.

163. In *Neagu v. Romania* (dec.), 2019, the Court considered that the applicant was able to pass through the main doors, albeit only by undertaking certain manoeuvres, and observed that the State authorities were mindful of her situation and of her right to receive special protection because of her disability.

164. However, in *Arnar Helgi Lárusson v. Iceland*, 2022, the Court considered that the situation should be distinguished from the above-mentioned cases. The accessibility issue concerned buildings owned and/or operated by and located in the applicant's own municipality. The applicant had identified a small, clearly defined number of buildings where access is lacking and explained how the lack of access to each of those buildings had affected his life. The Court noted that without access to the physical environment and to other facilities and services open or provided to the public, people with disabilities would not have equal opportunities for participation in their respective societies. The matter at issue was liable to affect the applicant's right to personal development as well as to establish and develop relationships with other human beings and the outside world, and the applicant's private life, within meaning of Article 8 of the Convention. As to whether the respondent State had fulfilled its duty to accommodate the applicant as a person with disabilities to correct factual inequalities (namely, had made "necessary and appropriate modification and adjustments" which did not impose "a disproportionate or undue burden" on the State), the Court found that the State took considerable measures to assess and address accessibility needs in public buildings, within the confines of the available budget and having regard to the cultural heritage protection of the buildings in question (§ 64).

b. Accessibility of polling stations

165. The Court has found that, under Article 14 taken in conjunction with Article 3 of Protocol No. 1, the reasonable accommodation obligations apply equally to the participation of people with disabilities in political life. It noted in this regard that Article 29 of the CRPD explicitly requires the States Parties to guarantee to people with disabilities the opportunity to enjoy political rights on an equal basis with others and to undertake to ensure, among other things, accessible voting procedures (*Toplak and Mrak v. Slovenia,* 2021, § 114). The Court observed that a general and complete

adaptation of polling stations in order to fully accommodate wheelchair users would no doubt facilitate their participation in the voting process. However, it reiterated that the States enjoy a margin of appreciation in assessing the needs of people with disabilities in respect of elections and the means of providing them with adequate access to polling stations within the context of the allocation of limited State resources. The Court observed that, in view of their awareness of the funds available to provide such access for persons with disabilities, the national authorities are in a better position to carry out this assessment than an international court (*Mółka v. Poland* (dec.), 2006).

166. In *Toplak and Mrak v. Slovenia*, 2021, the Court observed that the applicants were able to vote at the polling stations in proximity of their residence, in accordance with their wishes, as opposed to having to go to specially designated polling stations. While adaptations of the voting facilities (such as tables, voting booth and ballot box) were not made in advance, assistance could be provided to the applicants on the spot by means of a reasonable accommodation of their needs. The Court understood that since voting in public referendums is organised *ad hoc* in buildings that otherwise serve other purposes it might be particularly difficult to ensure full accessibility in respect of the voting process for people with different types of disability in advance – especially if the State aims to provide a high number of polling stations. Since the improvement of accessibility in the built environment may take time, it is essential that in the meantime the domestic authorities react with the requisite diligence to ensure that people with disabilities can vote freely and by secret ballot. In the present case, the National Commission responded promptly and constructively to the applicants' request that their respective polling stations be rendered accessible. At the request of the first applicant, a ramp was installed at the polling station for his electoral area. At the request of the second applicant, a visit to the building (school) that would serve as the polling station for his electoral area was arranged a few days before the day of the 2015 Referendum in order to ensure that he would be able to enter the building and the polling room (§ 121).

F. Harassment, stigmatisation, stereotyping

167. The prohibition of discrimination extends to cases of harassment, stigmatisation, and stereotyping of persons with disabilities. In these situations, the approach of the Court is to scrutinize a potentially discriminatory attitude, or a general institutional conduct of passivity and/or lack of awareness towards persons with disabilities.

168. In *Đorđević v. Croatia,* 2012, the applicants complained that the State authorities had not given them adequate protection from harassment by children from their neighbourhood. The applicants addressed the issue of violence as a disability hate crime (§ 114). They submitted that harassment against persons with disabilities was usually motivated by a perception of such persons as inferior. Violence and hostility might have wide-ranging consequences, including emotional, physical and sexual implications, or even the death of the victim (§ 115). Although the discrimination complaint was rejected for non-exhaustion of domestic remedies, the Court stated that where a substantive and a separate breach has been found of the substantive Article, the Court may not always consider it necessary to examine the case under Article 14 as well, though the position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case (§ 159).

169. In *I.B. v. Greece*, 2013, the applicant was dismissed from work after it was announced that he was HIV-positive. The Court found that it is clear that the applicant's dismissal resulted in the stigmatisation of a person who, even if they were HIV-positive, had not shown any symptoms of the disease. It found that ignorance about how the disease spreads had bred prejudices which, in turn, had stigmatised or marginalised those infected with the virus. It added that, consequently, people living with HIV were a vulnerable group and that the State should be afforded only a narrow margin of appreciation in choosing measures that singled out this group for differential treatment on the basis of their HIV status (§ 81).

170. The Court has also addressed the stigmatisation of persons with disabilities under Article 10 of the Convention. In *National Youth Council v. the Republic of Moldova,* 2024, the local authorities' refused to allow the applicant NGO to display anti-discrimination illustrations on advertising panels on the grounds that they depicted some social groups, including persons with disabilities, in an undignified and humiliating manner. The poster was part of an anti-discrimination campaign to promote the first freephone discrimination helpline in Moldova. While the poster featured a person in wheelchair with a sad expression on the face, a deformed body and an outstretched hand, conveying negative stereotypes of persons with disabilities, it was obvious that the intended goal had not been to insult or stigmatise those vulnerable groups or, insidiously, to promote hate speech and intolerance. Taken in their context, the poster and cartoons had clearly been a means of drawing the public's attention precisely to social stereotyping and to the discrimination experienced by vulnerable groups.

171. In *I.C. the Republic of Moldova,* 2025 the Court was called to examine the domestic authorities' failure to protect the applicant with intellectual disability from servitude and to investigate her allegations about servitude and sexual abuse. It addressed the issue from the perspective of whether the authorities' conduct was the result of a discriminatory approach, stemming from a wider institutional tolerance of violence against women and neglect of persons with disabilities. The Court found that fact that the domestic authorities considered the applicant to be untruthful, based on discriminatory views about her credibility as a woman with an intellectual disability, the failure to properly factor in her vulnerability due to her intellectual disability when interpreting her testimony and the lack of procedural accommodation clearly reflected a discriminatory attitude towards the applicant. Furthermore, the domestic courts' finding that the unremunerated domestic and farm work of a woman with intellectual disabilities did not represent any material value and could not amount to labour exploitation conveyed stereotypes, preconceived beliefs and myths about persons with disabilities (§§ 216-223).

G. Institutionalisation

172. In *V.I. v. the Republic of Moldova,* 2024, the Court examined whether the systematic psychiatric institutionalisation, in the absence of any medical necessity, of children with intellectual disability qualified as discrimination. The Court relied on the findings of the United Nations' Special Rapporteurs that the widespread perception of persons with disabilities as "abnormal", as distinct from "healthy" persons, interlinked with the lack of community support services that cater to their needs, resulted in a high rate of institutionalisation of children with psycho-social disabilities in the Republic of Moldova. It also considered that the applicant's placement in a psychiatric hospital had been related to the absence of alternative care options and that the domestic authorities viewed the applicant's intellectual disability as mental disorder justifying treatment. These elements led the Court to conclude that the authorities' action perpetuated a discriminatory practice and that a *prima facie* case of discrimination had been established (§§ 172-176).

IV. Right to life[11]

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

A. Risk of suicide

173. Persons with mental disabilities and psychiatric patients are considered to constitute a particularly vulnerable group, even when treated on a voluntarily basis, who require protection from self-harm (*Renolde v. France*, 2008, § 84; *Fernandes de Oliveira v. Portugal* [GC], 2019, § 124; *S.F. v. Switzerland*, 2020, § 78). The Court has examined the obligations of States in respect of persons with mental disorders demonstrating a risk of suicide in prisons and in the context of both voluntary and involuntary psychiatric treatment. In the jurisprudence of the Court, cases concerning the risk of suicide of persons under the control of the State authorities may engage the State's positive obligation to take preventive operational measures to protect an individual from himself or herself. Moreover, States are under the obligation to conduct an effective investigation into any death occurring (on this latter aspect, see Chapter on Legal protection). In addition, as regards suicide in healthcare facilities, there is a distinct positive obligation on the State to put in place a regulatory framework compelling hospitals to adopt appropriate measures for the protection of patients' lives.

1. Prevention of suicide

174. In order to establish whether the authorities knew or ought to have known that the life of a particular individual was subject to a real and immediate risk, triggering the duty to take appropriate preventive measures, the Court takes into account a number of factors, including: i) whether the person had a history of mental health problems; ii) the gravity of the mental condition; iii) previous attempts to commit suicide or self-harm; iv) suicidal thoughts or threats; and v) signs of physical or mental distress (*Fernandes de Oliveira v. Portugal* [GC], 2019, § 115; *Boychenko v. Russia*, 2021, § 80).

175. On the basis of these factors, the Court has found a violation of Article 2 of the Convention in the following cases concerning the suicide of an applicant's relative in prison:

- where a prisoner, known to have "severe disturbance" and who had attempted to commit suicide shortly beforehand, was placed in solitary confinement for a prolonged period (*Renolde v. France*, 2008);
- where a person with mental disorders was detained in the ordinary section of a prison rather than in a psychiatric wing due to a chronic shortage of places (*De Donder and De Clippel v. Belgium*, 2011);

[11] For further details see the Guide on Article 2 - Right to life.

- where the authorities had failed to display due vigilance as regards the availability of a blade and the insufficient aid provided by the prison officers on the night of the fatal suicide attempt (*Shumkova v. Russia*, 2012).

176. By contrast, the Court found that there had been no violation of Article 2 of the Convention in relation to the suicide of a person who had been voluntarily admitted in a psychiatric hospital as it had not been established that the authorities had known or ought to have known that there had been both a real and immediate risk to the person's life in the days preceding his death (*Fernandes de Oliveira v. Portugal* [GC], 2019) or where the applicant's escape from a psychiatric hospital was not foreseeable for the hospital and was not therefore attributable to it (*Hiller v. Austria*, 2017, § 53; see also, *Barańska v. Poland* (dec.), 2014).

177. Similarly, the Court did not find a violation of Article 2 of the Convention where the authorities responded in a reasonable way to the patient's conduct and suicidal tendencies. For example, in *Keenan v. the United Kingdom*, 2001, there was daily medical supervision and there was no reason to alert the authorities on the day of the incident that attempted suicide was likely (for the Court's findings under Article 3 of the Convention in this case, see Chapter on Ill-treatment), and in *Jeanty v. Belgium*, 2020, the authorities had intervened diligently and had effectively prevented several suicide attempts.

178. In *Reynolds v. the United Kingdom*, 2012, the applicant's son had been admitted as a voluntary inpatient, and subsequently killed himself by jumping out of a sixth-floor window due to psychotic symptoms. In finding a violation of Article 13 in conjunction with Article 2, the Court concluded that the applicant had not had civil proceedings available to her to establish any liability and compensation as regards her own suffering and her son's death and found that there was an arguable claim of a breach under Article 2 in the circumstances of a death following voluntary hospitalisation in a psychiatric institution.

179. The authorities have a general operational duty with respect to voluntary psychiatric patients to take reasonable measures to protect them from a real and immediate risk of suicide. The specific measures required will depend on the particular circumstances of the case, and those specific circumstances will often differ depending on whether the patient is voluntarily or involuntarily hospitalised. Therefore, this duty, namely to take reasonable measures to prevent a person from self-harm, exists with respect to both categories of patient. In the case of patients who are hospitalised following a judicial order, and therefore involuntarily, the Court may apply a stricter standard of scrutiny in its own assessment (*Fernandes de Oliveira v. Portugal* [GC], 2019, § 124).

180. As regards the specific measures required, the Court has held that hospitalisation of a psychiatric patient, whether involuntary or voluntary, inevitably involves a certain level of restraint as a result of the patient's medical condition and the ensuing treatment by medical professionals. In the process of treatment, recourse to further kinds of restraint is often an option. Such restraint may take different forms, including limitation of personal liberty and privacy rights (*Fernandes de Oliveira v. Portugal* [GC], 2019).

181. At the same time, the very essence of the Convention is respect for human dignity and human freedom. In this regard, the authorities must discharge their duties in a manner compatible with the rights and freedoms of the individual concerned and in such a way as to diminish the opportunities for self-harm, without infringing personal autonomy. The Court has acknowledged that excessively restrictive measures may give rise to issues under Articles 3, 5 and 8 of the Convention (*Fernandes de Oliveira v. Portugal* [GC], 2019, § 112). Pointing to, in particular Recommendation Rec(2004)10 of the Committee of Ministers concerning the protection of the human rights and dignity of persons with mental disorder, in particular those who are subject to involuntary placement or treatment and the CRPD, the Court has held that today's paradigm in mental health care is to give persons with mental disabilities the greatest possible personal freedom in order to facilitate their re-integration into society. It is therefore desirable to grant hospitalised persons the maximum freedom of movement in

order to preserve as much as possible their dignity and their right to self-determination (*Hiller v. Austria*, 2017, § 54).

2. Regulatory framework

182. In the particular context of health care, the Court has interpreted the substantive positive obligation of the State as requiring the latter to make regulations compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives. That positive obligation also requires an effective independent judicial system to be set up so that the cause of death of patients in the care of the medical profession, whether in the public or the private sector, can be determined and those responsible made accountable (*Fernandes de Oliveira v. Portugal* [GC], 2019, § 105).

183. The purpose of the regulatory framework under Article 2 is to provide the necessary tools for the protection of a patient's life. The lack of a written policy on the use of restraint measures may not be determinative of its efficiency and may not in itself warrant a finding that Article 2 was breached. Nonetheless, the existing surveillance procedure and the available restraint measures should provide the medical facility with the tools necessary for the treatment of patients (*Fernandes de Oliveira v. Portugal* [GC], 2019, §§ 119-120).

3. Investigation

184. For further details in this regard, see the Chapter on Legal protection.

B. Death while under the control of the State authorities

185. Deprivations of life are subjected to the most careful scrutiny, taking into consideration not only the actions of State agents but also all of the surrounding circumstances including such matters as the relevant legal or regulatory framework in place and the planning and control of the actions under examination.

186. Where the authorities decide to place and maintain in detention persons with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to their special needs resulting from their disability (*Jasinskis v. Latvia*, 2010, § 59). The State is therefore under a positive obligation to take all reasonable measures to ensure that the health and well-being of persons in detention, police custody or under arrest, who thus find themselves dependent on the State authorities, are adequately secured. This includes promptly providing them with the medical assistance required by their condition in order to prevent a fatal outcome (*Saoud v. France*, 2007, § 98; *Frančiška Štefančič v. Slovenia*, 2017, § 66).

1. Death in care homes

187. The case of *Centre of Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, concerned a young Roma man with severe mental disabilities and HIV infection who had spent his entire life in State care. On reaching adulthood he was eventually placed in a psychiatric hospital which had no facilities to treat HIV and where conditions were known to be appalling, without adequate staff, medication, heating or food. The Court has underlined that for his entire life Mr Câmpeanu was in the hands of the authorities, which were therefore under an obligation to account for his treatment. They were aware of the appalling conditions in the psychiatric hospital, which had led to an increase in the number of deaths. The Court has found a violation of Article 2 of the Convention on the grounds that the authorities unreasonably put his life in danger by placing him in the hospital, notwithstanding his heightened state of vulnerability while the medical staff failed to provide appropriate care and treatment.

188. In the case of *Nencheva and Others v. Bulgaria*, 2013, concerning the death of seven children and young adults in a home for children with severe mental disabilities, the Court has reached a similar conclusion that all children and young adults were entrusted to the care of the State in a specialised public facility and had been under the exclusive supervision of the authorities, on account of their particular vulnerability, among other factors. The poor conditions in the home inevitably posed a risk to the lives of vulnerable children suffering from illnesses requiring specific and intensive care, which the authorities had precise knowledge of. However, they failed their obligation to take protective action and swift, practical and sufficient measures to prevent the deaths.

189. Similarly, the Court found that such exclusive control of State authorities existed in view of the fact that the applicant was fully dependent on the social care institution for her most basic human needs including her place of residence, her medical treatment, her daily activities, and her interaction with the outside world (*Validity Foundation on behalf of T.J. v. Hungary,* 2024, § 76). Whether the domestic authorities could be held accountable for the applicant's death in the social care institution in view of the poor conditions, the Court pointed out that the authorities were aware of such conditions, including the shortage of medical staff, the insufficient medical and therapeutic care, the inappropriate living conditions, the excessive use of means of restraint, and the high number of deaths. Nonetheless, they did not provide an adequate response to the generally difficult situation and did not have a requisite standard of protection that could have enabled them to prevent the deterioration in health and untimely death of the applicant (§§ 95-96).

2. Death in prison

190. In the context of Article 2, the obligation to protect the life of individuals in custody also implies an obligation for the authorities to provide them with the medical care necessary to safeguard their life. Where allegations concern the authorities' negligence in the performance of their duties to react to a person's medical condition and disability to protect his life, the first question to be resolved first is whether the officers knew or ought to have known about the danger to the person's health and subsequently whether the officers in question displayed adequate diligence in light of the person's medical condition and disability in so far as they knew or ought to have known about them (*Jasinskis v. Latvia*, 2010, §§ 60-61) or whether they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (*Younger v. the United Kingdom* (dec.), 2003).

191. In *Jasinskis v. Latvia*, 2010, the applicant's deaf son suffered head injuries prior to being arrested by the police and placed in a police cell to sober up. The police did not have him medically examined when they took him into custody, in breach of the European Committee for the Prevention of Torture (CPT) standards. Furthermore, because of his sensory disability, the applicant's son had no means of communicating with the prison guards. He died in his cell the next day as a result of the injury to his head. The Court found that by not seeking a medical opinion or calling an ambulance for almost seven hours the police had failed to fulfil their duty to safeguard his life.

192. In the case of prisoners with drug addiction problems, the authorities have an obligation to adequately assess their state of health and to offer them appropriate care. It is their responsibility to pay particular attention to the possibility that prisoners suffering from addiction may consume non-prescribed medicines, taking into account their vulnerability, the extent of their psychiatric comorbidities and the anxiety-provoking effects of incarceration, and to carry out, accordingly, if necessary, more in-depth medical examinations or other adjustments in the organisation of care or the management of detention. Nonetheless, their obligation in this area can only be an obligation of means and not of results, even if drug trafficking is a well-known phenomenon in prison (*Sahraoui and others v. France*, 2024).

193. Article 2 of the Convention also imposes on the State the positive obligation to train its law enforcement officials, including its prison staff, in such a manner as to ensure their high level of

competence and to prevent any treatment that runs contrary to that provision (*Tekın and Arslan v. Belgium*, 2017, § 95). This was lacking, for instance, in the case of a prisoner with mental disability who died in his cell after being restrained in a stranglehold by a prison officer. In addition to the absence of clear recommendations on the use of the immobilisation technique at stake (§§ 92-93), the Court noted the gaps in the training provided to prison staff and notably the absence of any training related to dealing with individuals with mental disabilities (§§ 96-97). As to the necessity of the force used against the applicants' son, the Court took issue with the fact that the latter had been treated by the police officers as an ordinary detainee in full possession of his mental faculties despite them knowing about his condition (§§ 102-104).

194. States can also be held liable under the Convention for failure to protect individuals against the actions of persons with disabilities. For instance, *Paul and Audrey Edwards v. the United Kingdom*, 2002, concerned the killing of a detainee by a cell-mate with mental disabilities and with a record of violence. The Court found that the failure of the agencies involved to pass on information about the cell-mate to the prison authorities and the inadequate nature of the screening process on his arrival in prison disclosed a breach of the State's positive obligation under Article 2 of the Convention to protect the applicants' son's life.

3. Death during police intervention

195. The Court considered a number of cases concerning the arrest of persons with mental disorder, police intervention in psychiatric facilities and where police officers were called to assist involuntary hospitalisation. In order to engage the international responsibility of the respondent State, it is necessary that the State agents were reasonably able to realize that the victim was in a state of vulnerability requiring a high degree of precaution in the choice of the "usual" arrest techniques (*T.V. v. Croatia*, 2024, § 58).

196. When preparing such operations, the police should foresee that they would be faced with resistance, that a person could turn psychotic or violent and should prepare their operation accordingly (*Shchiborshch and Kuzmina v. Russia*, 2014, § 239; *T.V. v. Croatia,* 2024, § 52). The mere fact that an individual is a psychiatric patient should prompt the police to realise that not only is he in a vulnerable position but that he is a person with mental health issues and that it is very likely that received medication. They should consider the effect of measures of restraints (e.g. using a taser) would have under such circumstances (*V v. the Czech Republic*, 2023, § 99).

197. Regard must be had whether the person is in a delirious state and poses immediate danger to either himself and others (*Shchiborshch and Kuzmina v. Russia,* 2014, § 240) or whether he is calm; and the police should approach him in a manner adapted to his state of distress capable of eliminating the immediate danger with the least harmful consequences, while preserving the dignity of that person (*T.V. v. Croatia,* 2024, § 54). It might be necessary for the police to have recourse to emergency psychiatric assistance or be assisted by a qualified medical personnel (*Shchiborshch and Kuzmina v. Russia,* § 240; *T.V. v. Croatia,* 2024, § 56).

198. In *Frančiška Štefančič v. Slovenia*, 2017, the applicant alleged that her son's death had resulted from an unprofessional and aggressive intervention during which the police and medical staff had attempted to take him to a psychiatric hospital for involuntary treatment. The Court has emphasised that a person with particular medical needs due to mental disability could be considered as vulnerable, calling for special protection, the more so when the person's vulnerability is compounded by a defenceless situation. When the authorities are aware of such a condition, they are required to demonstrate special care in the choice of methods used to manage the person's behaviour (§ 73). In cases where force is used on persons with mental health issues, the Government must demonstrate that that force was necessary for the purpose of securing the health and well-being of the individual concerned (§ 74).

199. As regards patients in the acute unit of a psychiatric hospital, there is nothing unusual in them being agitated or violent and psychiatric institutions must be appropriately staffed and equipped to handle such patients by their own means so as to have recourse to the assistance police only as a means of last resort (*V v. the Czech Republic,* 2023, § 100).

200. Dealing with individuals with a mental disorder requires special training, the absence of which is likely to render futile any attempted negotiations with the person concerned (*Shchiborshch and Kuzmina v. Russia*, 2014, § 233). Furthermore, there should be an appropriate legal and administrative framework (including some instruction or methodological guidance put in place) concerning, on the one hand, coordination between health professionals and the police when the latter's intervention in medical establishments is unavoidable and, on the other hand, the possible health risks associated with the use by the police of tasers in general and, in particular, against persons with mental disorders. Furthermore, there should be some instruction or methodological guidance requiring that cooperation and coordination be established between on the one hand police officers intervening at hospitals and on the other hand health professionals (*V v. the Czech Republic,* 2023, §§ 108-109).

201. The Court has examined further cases of deaths of persons with mental disabilities during a police intervention aimed at arresting them. They concerned the following matters:

- *Saoud v. France*, 2007, concerning the death by gradual asphyxia of a young man with schizophrenia who was handcuffed and held face down to the ground by police officers for over thirty minutes;
- *Boukrourou and Others v. France*, 2017, concerning an unknown medical condition of a person with a mental disability leading to his accidental death (heart failure) during a police intervention;
- *Mendy v. France* (dec.), 2018, where a person with mental disabilities threatening a man's life with a knife was shot dead by a police officer during his arrest.

4. Death during clinical trials

202. In the context of the participation of persons with mental disorder at clinical trials, considered as dangerous activities, States must ensure through a system of rules and through sufficient control that the risk to life is reduced to a reasonable minimum. If nevertheless damage arises, it will only amount to a breach of the State's positive obligations if it was due to insufficient regulations or insufficient control, but not if the damage was caused through the negligent conduct of an individual or to a chain of unfortunate events (*Traskunova v. Russia*, 2022, §§ 73-74). In view of their vulnerability, it is important that mentally ill patients enjoy a heightened protection and that their participation in clinical trials be accompanied by particularly strong safeguards, with due account given to the particularities of their mental condition and its evolution over time (*ibid*., § 79). The doctors in charge should duly assess whether a mentally ill patient was able to take rational decisions regarding her participation in the trial (*ibid*., § 79).

V. Ill-treatment[12]

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Prison environment[13]

203. Article 3 of the Convention requires Member States to ensure that prisoners are detained in conditions that are compatible with respect for their human dignity, that the manner and method of the execution of the measure do not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured (*Kudła v. Poland* [GC], 2000, § 94; and *Ramirez Sanchez v. France* [GC], 2006, § 119).

204. The detention of a person who is ill in inappropriate physical and medical conditions may in principle amount to treatment contrary to Article 3 (*Kudła v. Poland* [GC], 2000, § 94; *Rooman v. Belgium* [GC], 2019, § 144). However, in order to reach the threshold for the applicability of that Article, any ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative: it depends on all the circumstances of the case, such as the sex, age and state of health of the victim (*Kudła v. Poland* [GC], 2000, § 91).

1. Physical disability

205. Severe physical disability is also among the factors to be taken into account in the assessment of whether a treatment has reached the minimum level of severity ((*Mouisel v. France*, 2002, § 38).

a. Continued detention

206. Severe physical disability, such as health and age, is relevant regards for the assessment of suitability for detention under Article 3 of the Convention (*Potoroc v. Romania*, 2020, § 67). Nonetheless, Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds (*Laniauskas v. Lithuania*, 2022, § 55). The Court takes into account, in particular, three factors to examine the compatibility of the state of health of the applicants with his/her continued detention: (a) the applicant's state of health and the effect on the latter of the manner of his or her imprisonment; (b) the adequacy or inadequacy of the medical care and treatment provided in detention; and (c) whether or not the person should continue to be detained in view of his or her state of health (*Farbtuhs v. Latvia*, 2004 § 53; *Dorneanu v. Romania*, 2017, § 77).

207. On the one hand, the Court found that the detention of a person with a severe disability constituted degrading treatment contrary to Article 3 in the following circumstances:

- the detention of an applicant who was eighty-four years of age, paraplegic and with a disability to the point of being unable to attend to most daily tasks unaided and who was assisted outside working hours by other – unqualified – inmates on a voluntary basis (*Farbtuhs v. Latvia*, 2004, §§ 56-61);

[12] For further details see the Guide on Article 3 - Prohibition of torture.
[13] For further details see the Guide on Prisoners' rights.

- a person with a severe disability was detained in inappropriate conditions where she was dangerously cold, risked developing sores because her bed was too hard or unreachable, and was unable to go to the toilet or keep clean without the greatest of difficulty (*Price v. the United Kingdom*, 2001, §§ 25-30);
- the detention of a person at an advanced stage of prostate cancer (certified as a severe disability) with declining health conditions leaving him deaf and blind and in overcrowded prison cells with poor hygiene (*Dorneanu v. Romania*, 2017, §§ 90-100).

208. On the other, the Court concluded that the applicant's visual impairment was not such as to make his continued detention incompatible with Article 3 of the Convention in the light of the findings of the domestic courts that the applicant walked around without any assistance, that he was able to read and sign documents and furthermore, that he took part in various social and educational activities, such as physical exercise, gardening and computer literacy classes. Moreover, he had never complained to the prison authorities of having difficulties in his daily life nor had he asked for any additional assistance (*Laniauskas v. Lithuania*, 2022).

b. Quality of care

209. Where the national authorities decide to place or keep a person with disabilities in detention, they should demonstrate special care in guaranteeing conditions corresponding to the special needs resulting from the detainee's disability (*Z.H. v. Hungary*, 2012, § 29; *Zarzycki v. Poland*, 2013, § 102; *Grimailovs v. Latvia*, 2013, § 151, with further references).

210. The Court has found a violation of Article 3 of the Convention in circumstances where unqualified people, fellow detainees and cellmates were assigned the responsibility to provide detainees with disabilities daily assistance, security and care, for instance, in the following cases:

- a person with a serious physical disability was left to rely on his cellmates for assistance with using the toilet, bathing and getting dressed or undressed (*Engel v. Hungary*, 2010, §§ 27 and 30; see also *Helhal v. France*, 2015, § 62; *Topekhin v. Russia*, 2016, § 86);
- the transfer of a prisoner with a disability for whom responsibility had been placed in the hands of gendarmes who were not qualified to foresee the medical risks involved in moving a person with disability (*Hüseyin Yıldırım v. Turkey*, 2007, § 84);
- the appointment of fellow inmates to care for the applicant was found to have seriously impeded his ability to participate in daily activities with the general prison population which, in turn, had precluded his integration and had stigmatised him even further (*Semikhvostov v. Russia*, 2014, § 84);

211. As regards the quality of treatment provided to detainees with disabilities, the Court considered that inadequate medical care, either in itself or together with the inadequate material conditions, constituted inhuman and degrading treatment in the following circumstances:

- a paraplegic detainee who had not been provided with adequate medication for chronic back pain for about two years (*Kupczak v. Poland*, 2011);
- a failure to take effective measures aimed at preventing the transmission of HCV and other contagious diseases in prison (*Machina v. the Republic of Moldova*, 2023);
- the Government's failure to organise an expert medical examination in disregard of the interim measure indicated by the Court and denying the applicant access to medical experts of his choice (*Amirov v. Russia*, 2014).
- a person confined to a wheelchair and suffering from paraplegia as well as a number of other health problems was detained in conditions where he did not have an unlimited and continuous supply of incontinence pads and catheters (*D.G. v. Poland*, 2013);

- a lack of physical and mental care for a detainee with disability, including providing a wheelchair only at his own expense (*Potoroc v. Romania*, 2020);
- the failure to provide a detainee with orthopaedic footwear after having parts of his feet amputated due to frostbite suffered while serving his life sentence (*Vladimir Vasilyev v. Russia*, 2012);
- the sanitary conditions of the prison facility were incompatible with the particular state of health of the applicant, who was obliged to use a catheter on a daily basis and had partial paralysis of the lower limbs (*Flamînzeanu v. Romania*, 2011).

c. Material conditions

212. The Court has assessed, not only the general conditions of detention, but also whether special measures had been taken to alleviate the hardships of detention of persons with disabilities and whether sufficient efforts were made to reasonably accommodate the prisoners' special needs (*D.G. v. Poland*, 2013). The Court has also found that the usual architectural or technical barriers in prison greatly affected the applicant, causing him physical and psychological pain and suffering (*Arutyunyan v. Russia*, 2012 §§ 77 and 81; *Cara-Damiani v. Italy*, 2012, § 70).

213. The Court has found a violation of Article 3 when:

- a person confined to a wheelchair, with paraplegia and a number of other health problems, was detained in prison which was not adapted for special-needs prisoners: the showers were not equipped with handrails, the applicant could not access the toilet in his wheelchair, his cellmates were to provide the necessary assistance, and he was unable to keep clean without the greatest difficulty (*D.G. v. Poland*, 2013);
- a person with a disability detained in a prison where he could not move around and, in particular, could not leave his cell independently (*Vincent v. France*, 2006, § 103; *Grimailovs v. Latvia*, 2013, §§ 157-162);
- for a period of almost fifteen months, the applicant, who had a disability and depended on a wheelchair for mobility, had been forced at least four times a week to go up and down four flights of stairs on his way to and from lengthy, complicated and tiring medical procedures that were vital to his health, which undoubtedly caused him unnecessary pain and exposed him to an unreasonable risk of serious damage to his health (*Arutyunyan v. Russia*, 2012, § 77);
- a person with a physical disability had been kept in solitary confinement for an excessive and unnecessarily protracted period, kept for at least seven months in a cell that failed to offer adequate protection against the weather, and kept in a location from which he could only gain access to outdoor exercise and fresh air by taking two flights of stairs (*Mathew v. the Netherlands*, 2005, §§ 219-215);
- the authorities' failure to obtain adequate assistance to inform a person, with a disability and with severe communication difficulties, of the reasons for his arrest (*Z.H. v. Hungary*, 2012);
- a person, who was deaf at birth, was not provided with a functioning hearing aid or any particular means of communicating with prison staff or fellow inmates for a total of approximately five years and was therefore *de facto* excluded from activities and services available for the general prison population (*Ābele v. Latvia*, 2017)
- a wheel-chair bound asylum seeker detained at a facility, pending his deportation, where he was denied some of the minimal necessities, such as sleeping on a bed and being able to use the toilet (*Asalya v. Turkey*, 2014);

- a person with muscular dystrophy (he is only able to move his head and hands) was made to wait in a car for hours outside the police station and his personal needs had to be attended to in public (*Shalyavski and Others v. Bulgaria*, 2017).

214. The Court found that the following situations had not reached the threshold of severity so as to amount to degrading treatment within the meaning of Article 3 of the Convention:

- a pro-active attitude of the prison administration vis-à-vis a prisoner with disability who had both his forearms amputated (basic mechanical prostheses had been available free of charge to him and a small refund of the cost of bio-mechanic prostheses had also been available). The Court thus considered that the authorities had provided the applicant with the regular and adequate assistance his special needs warranted (*Zarzycki v. Poland*, 2013);
- a person who was paraplegic and incontinent following a firearms injury was provided with adequate treatment under medical supervision and accommodation was made in the prison to improve the conditions of his detention. He was also assisted by fellow inmates in performing everyday tasks and had not complained that the assistance he received was inadequate nor had he requested a carer (*Ürfi Çetinkaya v. Turkey*, 2013);
- the delay in the applicant undergoing surgery for his spinal problems, albeit significant, was not attributable to the authorities but rather to the applicant's own attitude, and to independent factors and unpredictable developments (*Normantowicz v. Poland*, 2022).

2. Mental disability

215. Like prisoners with physical disabilities, detainees with mental disorders may require special medical care and treatment for their deprivation of liberty to be compatible with Article 3 of the Convention. The assessment of whether particular conditions of detention are incompatible with the standards of Article 3 has to take into consideration the vulnerability of those persons and, in some cases, their inability to complain coherently or at all about how they are being affected by any particular treatment (see, for example, *Herczegfalvy v. Austria*, 1992, § 82; *Aerts v. Belgium*, 1998, § 66; *Murray v. the Netherlands* [GC], 2016, § 106). The conditions of detention must under no circumstances arouse in the detainee feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. On this point, the Court has recognised that detainees with mental disorders are more vulnerable than ordinary detainees, and that certain requirements of prison life pose a greater risk that their health will suffer, exacerbating the risk that they suffer from a feeling of inferiority, and are necessarily a source of stress and anxiety. It considers that such a situation calls for increased vigilance in reviewing whether the Convention has been complied with (*Sławomir Musiał* v. *Poland*, 2009, § 96; *Rooman v. Belgium* [GC], 2019, 145).

216. In determining whether the detention of a mentally ill person is compatible with Article 3 of the Convention, the Court has taken into consideration two elements: in the first place, the individual's health and the effect on it of the manner of execution of his or her detention, and secondly, the availability of adequate medical care (*Niort v. Italy,* 2025, §§ 81-82). The Court has held that, while there is no general obligation to release a prisoner on health grounds, in certain situations compliance with Article 3 may require the release of a prisoner or their transfer to a care facility. In any event, the domestic authorities must examine, in a sufficiently rigorous manner, the compatibility of a detainee's state of health with detention in prison (*ibid*., §§ 95, 98-99 and 104).

217. In assessing the health of detainees and the effect of detention on it, the Court may have regard to the medical documents submitted in the domestic proceedings indicating the aggravation of pre-existing disorders due to detention (*Niort v. Italy*, § 88). In particular, the Court has recognised that while detention in a high-security prison facility does not, of itself, raise an issue under Article 3 of the Convention, the risk of a significant deterioration in the applicant's mental and physical health arising from the conditions of detention in a maximum security prison is liable to aggravate his illness

(paranoid schizophrenic). It thus may give rise to a breach of Article 3 of the Convention (*Epure v. Romania,* 2021, §§ 72-76).

a. Medical treatment

218. The Court has consistently held that Article 3 requires States to ensure that the health and well-being of prisoners are adequately secured by, among other things, providing them with the requisite medical assistance (see, among many other authorities, *Kudła v. Poland* [GC], 2000; *Sławomir Musiał* v. *Poland*, 2009, § 87; *Murray v. the Netherlands* [GC], 2016, § 105). While it is for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who are incapable of deciding for themselves, and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3, whose requirements permit of no derogation.

219. A lack of appropriate medical care for persons in custody is therefore capable of engaging the State's responsibility under Article 3 (*Naumenko v. Ukraine*, 2004, § 112).

220. Where a credible and reasonably detailed description of the allegedly degrading conditions of detention is considered to constitute a *prima facie* case of ill-treatment the burden is on the Government to collect and produce relevant documents (*Miranda Magro v. Portugal,* 2024, § 71, and *Niort v. Italy,* 2025, § 99). Thus, the Court was prepared to accept the applicant's account of the conditions of his detention, where the Government did not provide medical reports or the applicant's therapeutic plan to demonstrate that the applicant had received individualised, continuous and specialised treatment and care (*ibid*., § 77).

221. The 'adequacy' of medical assistance remains the most difficult element to determine. The mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate. The authorities must also ensure that a comprehensive record is kept (concerning the detainee's state of health and his or her treatment while in detention), that diagnosis and care are prompt and accurate, and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis. The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through. Furthermore, medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities *Rooman v. Belgium* [GC], 2019, § 147).

222. Detaining a person with an intellectual disability in the psychiatric wing of a prison without appropriate medical care and over a significant period, without any realistic prospect of change, has been found to constitute particularly acute hardship that amounted to degrading treatment contrary to Article 3 (*Claes v. Belgium*, 2013). In *Claes v. Belgium*, 2013, the Court considered that the applicant's situation stemmed from a structural problem. The support provided to persons detained in prison psychiatric wings was inadequate and placing them in facilities outside prison often proved impossible either because of the shortage of places or because the relevant legislation did not allow the mental-health authorities to order placement in external facilities (see also, on the same structural problem, *W.D. v. Belgium*, 2016; and, in relation to a comparable situation in Albania, *Strazimiri v. Albania*, 2020).

223. The Court held that when the applicant with epilepsy and with slight to moderate mental impairment, who had frequent seizures, aggressive behaviour and complete loss of self-control was only assisted by various fellow inmates without the necessary qualifications or medical training, the lack of specialised assistance must have given rise to considerable anxiety. In addition, the fact that

the applicant was frequently in a situation of inflicting self-harm, even when under specialised supervision, evidenced the absence of an assessment of his medical needs and of a comprehensive therapeutic treatment (*Epure v. Romania,* 2021).

224. The Court has found a violation of Article 3 where a detainee with a chronic mental disorder, which involved psychotic episodes and feelings of paranoia, was placed in prison with ordinary prisoners, was treated like other inmates and, given the lack of relevant facilities and medicines, only received in-patient treatment in the prison hospital when his conditioned worsened (*Dybeku v. Albania*, 2007).

225. Where the treatment cannot be provided in the place of detention, Article 3 may go so far as to impose an obligation on the State to transfer prisoners with mental illnesses to special facilities to receive adequate treatment (*Raffray Taddei v. France*, 2010, § 63).

226. The Court also found a breach of Article 3 of the Convention on account of repeated transfers of a prison with schizophrenia to and from a psychiatric hospital (*G. v. France*, 2012).

b. Treatment of prisoners presenting risk of suicide

227. Suicidal tendencies should call for specific attention when dealing with mentally ill detainees (*Keenan v. United Kingdom*, 2001; *Rivière v. France*, 2006). Where the Court has concluded under Article 2 that, on the whole, the authorities responded in a reasonable way to a detainee's conduct and took appropriate steps to safeguard their lives, it has also considered whether the standard of care provided fell to be examined under Article 3 of the Convention.

228. The lack of effective monitoring of a person's condition by a psychiatrist, as well as the lack of informed psychiatric input into his assessment and treatment, disclose significant defects in the medical care provided to a mentally ill person known to be a suicide risk (*Keenan v. United Kingdom*, 2001). In this regard, the lack of supervision of a detainee with mental disorders who had made several attempts to commit suicide, combined with his placement in an isolation cell for three days as a disciplinary measure, was found to constitute degrading treatment contrary to Article 3 of the Convention (*Jeanty v. Belgium*, 2020).

229. Likewise, in *Renolde v. France*, 2008, the Court found that, although the authorities had known from the moment a prisoner had made a first suicide attempt that he was suffering from acute psychotic disorders capable of resulting in self-harm, they should at the very least have provided medical treatment corresponding to the seriousness of his condition and made sure he was taking his daily medication. Furthermore, giving him the maximum penalty of 45 days' detention in a punishment cell had isolated him and deprived him of visits and all activities, thereby aggravating the risk of suicide.

230. Article 3 was also found to have been breached where the authorities had failed to implement and provide a coherent and appropriate therapeutic strategy capable of responding adequately to the mental illness of the applicant, who was in a situation of self-harm, even when under specialised supervision (*Epure v. Romania*, 2021; *Rooman v. Belgium* [GC], 2019).

3. Life prisoners

231. Life prisoners who have been held to be criminally responsible for the offences of which they have been found guilty – and who are therefore not considered "persons of unsound mind" within the meaning of Article 5 § 1 (e) of the Convention – may nevertheless have certain mental-health issues. In this regard, see the Guide on Article 3 - Prohibition of torture (Life imprisonment).

B. Conditions in care homes and hospitals

232. When a person's placement in a social care home – or psychiatric hospital – amounts to a deprivation of liberty within the meaning of Article 5 of the Convention, Article 3 can apply as it prohibits the inhuman and degrading treatment of anyone in the care of the authorities. The prohibition of ill-treatment in Article 3 applies equally to all forms of deprivation of liberty, and in particular makes no distinction according to the purpose of the measure in issue: it is immaterial whether the measure entails detention ordered in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned (*Stanev v. Bulgaria*, 2012, § 206).

233. Where the authorities decide to place and keep in detention a person with a mental illness, they should demonstrate special care in guaranteeing conditions which correspond to the person's special needs resulting from his or her disability (*Petrosyan v. Armenia,* 2025, § 109). The same applies to persons who are placed involuntarily in psychiatric institutions (in the context of Article 2, see *Fernandes de Oliveira v. Portugal* [GC], 2019, § 113). In the case of mentally ill patients, consideration must be given to their particular vulnerability (*Hiller v. Austria,* 2016, § 48).

234. The lack of financial resources is not a relevant argument to justify keeping a person with disability in inadequate living conditions such as: inadequately heated building, access to a shower only once a week in unhygienic and dilapidated bathrooms, and insufficient and poor-quality food. Additional elements, such as the social care home not returning clothes to the same people after they were washed, are also likely to arouse a feeling of inferiority in the residents (*Stanev v. Bulgaria,* 2012, §§ 209-210).

235. The Court has also examined the placement of a minor with mental disability, who was deaf and unable to speak, in a home where the personnel were not qualified to communicate with him, the facilities were not suited to his hyperactivity and his regular supervision could not be ensured. These factors necessarily resulted in a finding that the minor's placement was inappropriate and that he lacked requisite care and these factors, as well as the fact that the applicant was regularly tied to his bed, constituted a violation of Article 3 of the Convention (*L.R. v. North Macedonia,* 2020, §§ 79, 82-83).

236. The Court had found a violation of Article 3 in *Clipea and Grosu v. the Republic of Moldova,* 2024, on account of the material conditions in a psychiatric hospital, where the applicants – *de facto* involuntary patients – stayed for three to four weeks. The Court established that the prohibition of access to walks in the fresh air for an extended period, the lack of a proper shower in healthy conditions and the lack of assistance to maintain personal hygiene may constitute degrading or inhuman treatment, especially in light of the applicants' particular vulnerability as persons with intellectual disabilities and as persons on *de facto* involuntary treatment (§§73-77).

C. Ill-treatment in detention

237. The Court has been called upon to rule on cases of alleged ill-treatment resulting in the disability of a detainee[14]. When examining these cases, the Court is sensitive to the position of inferiority and powerlessness of, for example, patients confined in psychiatric hospitals, stating that it calls for increased vigilance in reviewing whether the Convention has been complied with (*Aggerholm v. Denmark,* 2020, §§ 82-83).

[14] As regards the obligation to conduct effective investigation into allegations of ill-treatment in detention, see Chapter on Legal protection.

1. Use of physical restraints in psychiatric treatment

238. In respect of the use of measures of physical restraint on patients in psychiatric hospitals, the developments in contemporary legal standards on seclusion and other forms of coercive and non-consensual measures against patients, with psychological or intellectual disabilities in hospitals and all other places of deprivation of liberty, require that physical restraint on patients be employed as a matter of last resort, when their application is the only means available to prevent immediate or imminent harm to the patient or others. Furthermore, the use of such measures must be accompanied by adequate safeguards against any abuse, provide sufficient procedural protection and be capable of demonstrating sufficient justification that the requirements of ultimate necessity and proportionality have been complied with and that all other reasonable options have failed to satisfactorily contain the risk of harm to the patient or others. In addition, it is also a requirement that the restraint measure is not prolonged beyond the period which was "strictly necessary", and that it is for the State to demonstrate convincingly that this condition was met (*Aggerholm v. Denmark,* 2020, § 84). The requirement for a meaningful assessment of the imminence or immediacy of the danger of harm in order to decide on the prolongation of restraint entails that medical staff make such assessments with sufficient frequency throughout the application of the measure (*Lavorgna v. Italy*, 2024, § 123).

239. In its early case-law, the Court considered that it was for the medical authorities to decide on the therapeutic methods to be used for patients entirely incapable of deciding for themselves and even prolonged and repeated mechanical restraint did not amount to inhuman or degrading treatment (*Herczegfalvy v. Austria*, 1992, § 82).

240. However, in recent cases the Court has found a violation of Article 3 in the following circumstances:

- a person was admitted against her will to a psychiatric clinic where she was strapped to a restraint bed, whereas her alleged aggression was only indicated in her record after the measure had already been used, and the records did not suggest that she had attempted to attack anyone (*M.S. v. Croatia (no. 2)*, 2015);
- a fragile person of slight build having a mental illness was taken to a sobering-up centre in a state of intoxication and was immediately strapped to a restraint bed for several hours, due to alleged "restlessness" and subsequently due to his allegedly aggressive behaviour towards a male nurse, without this being reported to the police or documented anywhere in the applicant's file (*Bureš v. the Czech Republic,* 2012);
- a person was strapped to a restraint bed for almost twenty-three hours and the domestic authorities failed to demonstrate that it was the only means available and that its duration was "strictly necessary" to prevent immediate or imminent harm to others (*Aggerholm v. Denmark*, 2020);
- an child of eight years of age was tied to his bed at night, and frequently during the day, for about a year and nine months to prevent him from running away from a rehabilitation institute (*L.R. v. North Macedonia,* 2020);
- a person was mechanically restrained for almost eight days in a hospital psychiatric ward without any evidence of a reassessment of the necessity for the restraints in the medical register (*Lavorgna v. Italy*, 2024 §§ 125-129).

241. Restrained patients must also be under close supervision and checks are to be performed at regular intervals. Every use of restraint must be properly recorded, and medical records properly kept facilitating any subsequent review of whether the use of restraining measures was justified (*Bureš v. the Czech Republic*, 2012, §§ 101-103). The Court further considers that the requirement for a meaningful assessment of the imminence or immediacy of the danger of harm in order to decide on the prolongation of restraint entails that medical staff make such assessments with sufficient frequency throughout the application of the measure.

242. Where an individual raises an arguable claim of ill-treatment under Article 3 of the Convention, the notion of an effective remedy entails, on the part of the State, a thorough and effective investigation capable of leading to the identification and punishment of those responsible. The same applies to allegations of ill-treatment in the context of psychiatric internment where physical restraint has been used against the applicant (*M.S. v. Croatia (no.2)*, 2015, § 75) (For further details see Chapter on Legal protection).

2. Use of force and handcuffing

243. Handcuffs or other instruments of restraint do not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with a lawful detention and does not entail the use of force, or public exposure, exceeding what is reasonably considered necessary (*Kucheruk v. Ukraine*, 2007, § 139).

244. Handcuffing a person in front of his family and forcibly escorting him to an involuntary psychiatric examination can constitute degrading treatment contrary to Article 3 of the Convention where there was no serious cause to fear that the person concerned might abscond or resort to violence and where his vulnerability as a mentally-ill person had not been not taken into consideration (*Pranjić-M-Lukić v. Bosnia and Herzegovina*, 2020).

245. The handcuffing of a detainee with a mental disorder for seven days while in solitary confinement cannot be justified by the danger posed by the person to his surrounding or by the need to prevent him harming himself. Prison authorities take the advice of a psychiatrist as to either the future treatment of the applicant or his fitness for such measures and the psychiatrist should carry out a follow-up supervision of the necessity of the measure (*Kucheruk v. Ukraine*, 2007, § 141).

246. The Court found that the use of force (truncheons) by prison guards to put an end to the agitated behaviour of a detainee with a mental disorder was unjustified, given that such behaviour was not an unexpected development to which the authorities might have been called upon to react without prior preparation and that the detainee showed no signs of danger to the health of the guards or cellmates (*Kucheruk v. Ukraine*, 2007, § 132).

3. Solitary confinement

247. The Court's standards on solitary confinement are presented in the Guide on Prisoners' rights. In *Ghazaryan and Bayramyan v. Azerbaijan*, the Court found that the solitary confinement of the applicant's son, who had a mental illness, amounted to inhuman and degrading treatment contrary to Article 3, as it was neither necessary, nor appropriate. The Court had regard, in particular, to the absence of any decision or documents enabling it to verify the necessity of the measure, such as whose safety it aimed to ensure, whether it was reviewed at any point in time or whether the applicants' son was informed of any of the reasons for the measure.

4. Ill-treatment by other detainees

248. States are also required to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals. Those measures should provide effective protection, in particular, of children and other vulnerable persons, and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge (*I.E. v. the Republic of Moldova*, 2020, §§ 38-39).

249. A minor, suspected to have a mental disability and placed for the first time in detention, is clearly in a particularly vulnerable position. By placing him in a cell with persons already convicted of very serious, violent offences, and given the insufficient reaction to clear and medically confirmed indications of ill-treatment (sexual abuse and beating), the authorities failed to discharge their positive obligation to protect him (*I.E. v. the Republic of Moldova*, 2020).

5. Ill-treatment by authorities resulting in disability

250. In *Badalyan v. Azerbaijan*, 2021, the applicant complained under Article 3 of the Convention that he was ill-treated during his twenty-two-month detention, leaving him with serious mental-health issues upon release. Before the Court, the applicant did not present proof of physical injuries. However, the Court found that the applicant has established a *prima facie* case that his symptoms of mental health injuries, detected immediately after his release, concerned his time in custody (§ 44). Furthermore, the applicant had given a detailed and consistent account of the facts. Under those circumstances, the burden was on the Government to provide a satisfactory and convincing explanation which casts doubt on the applicant's account (§§ 37-44). Since such an explanation was lacking, the Court found a violation of Article 3 of the Convention.

251. In *Savin v. Ukraine*, 2012, ill-treatment by the police had left the applicant with a disability. In assessing the treatment to which he had been subjected in custody, the Court referred to the findings of the domestic investigation and the medical experts. Those findings were sufficient for the Court to conclude that the applicant had been subjected to torture. It took into account the severity of the ill-treatment, which had impaired the applicant's health to such an extent that he had become disabled, and its intentional nature as the aim had been to extract a confession.

VI. Legal protection[15]

Article 6 of the Convention

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

Article 2 of the Convention

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

..."

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Applicability of Article 6

252. The Court has been called upon to decide whether confinement in psychiatric hospitals constituted a determination of civil rights and obligations or of a criminal charge. In some cases, concerning proceedings for the involuntary placement of mentally-ill offenders in a psychiatric hospital, the Court did not consider that Article 6 § 1 of the Convention applied under its criminal head (*Antoine v. the United Kingdom* (dec.), 2003; and *Kerr v. the United Kingdom* (dec.), 2003). The applicants were unfit to plead and stand trial, leading to the discontinuation of the criminal trial against them, without conviction or punitive sanction. As the decision on the placement in a psychiatric hospital pursued preventive purposes, the Court considered that these proceedings did not concern the determination of a criminal charge within the meaning of Article 6 § 1 of the Convention.

[15] For further details see the Guide on Article 6 - Right to a fair trial (civil limb).

253. By contrast, in cases where the internment of mentally-ill offenders in a psychiatric hospital was ordered by the criminal courts in the proceedings whose task was, in substance, to establish whether the applicant had committed a wrongful act and whether at that time he could be held criminally liable for his act, the Court considered that Article 6 § 1 applied under its criminal limb on the grounds that the practical situation of the applicants was essentially similar to a suspect or accused in criminal proceedings (*Vasenin v. Russia,* 2016 with reference to *Valeriy Lopata v. Russia,* 2012) or because the domestic court was called to decide whether the applicant had committed the acts constituting a criminal offence and upon the applicant's criminal responsibility, both of which are elements of the determination of the criminal charge (*Hodžić v. Croatia,* 2019, § 50).

254. In cases concerning the internment of persons of unsound mind (non-offenders) in a psychiatric institution, the Court has examined a number of cases rather under Article 5 § 4 of the Convention, which provides for similar guarantees to those under Articles 6 but in the context of detention (see, for example, *K.C. v. Poland*, 2014, §§ 77-83; *Kaganovskyy v. Ukraine*, 2022, §§ 107-110). Exceptionally, in some other cases in this context, the Court found that Article 6 § 1 of the Convention applied under its civil limb, because "the right to liberty is a civil right" (*Aerts v. Belgium*, 1998) and explicitly dismissed the Government's objection of incompatibility *ratione materiae*, reasoning that the proceedings in issue concerned only the lawfulness of the detention without involving any related pecuniary claims (*Laidin v. France (no. 2),* 2003).

B. Disability and procedural accommodations

255. The purpose of procedural accommodations under the Court's case-law is to facilitate the role of persons with disabilities in legal proceedings, in keeping with the CRPD (*R.P. and Others v. the United Kingdom*, 2012, § 65). The Convention system requires that, in certain cases, the Contracting States take positive measures to guarantee effective compliance with the rights set out in Article 6 (*Vaudelle v. France,* 2001, § 52) and, from its early case-law, the Court has considered under Article 6 that special procedural safeguards may be called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (*Winterwerp v. the Netherlands*, § 60). Bearing in mind the requirement in the CRPD that State parties provide appropriate accommodation to facilitate the effective role of persons with disabilities in legal proceedings, it is necessary to take measures to ensure that a person's best interests are represented. A failure to take appropriate measures of accommodation might in itself amount to a violation of the right to a fair trial and Article 6 § 1 (*R.P. and Others v. the United Kingdom*, 2012, § 67) as well as other substantive rights under the Convention, including Articles 5 and 8 (see below). However, the Court's assessment also entails whether the lack of adjustment measures has an impact on the overall fairness of the proceedings (*F.S.M. v. Spain,* 2025, § 69, and *Krpelík v. the Czech Republic,* 2025, § 98).

256. The domestic authorities are to assess whether the personal circumstances of an individual prevent him or her from effectively participating at proceedings. In defining the circumstances where the authorities are required to make appropriate adjustments, the Court accepts the authorities' need to have sufficient indications of the person's particular vulnerability (*Hasáliková v. Slovakia*, 2021, § 69).

257. An intellectual disability is recognised as grounds, of itself, for particular vulnerability, especially when a person is involved in criminal proceedings; adult suspects or defendants with intellectual disabilities may therefore fall within the category of particularly vulnerable persons, irrespective whether their legal capacity has formally been restricted (*Krpelík v. the Czech Republic,* 2025, § 80). Such indications of vulnerability are however not present in case of an adult who, although with lower mental capacity, does not have any mental illness or disorder, is able to recognise the dangerousness of his or her actions, can foresee their consequences, and is assisted by a lawyer (*Hasáliková v. Slovakia*, 2021, §§ 66-70). The Court has reached a similar conclusion in *O'Donnell v. the United Kingdom*, 2015, where the trial judge gave sufficient weight to the medical evidence concerning the

accused's mental capacity to give evidence (§ 55). On the contrary, the Court has considered that, when a person was regarded as being incapable of acting alone on his own behalf in the conduct of his civil affairs, he should be regarded as being equally incapable of acting alone in the criminal proceedings and therefore is entitled to assistance to defend himself against a criminal charge (*Vaudelle v. France,* 2001, §§ 61-62).

258. The Court attached particular importance to the victim's vulnerability in the context of an investigation into the trafficking and/or servitude of a women with an intellectual disability. It held that, when deciding on the need for procedural accommodation and when interpreting the applicant's statements and possible contradictions, the domestic authorities should consider assessing her vulnerability, her support network and the availability of community services (*I.C. v. the Republic of Moldova,* 2025, § 170) .

259. In addition, as regards children with a mental illness, the Court has found that they were particularly vulnerable and thus require special protection under Article 6 (*Blokhin v. Russia* [GC], 2016, § 203). The Court has referred to the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, the United Nations Convention on the Rights of the Child, as well as to the General Comment No. 9 of the United Nations Committee on the Rights of the Child as guidelines for State obligations with respect to children with disabilities (*ibid*., §§ 80, 82-83, 203).

260. Being conscious of difficulties related to a person's disability , the domestic authorities are bound to take additional steps towards, or actively ensure in any appropriate way, the exercise of procedural rights (*Timergaliyev v. Russia,* 2008, § 58; *Krpelík v. the Czech Republic,* 2025, § 87). However, in circumstances where the applicant's mental capacity is not diminished to an extent of preventing him from understanding his procedural difficulties and where he is represented by a lawyer of his own choosing, it is up to them to assess the need for and request adjustment measures (*F.S.M. v. Spain,* 2025, § 66)

261. As regards the nature of the adjustment measures, the Court recognises that, in cases involving persons with mental disorder, the domestic courts should enjoy a certain margin of appreciation. It is for the domestic courts to make the relevant procedural arrangements to secure the proper administration of justice and the protection of the health of the person concerned (*Shtukaturov v. Russia*, 2008, § 68; *Stanev v. Bulgaria* [GC], 2012, § 230; *D.D. v. Lithuania*, 2012, § 117; *A.N. v. Lithuania*, 2016, § 89).

262. Such measures should not affect the very essence of the applicant's right to a fair trial as guaranteed by Article 6 of the Convention (*Stanev v. Bulgaria* [GC], 2012, § 230). In assessing whether or not a particular measure was necessary, the Court will take into account all relevant factors such as the nature and complexity of the issue before the domestic courts, what was at stake for the applicant and whether his appearance in person represented any threat to others or to himself (*Shtukaturov v. Russia*, 2008, § 68; see also *R.P. and Others v. the United Kingdom*, 2012, § 65).

263. The need to protect and safeguard the interest of a particularly vulnerable person with a mental disability may also entail the restriction of the procedural rights of third parties (*Evers v. Germany*, 2020, §§ 79-93).

264. Instead of deciding in the abstract whether domestic law is compatible with the Convention or whether domestic law has been complied with by the national authorities, the Court assesses whether, in the particular circumstances, "appropriate adjustments" were made to ensure that the applicant's rights under the Convention were protected. It has found that this was not the case in the following situations:

- *In the context of Article 6* in *Vaudelle v. France*, 2001, the Court found that the authorities had failed to order the applicant to attend the appointment with the psychiatrist, to appear at the hearing and, in the event of his failing to comply, arrange for him to be represented

by a supervisor or a lawyer (§ 65). These shortcomings had prevented him from understanding the proceedings and the nature and cause of accusations against him.

- *In the context of Article 6* in *Timergaliyev v. Russia*, 2008, the Court held that the authorities had failed to accommodate the needs of an accused with an extreme hearing disability who was thus prevented from following the proceedings effectively, undermining his defence rights (§§ 56-60).
- *In the context of Article 6* in *Krpelík v. the Czech Republic,* 2025, the Court examined whether the information provided on procedural rights was accessible to the applicant with an intellectual disability who had not been provided with any legal or other assistance. The Court held that it was unlikely that advice merely provided on a pre-printed form including domestic-law terms would have been enough to enable the applicant to sufficiently comprehend the nature of his rights and to exercise them effectively. The Court gave indications as to the procedural adjustments, including providing the applicant an easy-to-read version of the information on his rights and obligations, providing an intermediary to facilitate communication and make the information accessible, and arranging representation by a lawyer (§ 87).
- *In the context of Article 8 (procedural)* assessing whether the adoption proceedings respected the applicant's right to family life, the Court found a violation of Article 8 in *A.K. and L. v. Croatia*, 2013. The case concerned a mother with a mild mental disability, a speech impediment and limited vocabulary. While the domestic courts took these circumstances into account in considering whether she could teach her child to speak properly, they did not consider whether the same circumstances would prevent her arguing her case in proceedings before the national courts concerning her parental rights. As she could not properly understand the full legal effect of the proceedings and adequately argue her case and thus protect her rights and interests as the biological mother, the Court considered that the national authorities should have ensured that, in view of the importance of the proceedings at issue for her right to respect for her family life, the applicant's rights and interests were adequately protected. Their failure to do so led to a finding of a violation of Article 8 of the Convention.
- *In the context of Article 5 § 2* in the case of an applicant who was deaf, dumb, illiterate and had an intellectual disability, the Court found that, where police officers interrogating a person realised that no meaningful communication was possible in the situation, they should have taken truly "reasonable steps" (a notion considered akin to that of "reasonable accommodation" in Articles 2, 13 and 14 of CRPD) to address the applicant's condition. It found that the sole presence of a sign-language interpreter, where the applicant could not communicate through sign language and the signing of the minutes of the interrogation, could not be considered to provide the applicant with the information required to enable him to challenge his detention (*Z.H. v. Hungary*, 2012).

C. Access to court and procedural guarantees

1. Access to court

265. The right of access to a court is not absolute but may be subject to limitations (*Ashingdane v. the United Kingdom*, 1985, § 57). These are permitted by implication since the right of access "by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals" (*ibid*.). The Court has acknowledged that restrictions on the procedural rights of a person who has been deprived of legal capacity may be justified for that person's own protection, the protection of the interests of others and the proper administration of justice. A blanket ban on access to court cannot be considered as

measure of protection tailored to the individual needs of the person concerned as it does not allow the assessment of whether the person understands the meaning of the proceedings and whether he can act autonomously, including defending his rights before the courts, without causing disruption to the proper administration of justice or harm to himself or others (*Nikolyan v. Armenia*, 2019, §§ 90-91).

266. In *Nikolyan v. Armenia*, 2019, the applicant's divorce and eviction claims had never been examined by the domestic courts, since his guardian had withdrawn them. It was doubtful whether the applicant's son acting as a guardian was genuinely neutral and that no conflict of interests existed as regards specifically the applicant's claim filed against his wife seeking to divorce and evict her. The Court held that when procedural rights, including the initiation or termination of proceedings, are exercised by a third person (e.g. guardian), domestic courts are to carry out scrutiny and oversight when deciding to accept procedural steps taken by those persons (§§ 95-97).

267. An unduly formalistic refusal to reinstate appeal proceedings due to time-limits may lead to a violation of the right of access to a court in situations of particular vulnerability, such as a psychiatric patient, deprived of his liberty in a psychiatric hospital (*Marc Brauer* v. *Germany*, 2016, §§ 33-45). While time-limits need to be respected and enforced in the interest of legal certainty and the proper administration of justice, the Court stressed that, in exceptional cases, flexibility must be applied to ensure that access to court is not limited in breach of the provisions of the Convention (§ 42). To hold otherwise would be too formalistic and contrary to the principle of practical and effective application of the Convention (§§ 43-44).

268. The imposition of a considerable financial burden after the conclusion of proceedings may constitute a restriction on the right of access to a court guaranteed by Article 6 § 1 of the Convention. In *Zustović v. Croatia*, 2021, the applicant brought an action against an administrative decision denying her a disability pension. The administrative court, while ruling in her favour on the merits, dismissed her claim for the costs of the judicial review proceedings. With reference to Article 41 of the Convention, the Court held that it was for the State to bear the costs of the proceedings (§§ 98-101 and 109).

269. Similarly, in *Dragan Kovačević v. Croatia*, 2022, the applicant, who has a mental disability, made a constitutional complaint to challenge his deprivation of legal capacity. The Constitutional Court quashed the civil courts' decisions but dismissed the applicant's claim for reimbursement of costs. The Court found a violation of the applicant's right of access to a court in light of the significant financial burden of having to bear the costs of the constitutional proceedings while such proceedings had been of existential importance for him.

270. The Court further has held that a factual hindrance could contravene the Convention in the same way as a legal impediment and that that limitation on access to a court should not go as far as interfering with an individual's entitlement to a fair hearing (*Golder v. the United Kingdom*, 1975, § 26; *Farcaş v. Romania* (dec.), 2010, §§ 47-48). In *Farcaş v. Romania* (dec.), 2010, an applicant with a physical impairment complained that, owing to a lack of special facilities, it had been impossible for him to bring legal proceedings to challenge the termination of his contract, the refusal to grant him a personal assistant, and the amount of his disability pension. The complaint was deemed inadmissible, because neither the right of access to court nor the right of individual petition was hindered by insurmountable obstacles. The applicant could have brought proceedings before the courts or the administrative authorities by post, if necessary through an intermediary (§§ 51-55).

2. Adequate representation

271. In conducting judicial proceedings, States needs to ensure that the best interests of persons with disabilities, or persons restricted in their legal capacity, are represented (*R.P. and Others v. the United Kingdom*, 2012, § 67).

272. In *A.M.M. v. Romania*, 2012, in the context of paternity proceedings, both the applicant and his mother had severe disabilities and it was unclear whether the mother was in a position to fully defend her child's interests. However, the guardianship office, responsible for protecting the interests of minors and persons with disabilities, had not taken part in the judicial proceedings and neither the applicant nor his mother had been represented by a lawyer at any point. The Court found a breach of the State's positive obligation under Article 8 as the domestic courts did not take any procedural steps to secure the appearance of the guardianship office or to offset its absence by any other measures to protect the child's interests in the proceedings (such as the appointment of a lawyer or the attendance at the hearings of a member of the public prosecutor's office).

273. Should the legal capacity of a person with a disability be restricted and only his guardian has the capacity to act in court proceedings, the only proper and effective means of protection of his/her legal interests before the courts is through a conflict-free guardianship (*Nikolyan v. Armenia,* 2019, § 95).

274. The Court did not find, in *X v. Finland*, 2012 that the appointment of a guardian for the applicant by the court *ex proprio motu* against her will was in contravention of the requirements of a fair trial. The domestic authorities had found that the applicant was in need of legal assistance because of her mental illness, and she was given the opportunity to express her view on the matter in writing (*ibid.*). Similarly, the appointment of an "official solicitor", acting as a *guardian ad litem* with the right to instruct the applicant's lawyer, was considered to be in compliance with Article 6 since there were adequate safeguards in place to ensure that the nature of the proceedings was fully explained to the applicant and she could challenge the appointment of the official solicitor. The Court noted that representing the best interests of the applicant did not require advancing any argument the applicant wished (*R.P. and Others v. the United Kingdom*, 2012, §§ 73-75).

275. A waiver of the right to legal assistance need not be explicit, but it must be voluntary and constitute a knowing and intelligent relinquishment of a right. It can only be accepted if it was expressed unequivocally and after the authorities had taken all reasonable steps to ensure that the person with disability was fully aware of his rights and could appreciate, as far as possible, the consequences of his conduct. The Court clarified that this was not the case when a person with a certain level of intellectual disability is taken for questioning without any legal or other assistance, and if merely only informed of his procedural rights by a complex pre-printed form (*Krpelík v. the Czech Republic,* 2025, §§ 76 and 82-83).

276. The credible allegation that the applicant signed a waiver of his right to a lawyer when he was suffering from the mental and physical effects of drug addiction and from symptoms of withdrawal rendered the 'voluntary' nature of the waiver signed by the applicant open to doubt: the domestic courts must scrutinise the validity of the waiver and assess, for example, whether the police officers had indications that the applicant had an illness which led to the impossibility of accepting his waiver (*Bogdan v. Ukraine,* 2024, §§ 59 and 69).

3. Right to a hearing

277. The obligation under Article 6 § 1 to hold a public hearing is not an absolute one. In particular, disputes concerning benefits under social-security schemes may be better dealt with in writing than in oral argument as they are generally rather technical, and their outcome usually depends on written opinions given by medical doctors. Moreover, it is understandable that, in this sphere, the national authorities should have regard to the demands of efficiency and economy. Even though very specific and country-specific circumstances of a case can necessitate an oral hearing in the presence of the applicant or his legal representative, in particular where the courts need to assess not only law but facts (*Đurić v. Serbia*, 2024, § 81), it is not necessary to systematically hold an oral hearing, as it could be an obstacle to the to the particular diligence required in social-security matters (*Salomonsson v. Sweden,* 2002, § 38). Nevertheless, in proceedings before a court of first and only instance, the right to a "public hearing" under Article 6 § 1 generally entails an entitlement to an "oral hearing" unless

there are exceptional circumstances that justify dispensing with such a hearing (*Miller v. Sweden*, 2005, § 29 and the case-law cited therein). Where, for example, the degree of disability is not straightforward and could be clarified by a doctor at an oral hearing but the applicant was denied an oral hearing in proceedings for determining an entitlement to disability benefits, the Court found a violation of Article 6 § 1 of the Convention (*ibid.*, §§ 34-36).

278. The exclusion of a person with a mental disorder from a criminal trial "given her inability to participate usefully in the criminal proceedings" has a serious impact on other procedural rights, including the right to study the case file, to challenge the charges against her, to present evidence or on her placement in a psychiatric facility. The Court will scrutinise whether the trial court made a proper assessment in this regard, whether the alleged mental disorder had been confirmed and whether the domestic court had before it any evidence convincingly demonstrating that the applicant's mental condition and behaviour precluded her stating her case in open court and defending herself adequately. Even where the domestic court asserted that it was, for example, necessary to protect a minor witness, who was vulnerable, this could only justify an exclusion of the applicant during the examination of that witness, not from the whole trial (*L.T. v. Ukraine*, 2024, §§ 57-59).

4. Length of proceedings

279. The reasonableness of the length of proceedings, under Article 6 § 1 of the Convention, must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (*Mocie v. France*, 2003, § 22). Particular diligence is required when the applicant suffers from a serious and incurable illness and his state of health deteriorates rapidly (*Mocie v. France*, 2003, § 22; *Gheorghe v. Romania*, 2007, § 54). In a case where the applicant's disability pension made up the bulk of his resources, the proceedings by which he sought to have that pension increased in view of the deterioration of his health were of particular significance for him, justifying special diligence on the part of the domestic authorities (*Mocie v. France*, 2003, § 22).

5. Evidence

280. The admissibility of evidence is primarily a matter for regulation by national law and, as a general rule, it is for the national courts to assess the evidence before them. The Court's task under the Convention is rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (*Đurić v. Serbia*, 2024, § 69). The Court has, however, found that the national rules on the admissibility of evidence effectively constituted both a legal and a factual obstacle to the applicant having his claim properly examined, where national law provided that a person's disability could only be determined through the presentation of written evidence dating back to the time when the injury had been sustained, without the possibility of any exceptions being made in the particular circumstances of a case (*ibid.*, §§ 77-80).

a. Expert opinions

281. The principle of equality of arms, which is one of the elements of the broader concept of a fair hearing, requires each party to be given a reasonable opportunity to present its case under conditions that do not place it at a substantial disadvantage vis-à-vis its opponent (*Korošec v. Slovenia*, 2015, § 46, and the case-law cited therein).

i. Disability allowances

282. Since disability allowances and pensions fall outside the probable area of expertise of judges, an opinion of a medical expertis likely to have a preponderant influence on the assessment of the facts and to be considered as an essential piece of evidence (*Augusto v. France*, 2007, § 51; *Korošec*

v. Slovenia, 2015, § 47; *Letinčić v. Croatia*, 2016, § 51). The Court has recognised that a lack of neutrality on the part of an appointed expert may, in certain circumstances, give rise to a breach of the principle of equality of arms (see, for instance, *Sara Lind Eggertsdóttir v. Iceland*, 2007, § 47; *Placì v. Italy,* 2014, § 79; *Sarıdaş v. Turkey*, 2015, § 35; *Korošec v. Slovenia*, 2015, § 48).

283. The Court has found violations of Article 6 § 1 on account of non-compliance with the principle of equality of arms by taking into account three factors:

1. the nature of the task entrusted to the experts;
2. the expert's position within the hierarchy of the opposing party; and
3. their role in the proceedings, in particular the weight attached by the domestic court to their opinions (*Sara Lind Eggertsdóttir v. Iceland*, 2007, §§ 47-55; *Korošec v. Slovenia*, 2015, §§ 52-56; *Hamzagić v. Croatia*, 2021, § 43).

284. When the opinion of an expert is not ordered by the domestic courts, but the opinion is treated as an expert opinion in the pre-judicial administrative proceedings and, for all practical purposes, regarded by the domestic courts as expert medical evidence in the subsequent proceedings, similar questions arise as those related to the neutrality of court-appointed experts (*Korošec v. Slovenia*, 2015, § 51; *Letinčić v. Croatia*, 2016, § 60). It is primarily for the national courts to assess the evidence they obtain and the relevance of any evidence that a party wishes to have produced (*Hamzagić v. Croatia*, 2021, § 57). In this regard, the fact that an applicant was awarded a disability pension in one country is of no relevance in the proceedings before the authorities in another country, since the latter are tasked with examining whether the applicant's medical issues warrant granting him a disability pension under the criteria applicable in their country (*Hamzagić v. Croatia*, 2021, § 50).

285. While the fact that an expert charged with giving an opinion on a matter is employed by the same administrative authority involved in the case might give rise to a certain apprehension on the part of the applicant, what is decisive is whether the doubts raised by appearances can be held to be objectively justified (*Korošec v. Slovenia*, 2015, § 54; *Devinar v. Slovenia*, 2018, § 48; *Hamzagić v. Croatia*, 2021, §§ 44-46). In this connection, there is an obligation on the part of the litigant to substantiate, to the minimum necessary degree, her request for the appointment of an independent expert (*Devinar v. Slovenia*, 2018, §§ 57-58). The Court has, for instance, found it unproblematic that the experts who submitted an opinion in a case were not specialists in psychiatry, or in any of the other particular illnesses suffered by the applicant (*Hamzagić v. Croatia*, 2021, § 54). Their task was not to diagnose and treat the applicant's illnesses, but to assess, on the basis of the medical documentation prepared by medical specialists who diagnosed and treated the applicant, their effect on the applicant's ability to work.

ii. Assessment of criminal liability

286. The outcome of criminal proceedings may depend solely on the factual question of the applicant's mental state at the time of offence. In *Gaggl v. Austria*, 2022, the Court was called upon to examine whether the applicant's criminal trial had been unfair: there had been two expert opinions both confirming the same diagnosis (the applicant had delusional disorder) but came to diametrically opposite conclusions as to whether she could be held criminally liable at the time of the events. Given the unforeseeable application of domestic law as to which expert opinion would be considered decisive and why the applicant's request for a third expert opinion was to be refused, the domestic courts deprived the applicant of the opportunity to challenge the evidence effectively, significantly impairing her rights to defence, thereby undermining the overall fairness of the trial against her, in breach of Article 6 of the Convention.

iii. Assessment of mental capacity

287. The opinion of an expert is likely to play a decisive role in both incapacity proceedings and in proceedings for the restoration of legal capacity where the person's most basic rights under Article 8 are at stake. Therefore, the expert's neutrality becomes an important requirement which should be given due consideration. Lack of neutrality may result in a violation of the equality of arms guarantee under Article 6 of the Convention (*Lashin v. Russia,* 2013, § 87). In a situation where the court did not see the person concerned personally and did not obtain a fresh assessment of his mental condition by an independent expert but relied on the expert opinion of the hospital where the applicant was involuntarily treated, the conclusion concerning the need for incapacitation cannot be considered reliable (*ibid*., § 89).

6. Specific contexts

a. Deprivation of liberty

288. The procedural guarantees in proceedings for involuntary committal need not always be the same as those required under Article 6 § 1 of the Convention for civil or criminal litigation (*B.M. v. Spain,* 2025, § 58). Nonetheless, domestic courts must subject deprivations of liberty of persons of unsound mind to thorough scrutiny so that the detained persons enjoy effective procedural safeguards against arbitrary detention in practice (*ibid*., § 45). In the light of the vulnerability of individuals suffering from mental disorders and the need to adduce very weighty reasons to justify any restriction of their rights, the proceedings resulting in the involuntary placement of an individual in a psychiatric facility must necessarily provide clearly effective guarantees against arbitrariness. This position is supported by the fact that hospitalisation in a specialised medical institution frequently results in an interference with an individual's private life and physical integrity through medical interventions against the individual's will (*Mifobova v. Russia,* 2015, § 55).

289. In particular, when an applicant clearly and undisputedly refuses to undergo psychiatric treatment, her or his effective participation in the proceedings is indispensable for a "fair and proper procedure". It is the national court's duty to inquire whether the person expressed a wish to attend the hearing and to have regard to his or her statement that he or she would like to benefit from the assistance of legal counsel and to participate in the hearing (*Mifobova v. Russia.,* §§ 58 and 62). An individual confined in a psychiatric institution because of his or her mental condition should, unless there are special circumstances, actually receive legal assistance in the proceedings relating to the continuation, suspension or termination of his or her confinement, given the importance of what is at stake for him or her, taken together with the very nature of the affliction. It is not for the person committed to care to take the initiative to obtain legal representation (*B.M. v. Spain,* 2025, § 59).

290. The issue of medication and its effects on applicant's ability to meaningfully participate in the hearing requires careful consideration by both mental health professionals and the courts, as it might make it difficult for the authorities to properly assess a person's mental state and conduct and to the patient to communicate with his representative (*Martinez Fernandez v. Hungary,* 2025, §§ 71-73).

291. The Court considered that the national authorities failed to secure the legal assistance that was necessary, where the applicant was represented in the involuntary hospitalisation proceedings, in the first place, by an employer of the department for healthcare who abstained from presenting any arguments or questions and, subsequently, by her son who had been diagnosed with schizophrenia and who had failed to appear at the hearing (*Mifobova v. Russia*, §§ 60 and 61).

292. As to the quality of legal assistance, the Court has given weight to the fact that, during proceedings concerning involuntary hospitalisation, the lawyer appointed by the applicant "represented" the applicant without even having seen or talked to him (*A.N. v. Lithuania,* 2016, § 104). The Court also concluded a violation of Article 5 § 1 of the Convention where the guardian *ad litem* failed to visit the applicant before the hearing on her involuntary hospitalisation, did not familiarise

himself with the circumstances of the applicant's hospitalisation, made no submissions on the applicant's behalf and endorsed the need for involuntary hospitalisation, irrespective of the applicant's wishes (*Martinez Fernandez v. Hungary*, 2025, §§ 66-69).

b. Possibility of judicial review (Article 5 § 4)

293. Article 5 § 4 of the Convention guarantees a remedy that must be accessible to the person concerned and must afford the possibility of reviewing compliance with the conditions to be satisfied if the detention of a person of unsound mind is to be regarded as "lawful" for the purposes of Article 5 § 1 (e). The Convention requirement, that a deprivation of liberty be amenable to independent judicial scrutiny, is of fundamental importance in the context of the underlying purpose of Article 5 of the Convention to provide safeguards against arbitrariness. What is at stake is both the protection of the physical liberty of individuals and their personal security (*Stanev v. Bulgaria* [GC], 2012, § 170, and *N. v. Romania*, 2017, § 186, *B.D. v. Belgium,* 2024, § 48).

294. Thus, while the Court has accepted that the forms of judicial review may vary from one domain to another, and depend on the type of deprivation of liberty in issue, it found a violation of Article 5 § 4 where the domestic law prevented the applicant from pursuing independently any legal remedy of a judicial character to challenge his continued detention (*Shtukaturov v. Russia,* 2008, § 123).

295. In the case of detention on the ground of mental illness, special procedural safeguards may be called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (*Stanev v. Bulgaria* [GC], 2012, § 170, and *N. v. Romania*, 2017, § 186). Among the principles emerging from the Court's case-law under Article 5 § 4 concerning those procedural safeguards are the following:

a. a person detained for an indefinite or lengthy period is, in principle, entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention;

b. Article 5 § 4 requires the procedure followed to have a judicial character and to afford the individual concerned guarantees appropriate to the kind of deprivation of liberty in question. In order to determine whether proceedings provide adequate guarantees, regard must be had to the particular nature of the circumstances in which they take place;

c. the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation (*Stanev v. Bulgaria* [GC], 2012, § 171; *Megyeri v. Germany*, 1992, § 22; *N. v. Romania*, 2017, § 187).

296. It follows that an individual confined in a psychiatric institution because of his mental condition should, unless there are special circumstances, receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his confinement, given the importance of what is at stake for him, taken together with the very nature of his affliction (*M.S. v. Croatia (no. 2)*, 2015, § 153; *N. v. Romania*, 2017, § 196). Article 5 § 4 does not require that persons committed to care under the head of "unsound mind" should themselves take the initiative in obtaining legal representation before having recourse to a court (*Megyeri v. Germany*, 1992, § 22; *M.S. v. Croatia (no. 2)*, 2015, § 153).

297. However, assigning counsel does not in itself ensure the effectiveness of the assistance he or she may afford an accused, because an effective legal representation of persons with disabilities requires an enhanced duty of supervision of their legal representatives by the competent domestic courts (*N.*

v. Romania, 2017, § 196; *M.S. v. Croatia (no. 2)*, 2015, § 154; *V.K. v. Russia*, 2017, § 40). Since under Article 6 § 3 (c) of the Convention the right to legal assistance ought to be practical and effective, not theoretical or illusory, and while a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes, national authorities are required to intervene under Article 6 § 3 (c) if a failure by a legal aid lawyer to provide effective representation is manifest or sufficiently brought to their attention in some other way (*V.K. v. Russia*, 2017, § 35).

298. With respect to the length of review proceedings, even an exceptional degree of complexity of the medical file does not relieve the national authorities of their essential obligations under Article 5 § 4. Moreover, the primary responsibility for delays caused by the order of an expert's report rests with the State (*Derungs v. Switzerland*, 2016, § 47).

c. Legal capacity

299. Complaints related to the proceedings leading to the deprivation of the legal capacity of persons with disabilities have either been examined under Article 8 (*Ivinović v. Croatia,* 2014; *Shtukaturov v. Russia*, 2008) or Article 6 of the Convention (*X and Y v. Croatia*, 2012). In *A.A.K. v. Türkiye*, 2023, the Court clarified that the difference between the aim pursued by the guarantees of Article 6 § 1 and that pursued by the guarantees of Article 8 does not necessarily justify an examination of the facts under each of those two provisions (§ 50). In determining whether or not the incapacitation proceedings had been fair, the Court had regard, *mutatis mutandis*, to its case-law under Article 5 §§ 1 (e) and 4 of the Convention (*Shtukaturov v. Russia*, 2008, § 66).

300. States must provide adequate procedural safeguards to ensure that persons with mental disabilities are able to participate in incapacitation proceedings and that the process is sufficiently individualised to meet their unique needs (*Shtukaturov v. Russia*, 2008, §§ 94-96; *N. v. Romania (no. 2)*, 2021, § 74). Persons with mental disabilities must have a clear, practical and effective opportunity to have access to court in connection with their incapacitation proceedings (*A.N. v. Lithuania*, 2016, § 105). Strict scrutiny is called for where measures that have such adverse effect on an individual's personal autonomy, such as deprivation of legal capacity has, are at stake (*Ivinović v. Croatia*, 2014, § 37).

301. Similarly, when it comes to the restoration of legal capacity, the Court has held that the right to ask a court to review a declaration of incapacity is one of the most important rights for the person concerned since such a procedure, once initiated, will be decisive for the exercise of all the rights and freedoms affected by the declaration of incapacity, not least in relation to any restrictions that may be placed on the person's liberty. Such persons should, in principle, enjoy direct access to the courts in this sphere (*Stanev v. Bulgaria* [GC], 2012, § 241; *Kędzior v. Poland*, 2012, § 89; *A.N. v. Lithuania*, 2016, §§ 100-104 and 126; *E.T. v. the Republic of Moldova,* 2024, § 42). It may also be appropriate in cases of this kind that the domestic authorities establish after a certain lapse of time whether such a measure continues to be justified. Re-examination is particularly justified if the person concerned requests it (*Matter v. Slovakia*, 1999, §§ 51 and 68; *A.N. v. Lithuania*, 2016, § 126).

302. Moreover, a change of legal guardian must be accompanied by safeguards that are commensurate with the gravity of the interference and the seriousness of the interests at stake. The Court therefore found a violation of Article 8 of the Convention where the applicant had no say in the proceedings leading to the appointment of a new guardian (*N. v. Romania (no. 2)*, 2021, §§ 68-74).

303. A failure to serve on a person a court decision depriving them of their legal capacity may raise an issue of the fairness of the incapacitation proceedings (*X and Y v. Croatia*, 2011, § 92; *A.N. v. Lithuania*, 2016, §§ 100-101).

304. Similarly to proceedings related to deprivation of liberty, a "person of unsound mind" must be allowed to be heard either in person or, where necessary, through some form of representation in proceedings concerning their legal capacity (*Shtukaturov v. Russia*, 2008, § 71). Indeed, such a person

plays a double role in the proceedings: as an interested party, and, at the same time, as the main object of the court's examination. That person's participation is therefore necessary not only to enable them to present their own case, but also to allow the judge to form their personal opinion about the applicant's mental capacity (*ibid.*, § 72; and *M.T.S. and M.J.S. v. Portugal,* 2024, § 85). Therefore, judges adopting decisions with serious consequences for a person's private life, such as those entailed by divesting someone of legal capacity, should in principle also have personal contact with those persons (*X and Y v. Croatia*, 2011, § 84) and not base their decisions merely on written submissions (*M.T.S. and M.J.S. v. Portugal,* 2024, § 83). A simple assumption that a person suffering from schizophrenia must be excluded from the proceedings is insufficient (*Lashin v. Russia,* 2013, § 82).

305. On that basis, the Court found a violation of Articles 6 and 8 of the Convention in cases where a person was deprived of their legal capacity without their knowledge or participation in the proceedings (*Shtukaturov v. Russia*, 2008; *X and Y v. Croatia*, 2011; *A.N. v. Lithuania*, 2016).

306. A person should be considered to have been sufficiently involved in the decision-making process to enable him/her to defend his/her case, but also to enable the court to form its own opinion on his/her mental capacity, where the applicant participated at the court hearings, his/her statements were heard, he/she could provide an explanation of her medical examination, request the re-examination of her mental capacity, challenge the expert opinion and participate in the closure of the proceedings (*A.A.K. v. Türkiye*, 2023, §§ 71-73).

307. Article 8 may require the authorities to provide the assistance of a lawyer where this proves indispensable for effective access to a judge taking into account precisely the seriousness of what is at stake for the person concerned (*A.A.K. v. Türkiye*, 2023, § 67). States have an obligation to ensure that persons with mental disabilities are afforded independent representation, enabling them to have their Convention complaints examined before a court or other independent body. The Court found that the appointment of an employee of the social centre, which initiated the legal capacity proceedings as the applicant's legal guardian for those proceedings constituted a conflict of loyalty, evidenced by the fact that the legal guardian gave her full consent to the deprivation of legal capacity and made no submissions as regards evidence (*Ivinović v. Croatia*, 2014). It reached a similar conclusion where the social services, designated to represent the applicant's interest lacked any meaningful involvement in the applicant's case, and simply indicated the word "agree" in their response to the request to incapacitate the applicant (*A.N. v. Lithuania,* 2016), or where the appointed temporary curator did not contest the appointment of a guardian (*M.T.S. and M.J.S. v. Portugal,* 2024, § 82).

308. Nonetheless, the failure of the domestic authorities to appoint *proprio motu* a lawyer to the applicant following the resignation of his legal aid lawyer dos not in itself engage the State's responsibility under Article 8 of the Convention. What needs to be determined in those circumstances is whether the person was sufficiently involved in the decision-making process, considered as a whole, to ensure the required protection of her interests (*A.A.K. v. Türkiye*, 2023, §§ 69-70).

309. When deciding on the appointment of a support person, the domestic courts need to take into the advance directive of the person concerned by the measure (*M.T.S. and M.J.S. v. Portugal,* 2024, § 86).

d. Interplay between Article 5 and Article 6 § 1

310. In cases before the Court involving "persons of unsound mind" where the domestic proceedings have concerned their detention the Court has mostly examined the applicants' complaints under Article 5 of the Convention. However, as described above, the Court found that Article 6 § 1 applies in its civil limb to the proceedings for the applicant's placement in a psychiatric institution and examined certain cases under Article 6 § 1 of the Convention (*Hodžić v. Croatia*, 2019, § 44). Furthermore, the Court has held that the "procedural" guarantees under Article 5 §§ 1 and 4 of the Convention are

broadly similar to those under Article 6 § 1 (*Stanev v. Bulgaria* [GC], 2012, § 232; *A.N. v. Lithuania*, 2016, § 88).

311. The Court elucidated the relationship between Article 5 § 4 and Article 6 § 1 for persons with a mental illness in *Blokhin v. Russia* [GC], 2016. The Grand Chamber rejected the Government's contention that the complaints relating to applicant's placement in a temporary detention centre should be considered under Article 5 § 4 of the Convention. In cases of mentally-ill defendants, the proceedings can lead to their being placed in closed institutions for treatment and to prevent them from committing further criminal acts. Such cases should comply with the requirements of Article 5 § 4 of the Convention. However, when punitive or deterrent elements are involved, complaints should be seen in the context of the more far-reaching procedural guarantees enshrined in Article 6 of the Convention rather than Article 5 § 4 (§ 181).

312. The interplay between Article 5 § 4 and Article 6 remains, nevertheless, important. The Court has consistently held that the "procedural" guarantees under Article 5 §§ 1 and 4 of the Convention are broadly similar to those under Article 6 § 1 (*Stanev v. Bulgaria* [GC], 2012, § 232; *D.D. v. Lithuania*, 2012, § 116). For example, in deciding whether guardianship appointments or incapacitation proceedings were "fair" within the meaning of Article 6 § 1, the Court will have regard, *mutatis mutandis*, to its case-law under Article 5 § 1 (e) and Article 5 § 4 of the Convention (*Shtukaturov v. Russia*, 2008, § 66; *D.D. v. Lithuania*, 2012, § 116; *A.N. v. Lithuania*, 2016, § 88).

313. On several occasions, the Court has found breaches of both Article 5 § 4 and Article 6 § 1 of the Convention (*Shtukaturov v. Russia*, 2008; *Stanev v. Bulgaria* [GC], 2012; *D.D. v. Lithuania*, 2012):

- In *Shtukaturov v. Russia*, 2008, the applicant was declared legally incapable and his mother, who was subsequently appointed his guardian, admitted him to a psychiatric hospital. The Court found a violation of Article 6 § 1 concerning the proceedings which deprived the applicant of his legal capacity. Moreover, the Court found a breach of Article 5 § 4 on account of the applicant's inability to obtain judicial review of his detention;
- In *Stanev v. Bulgaria* [GC], 2012, the applicant was placed under partial guardianship against his will and admitted to a social care home. The Grand Chamber held that there had been a violation of Article 6 § 1 in that the applicant had been denied access to a court to seek restoration of his legal capacity. The Grand Chamber further held that there had been a violation of Article 5 § 4 concerning the impossibility for the applicant to bring proceedings to have the lawfulness of his detention decided by a court;
- In *D.D. v. Lithuania*, 2012, the applicant's adoptive father was appointed her legal guardian and, at his request, she was interned in a care home. The Court found a violation of Article 6 § 1 due to serious flaws in the court proceedings for her legal incapacitation. The Court further held that there had been a violation of Article 5 § 4, considering that where a person capable of expressing a view, despite being deprived of legal capacity, was also deprived of liberty at the request of his or her guardian, he or she must be accorded the opportunity of contesting that confinement before a court with separate legal representation.

D. Legislative and regulatory framework of protection

314. The positive obligation of protection from treatment contrary to Article 3 of the Convention comprises of an obligation to put in place a legislative and regulatory framework of protection (*A.P. v. Armenia*, 2024, § 104) to shield individuals adequately from breaches of their physical and psychological integrity, particularly, in the most serious cases, through the enactment of criminal-law provisions and their effective application in practice (*V.I. v. the Republic of Moldova*, 2024, § 123).

315. As regards children with disabilities, the Court has held that the positive obligation of protection assumes particular importance in the context of a public service with a duty to protect the health and well-being of children, especially where those children are particularly vulnerable and are under the

exclusive control of the authorities. It may, in some circumstances, require the adoption of special measures and safeguards. The Court has thus held that the legal framework – which lacked the safeguard of an independent review of involuntary placement in a psychiatric hospital, of involuntary psychiatric treatment, of the use of chemical restraint and which lacked other mechanisms to prevent such abuse of persons with intellectual disabilities in general, and of children without parental care in particular –, fell short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to such children against serious breaches of their integrity, contrary to Article 3 of the Convention (*V.I. v. the Republic of Moldova,* 2024).

316. The case of *A.P. v. Armenia,* 2024, concerned the sexual abuse of a fourteen-year old with intellectual disability in her State school by a sports teacher and administrative head of the village. The Court considered whether State fulfilled its positive obligations under Article 3 of the Convention and whether the framework of laws and regulations (notably its mechanisms for the prevention, detection and reporting of ill-treatment) provided effective protection for children (particularly those with disabilities) attending a public school against the risk of sexual abuse. It held that States have a heightened duty of protection towards children under their care and control, especially those children who are in a particularly vulnerable situation owing to disability (*ibid*., § 116). In the absence of mechanisms to detect and report abuse, of any training of persons working in contact with children, and of any special mechanisms and safeguards for those children who were even more vulnerable to abuse and exploitation owing to a disability, the Court found a violation of Article 3 of the Convention.

317. In *G. M. and Others v. the Republic of Moldova*, 2022, concerning the forced sterilisation and abortion of women with intellectual disabilities living in a neuropsychiatric residential facility, the Court found that the existing domestic legal framework lacked: the safeguard of obtaining a valid, free and prior consent for medical interventions from persons with intellectual disabilities; adequate criminal legislation to dissuade the practice of non-consensual medical interventions carried out persons with intellectual disabilities in general and women in particular; and other mechanisms to prevent such abuse of persons with intellectual disabilities in general and of women in particular. Therefore, it fell short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to women living in psychiatric institutions against serious breaches of their integrity.

318. In *X and Y v. the Netherlands*, 1985, the father of an adolescent with a mental disability found himself unable to institute criminal proceedings against an individual who had sexually assaulted his daughter due to a gap in the domestic criminal laws, which required the victim to file the complaint herself. Although the victim was more than sixteen years of age, she was unable to file the criminal complaint due to her mental disabilities. The Court found that provisions of Criminal Code at issue did not sufficiently provide "practical and effective protection" to the victim and the impossibility of instituting criminal proceedings against the perpetrator of sexual assault on a minor with a mental disability breached Article 8 of the Convention.

319. Furthermore, in the context of allegations of ill-treatment by the use of physical restraint against a person involuntarily retained in a psychiatric hospital, Article 3 of the Convention requires States to put in place effective criminal-law provisions to deter the commission of offences against personal integrity, backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. The domestic legal system, and in particular the criminal law applicable in the circumstances of the case, must provide practical and effective protection of the rights guaranteed by Article 3. Wilful ill-treatment of persons who are within the control of agents of the State cannot be remedied exclusively through an award of compensation to the victim (*Bureš v. the Czech Republic*, 2012, § 81; *M.S. v. Croatia (no. 2)*, 2015, § 74; *L.R. v. North Macedonia,* 2020, § 87).

320. The Court also emphasised that the inappropriate legislative and administrative framework and policy of deinstitutionalisation, which does not put in place a systemic transformation, individualised

support services and inclusive mainstream services, as well as monitoring mechanisms, will preserve the risk of abuse and exploitation, resulting in a treatment contrary to Article 4 of the Convention (*I.C. v. the Repulic of Moldova,* §§ 155-157)

E. Effective investigation

321. The general principles relating to the duty to carry out an effective investigation into alleged breaches of the right to life are outlined in the Guide on Article 2 - Right to life and those related to the duty to investigate allegations of torture, inhuman or degrading treatment or punishment in the Guide on Article 3 - Prohibition of torture. Moreover, and as described below, the case-law of the Court requires that the authorities have regard to a person's vulnerability when conducting an investigation and that the investigation establishes and evaluates all the relevant facts pertaining to the individual's disability.

1. Article 2

a. Death in prison

322. In a prison context, individuals with a history of mental illness are under the care and responsibility of the authorities and in that situation it is irrelevant whether State agents were involved by acts or omissions in the events leading to an individual's death (*Paul and Audrey Edwards v. the United Kingdom*, 2002, § 74).

b. Death during police intervention

323. Article 2 of the Convention contains a procedural obligation to carry out an effective investigation into the use of coercive measures by police officers and the alleged ensuing death of vulnerable individuals, including persons undergoing psychiatric treatment or in mental distress. Where forensic medical opinion substantiates that a person' death was a result of a mental trauma, his agitated mental state and self-harming, being aggravated by the actions of the police, the domestic authorities are to pursue the criminal complaint concerning the person's death (*T.V. v. Croatia,* 2024).

324. In *V v. the Czech Republic,* 2023, concerning a police intervention in a psychiatric hospital to control the threatening behaviour of a patient, the Court has found that the domestic investigation did not focus on the information exchanged between the police officers and the medical staff, and the experts were not asked to comment on any possible interaction between the medication administered to patient before and after the police intervention and the use of a taser by the police. These shortcomings undermined, to a decisive extent, the investigation's ability to establish the circumstances of the case.

c. Death in psychiatric facilities

325. The requirement that proceedings be completed within a reasonable time is of particular relevance in the context of health care. Knowledge of the facts and of possible errors committed in the course of medical care are essential to enable the institutions concerned and medical staff to remedy the potential deficiencies and prevent similar errors. The prompt examination of such cases is therefore important for the safety of users of all health services. Particularly in those cases concerning proceedings instituted to elucidate the circumstances of an individual's death in a hospital setting, length of proceedings is a strong indication that the proceedings were defective (*Fernandes de Oliveira v. Portugal* [GC], 2019, § 137).

d. Death in social care homes

326. Patients accommodated in social care homes are under the exclusive control of State authorities and it is the State's duty to initiate an effective investigation on their own motion into the circumstances of a patient's death (*Nencheva and Others v. Bulgaria,* 2013, § 125).

327. The requirement of diligence under Article 2 means that such an investigation must concern the establishment of the circumstances and the possible involvement of the authorities, the existence of a regulatory framework relating to the obligation of those authorities to protect life, and the identification and holding accountable, where appropriate, of the persons involved. The investigation needs to establish whether the shortcomings in the social protection system, such as inadequate conditions of accommodation, were a contributing factor to the patient's death. Investigations need to be initiated promptly to establish the concrete cause of death and the possible link between those causes and the conduct of the various officials, including the person responsible for patients (*Nencheva and Others v. Bulgaria*, §§ 131-32).

328. The Court thus has found a violation of the procedural limb of Article 2 due to the limited scope of investigations not dealing with the issues pertaining to potential dysfunctions in the social protection system or shortcomings in the treatment the person received.

329. For example, in *Nencheva and Others v. Bulgaria,* 2013, the investigations wrongly focused solely on the criminal responsibility of members of the staff of the social care home without assessing the responsibility at higher level in public institutions, and failed to address the shortcomings in the home's management and the failings attributable to public authorities (e.g. providing necessary budget). The Court found a violation of Article 2 in that the authorities had failed in their duty to protect the lives of the vulnerable children placed in their care from a serious and immediate threat. The authorities had also failed to conduct an effective official investigation into the deaths, occurring in highly exceptional circumstances.

330. In *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, the Court concluded that the authorities failed to subject Mr Câmpeanu's case to the careful scrutiny required by Article 2 of the Convention and thus to carry out an effective investigation into the circumstances surrounding his death. Besides the failure to carry out an autopsy immediately after the patient's death, there had been no effective investigation into the therapeutic approach applied in his case.

e. Disappearance

331. In cases related to missing persons, the Court drew a distinction between the obligation to investigate a suspicious death and the obligation to investigate a suspicious disappearance (*Gonçalves Monteiro v. Portugal*, 2022, § 125). It stated that a disappearance was not an "instantaneous" act or event: the additional distinctive element of a subsequent failure to account for the whereabouts and fate of the missing person gave rise to a continuing situation, with the procedural obligation potentially persisting as long as the fate of the person is unaccounted for. In a case of a missing young person with schizophrenia, the Court considered that the delay taken by the investigating authorities, when the theory of death by suicide appeared increasingly likely, compromised the obtaining of material evidence that could have made it possible to elucidate the circumstances of the disappearance (*ibid*., § 132).

f. Disability caused by (in)actions of State authorities

332. When a person's disability is caused by the failure of the State authorities to fulfil their substantive positive obligation to take preventive measures to protect people's health, the Court will examine whether the State fulfilled its procedural positive obligation under Article 2 of providing appropriate redress. The case of *Zinatullin v. Russia*, 2020, concerned an accident - resulting in the disability of a 14-year-old applicant - at a construction site of an unfinished building owned by the

municipality and freely accessible from the side of a local school. The applicant submitted that he had been a victim of the failure of the mayor's office to take safety measures at the construction site. The Court found a violation of the procedural limb of Article 2 of the Convention on the grounds that, despite the establishment of a link between the unfinished building and the mayor's office, the refusal to conduct a criminal investigation had remained unreasoned, contrary to the task of the establishment of relevant facts and holding accountable those at fault, and the civil-law remedy had fallen short of providing the applicant with appropriate redress (§ 46).

2. Article 3

a. Sexual abuse

333. The Court has noted, based on international materials on the situation of people with disabilities, that the rate of abuse and violence committed against people with disabilities is considerably higher than the rate for the general population. The failure to properly investigate or provide an appropriate judicial response to complaints of sexual abuse against vulnerable persons, such as persons with intellectual disabilities, creates a background of impunity which could be in breach of the State's positive obligations under Article 3 of the Convention (*I.C.* v. *Romania*, 2016, § 55).

334. An intellectual disability creates a heightened state of vulnerability and requires both the investigative authorities and the domestic courts to show increased diligence in analysing the victim's statements (*I.C. v. Romania,* § 56). They should assess the validity of the applicant's consent to the sexual acts in the light of her intellectual capacity. Furthermore, they should not put undue emphasis on the absence of proof of resistance by the victim in their investigation into allegations of sexual abuse (§ 58). Such inadequacies would give rise to a finding as to a failure to take a context-sensitive approach in the investigation.

335. In *G.M. and Others v. the Republic of Moldova*, 2022, the Court pointed out that women with intellectual disabilities are particularly exposed and vulnerable to sexual abuse in an institutional context (§ 95). The domestic inquiry failed to factor in the gender and disability aspects of the applicants' complaints concerning institutionalised medical violence against them (§ 106).

336. In *I. G. v. Türkiye*, 2024, concerning the rape of an adult with intellectual and physical disabilities by minors the Court found that, in situations where the acts complained of constituted treatment prohibited by Article 3 and it was not possible to institute criminal proceedings against an alleged perpetrator on account of his or her age being below the age of criminal responsibility, the authorities would still be bound by their procedural obligation to shed light on the facts (§ 39).

b. Ill-treatment during involuntary psychiatric treatment

337. The Court has emphasised that, what is in issue in cases pertaining to alleged ill-treatment is not individual criminal-law liability, but the State's international-law responsibility. The purpose of the obligation of effective investigation is to secure the effective implementation of domestic laws which protect the right not to be ill-treated and, in those cases involving State agents or bodies, to ensure their accountability (*L.R. v. North Macedonia*, 2020, § 92). The inquiry in the applicant's allegations of ill-treatment during placement in a psychiatric facility should factor in the applicant's vulnerability, age or the disability aspects of his complaints concerning the institutionalised neglect and medical violence (*V.I. v. the Republic of Moldova*, 2024, § 119).

338. The Court has held that rather than focusing on the criminal responsibility of certain individuals, the domestic authorities should lead an effective attempt to verify whether the system's failures had resulted from acts by the authorities' representatives or any other public servant, for which they could be held accountable (*L.R. v. North Macedonia,* 2020, § 93). The Court held that the procedural obligation had not been fulfilled where the investigations were essentially directed against the

employees of a care home for the inappropriate placement of a nine years' old child, instead of verifying the reasons and responsibilities for the system's failure to protect that child (*ibid.*, 2020) and where the investigations focused on the accountability of the applicant's guardian, instead of a full and careful analysis of the situation (*V.I. v. the Republic of Moldova*, 2024).

339. The Court has found a breach of Article 3 for a failure to carry out an effective investigation into allegations of ill-treatment in a psychiatric context:

- In *V.I. v. the Republic of Moldova*, 2024, concerning the applicant's allegations of violence and sexual abuse at the hands of other patients during his stay in the adults' section of the hospital, as well as about his placement and treatment without a medical necessity;
- In *M.S. v. Croatia (no. 2)*, 2015, concerning the applicant's allegation of being tied with restraining belts to a bed without any reason and in violation of her human dignity and of being unlawfully confined to a hospital;
- In *L.R. v. North Macedonia*, 2020, concerning the applicant's complaint about inappropriate placement in a rehabilitation institute and of being tied up there.
- In *Clipea and Grosu v. the Republic of Moldova*, 2024, concerning one of the applicants' allegations of ill-treatment by other patients, beating by staff members and restraint, on account of lack of promptness and the applicants' inability to participate effectively in the investigation.

c. Ill-treatment resulting in disability

340. Actions by public authorities that caused a person's disability also clearly require an effective investigation. In the case of police brutality, the Court has held that any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of the necessary standard, and that a requirement of promptness and reasonable expedition is implicit in this context (*Savitskyy v. Ukraine*, 2012, § 99). In this context, a number of reasons can lead to a finding of a breach of the obligation to conduct an effective investigation include when the investigation has not been impartial, objective or thorough, the excessive length of the proceedings, requests for free legal representation have been refused, or the concerned police officers have not faced criminal liability or sanctions (*Savitskyy v. Ukraine*, 2012, § 121; *Savin v. Ukraine*, 2012, § 72).

VII. Health care and social protection

Article 1 of Protocol No. 1 to the Convention

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14 of the Convention

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Health care

341. The Court has interpreted the right to respect for private life guaranteed by Article 8 of the Convention as covering the right to the protection of one's physical, moral and psychological integrity, the right to "personal development", as well as the notion of personal autonomy. Furthermore, Article 8 is relevant to complaints about public funding to facilitate the mobility and quality of life of persons with disabilities (*McDonald v. the United Kingdom*, 2014, § 46). It therefore encompasses issues pertaining to one's right to decide on his or her medical treatment (*Glass v. the United Kingdom*, 2004, §§ 74-83)[16] and, in particular circumstances, the State's positive obligation to adopt measures designed to secure respect for private life, for example, by providing access to healthcare and medical treatment (*Sentges v. the Netherlands* (dec.), 2003)[17].

1. Access to health care

342. When examining whether the facts of the case fall within the scope of the concept of "respect" for "private life", the Court has held that Article 8 may impose positive obligations on a State to secure respect for private life where there is a direct and immediate link between the measures sought by an applicant with a disability and the latter's private life. However, Article 8 does not apply to situations concerning interpersonal relations of such broad and indeterminate scope that there can be no conceivable link between the measures the State is urged to take and an individual's private life. Article 8 cannot be considered applicable each time an individual's everyday life is disrupted, but only in the exceptional cases where the State's failure to adopt measures interferes with that individual's

[16] As regards consent in healthcare and involuntary treatment see Chapter on Autonomy – Consent in health care above.

[17] As regards the impact of a refusal or withdrawal of healthcare and social assistance on the autonomy of persons with disabilities, see Chapter on Autonomy - Legal capacity and independence above.

right to personal development and his or her right to establish and maintain relations with other human beings and the outside world. It is incumbent on the individual concerned to demonstrate the existence of a special link between the situation complaint of and the particular needs of his or her private life (*Sentges v. the Netherlands* (dec.), 2003).

343. The Court has found that such special link existed where the applicant with severely limited mobility complained that reducing the level of healthcare offered by the authorities would have undignified and distressing consequences. The Court has accepted that such a measure was capable of having an impact on her enjoyment of her right to respect for private life as guaranteed under Article 8 § 1 of the Convention (*McDonald v. the United Kingdom*, 2014, § 47).

344. However, as regards the assessment of the level of care, the Court has emphasised that States are afforded a wide margin of appreciation in issues of general policy, including social, economic and health-care policies. The margin is particularly wide when the issues involve an assessment of priorities in the context of the allocation of limited State resources (*McDonald v. the United Kingdom*,2014, § 54). In view of their familiarity with the demands made on the health care system as well as with the funds available to meet those demands, the national authorities are in a better position to carry out this assessment than an international court (*Pentiacova and Others v. Moldova* (dec.), 2005).

345. Thus, the Court has declared a case inadmissible as manifestly ill-founded where a person with a severe disability had sought a robotic arm to assist his mobility. Noting that the applicant had access to the standard of health care offered to all insured persons and while underlying that it did not wish to underestimate the difficulties encountered by the applicant, the Court has found that the respondent State had not exceeded its wide margin of appreciation when assessing priorities in the context of the allocation of limited State resources (*Sentges v. the Netherlands* (dec.), 2003).

346. As regards complaints brought under Article 1 of Protocol No. 1 to the Convention, the Court has held that the eligibility of a person with a disability for free medication (cancer drugs) amounted to a "legitimate expectation" within the meaning of that provision (*Fedulov v. Russia*, 2019, §§ 70-72). Where, on four occasions out of five, the applicant was unable to obtain the medicine necessary for the treatment of his cancer, despite it being critical for his life, owing to a lack of funds to make that medicine available for distribution free of charge, the Court considered that the denial of the provision of the treatment had had no basis in domestic law and was arbitrary.

347. Furthermore, a medical personnel's refusal to administer the standard insulin treatment to a person with type-1 diabetes in a precarious condition can raise an issue under Article 2 of the Convention. In *Aftanache v. Romania*, 2020, medical personal had refused to administer the applicant with such treatment because they suspected that he was a drug addict. The Court found a violation of the procedural limb of Article 2 on the grounds that the domestic authorities had failed to properly investigate the refusal which had put the applicant's life at risk.

2. Discontinuation of life sustaining treatment

348. In *Lambert and Others v. France* [GC], 2015, the applicants complained of the authorities' decision authorising the withdrawal of the artificial nutrition and hydration of their son and brother who was in a state of total dependence and was kept alive artificially. To assess whether the State had fulfilled its positive obligations flowing from Article 2 of the Convention, the Court took into account the following factors: the existence in domestic law and practice of a regulatory framework compatible with the requirements of Article 2; whether account had been taken of the applicant's previously expressed wishes and those of the persons close to him, as well as the opinions of other medical personnel; and the possibility to approach the courts in the event of doubts as to the best decision to take in the patient's interests. The Court also took account of the criteria laid down in the Council of Europe's Guide on the decision-making process regarding medical treatment in end-of-life situations (§ 143). In the circumstances of the case, the Court found the legislative framework (§§ 150-160) and

the decision-making process (§§ 161-168), which had been conducted in a meticulous fashion, to be compatible with the requirements of Article 2 of the Convention.

349. The Court took into account these same factors when deciding cases related to decisions to withdraw life-sustaining treatment for children suffering, respectively, from a fatal genetic disease and from a terminal medical condition, the Court declaring the applications inadmissible as manifestly ill-founded where such decisions had been based on the best interests of the children (*Gard and Others v. the United Kingdom* (dec.), 2017; *Parfitt v. the United Kingdom* (dec.), 2021).

3. Disability caused by medical negligence

350. The Court has examined cases concerning complaints of medical negligence during childbirth which had allegedly caused physical and/or mental disabilities to the new-born (*Spyra and Kranczkowski v. Poland*, 2012; *İbrahim Keskin v. Turkey*, 2018; *Mehmet Ulusoy and Others v. Turkey*, 2019; *Vilela and Others v. Portugal*, 2021). These cases were examined under the substantive and/or procedural limb of Article 8 of the Convention.[18]

351. As concerns medical negligence allegedly causing disability, the domestic authorities have a duty, firstly, to have in place regulations compelling both public and private hospitals to adopt appropriate measures for the protection of their patients' physical integrity and, secondly, to provide victims of medical negligence with access to proceedings in which they could, where appropriate, obtain compensation for damage (*İbrahim Keskin v. Turkey*, 2018, § 61; *Mehmet Ulusoy and Others v. Turkey*, 2019, § 83). Allegations of medical negligence also warrant an adequate judicial response. In this respect, the Court has notably held that it cannot accept that criminal or civil compensatory proceedings instituted following alleged medical negligence last for almost seven years (*İbrahim Keskin v. Turkey*, 2018, §§ 69-71; *Vilela and Others v. Portugal*, 2021, concerning civil proceedings lasting for over nine years).

352. In *Mehmet Ulusoy and Others v. Turkey*, 2019, the Court found a violation of the procedural limb of Article 8 of the Convention on the grounds that no domestic authority had been able to give a consistent and scientifically-based response to the applicants' allegations or to assess the alleged responsibility of health professionals in the first applicant's severe disability. The domestic courts had based their decisions on official reports which had either lacked independence or which had not adequately tackled the main issues at stake. Finally, the administrative courts had rejected the applicants' claims without giving an answer to their main, if not decisive, arguments.

353. By contrast, where the applicants' case had been examined by three levels of jurisdiction and a medical disciplinary authority, all of which had rejected the possibility of a causal link between the procedure followed by the medical staff and the child's disability, the Court found that it could not be said that the domestic judicial system taken as a whole had failed to adequately examine the case (*Spyra and Kranczkowski v. Poland*, 2012).

4. Abortion

354. The Court examined different scenarios relating to disability in the context of abortions[19]:

- *D. v. Ireland* (dec.), 2006, concerning the lack of abortion services in Ireland in the case of a fatal foetal abnormality (right to respect for private and family life): the application was declared inadmissible for failure to exhaust domestic remedies;
- *Tysiąc v. Poland*, 2007, concerning the refusal to perform a therapeutic abortion despite the serious risk that the applicant would go blind if she brought the pregnancy to term (right to respect for private life): the Court found a violation of Article 8 of the Convention,

[18] For the principles related to alleged medical negligence in general, see the Key Theme on Medical negligence.
[19] As regards forced abortion and sterilisation of women with disabilities, see the Chapter on Autonomy.

considering that, although the relevant legislation provided for a procedure for taking decisions on therapeutic abortion based on medical considerations, it did not contain an effective mechanism capable of determining whether the conditions for obtaining a lawful abortion had been met;

- *R.R. v. Poland*, 2011, concerning the lack of access to prenatal genetic tests which resulted in the inability to have an abortion on the grounds of foetal abnormality: finding a violation of Article 3 of the Convention, the Court noted that the domestic legislation unequivocally imposed an obligation on the State in cases of suspicion of genetic disorder or developmental problems to ensure unimpeded access to prenatal information and testing. It also imposed a general obligation on doctors to give patients all necessary information on their cases and afforded patients the right to comprehensive information on their health. Despite this, as a result of temporising by the health professionals, the applicant had had to endure six weeks of uncertainty concerning the health of her foetus and by the time she obtained the results of the tests it was too late for her to have a legal abortion.

B. Social protection

Disability benefits and tax reduction

355. In the modern, democratic State, many individuals are, for all or part of their lives, completely dependent for survival on social-security and welfare benefits (*Béláné Nagy v. Hungary* [GC], 2016, § 80). The Court is therefore mindful of the special characteristics of disability benefits and the circumstances of the persons concerned, particularly when such benefits constitute their only source of income, or a significant part thereof (*ibid.*, § 123; *Kjartan Ásmundsson v. Iceland*, 2004, § 44). In some cases, the applicant's personal vulnerability is also taken into consideration, as in *Pyrantienė v. Lithuania*, 2013, § 62, where the applicant was of pensionable age and suffered from long-term disability.

356. Cases related to disability benefits and tax relief have been examined by the Court under Article 8 and Article 1 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention[20].

357. The Court examined several cases related to the discontinuation of disability benefits. Such benefits can in principle be revoked or reduced, even where they have been paid to the entitled person for a long time. It is in the nature of things that various health conditions, which initially make it impossible for persons afflicted with them to work, can evolve over time leading to either deterioration or improvement of the person's health. It is permissible for States to take measures to reassess the medical condition of persons receiving disability pensions with a view to establishing whether they continue to be unfit to work, provided that such reassessment is in conformity with the law and attended by sufficient procedural guarantees (*Wieczorek v. Poland*, 2009, § 67; *Iwaszkiewicz v. Poland*, 2011, § 51).

358. However, in *Béláné Nagy v. Hungary* [GC], 2016, the Court examined the discontinuation of the applicant's disability benefits due to the introduction by law of new eligibility criteria. The Court found that there was no reasonable relationship of proportionality between the aim pursued and the means applied as the applicant was subjected to a complete deprivation of any entitlements. In particular, the Court underlined the fact that the applicant did not have any other significant income on which to subsist and that she evidently had difficulties in pursuing gainful employment and belonged to the

[20] For further details see the Guide on Article 8 - Right to respect for private and family life, Guide on Article 1 of Protocol No. 1 - Protection of property, Guide on Article 14 and Article 1 of Protocol No. 12- Prohibition of discrimination.

vulnerable group of persons with disabilities. Accordingly, the Court found a violation of Article 1 of Protocol No. 1 (see also, *Kjartan Ásmundsson v. Iceland*, 2004; *Krajnc v. Slovenia*, 2017).

359. The discontinuation of a disability pension, as a result of an incorrect assessment of the applicant's fitness for work and the subsequent failure to provide a legal solution - preventing the applicant from receiving compensation (on the basis of the *res judicata* principle), despite the existence of relevant and sufficient reasons to depart from the incorrect finding to secure respect for social justice and fairness - were also deemed to have placed a disproportionate burden on the applicant (*Grobelny v. Poland*, 2020, §§ 67-71).

360. In *Fedulov v. Russia*, 2019, concerning the eligibility of a person with disability for free medication, the Court found that the situation was not prompted by any change in legislation. The applicant fulfilled all the criteria for receiving the benefit in question, its uninterrupted enjoyment being critical to the applicant's life, and the State authorities' refusal, based on the lack of funds, was ultimately difficult to reconcile with the rule of law. This conclusion made it unnecessary to make a proportionality assessment.

361. By contrast, the Court found no violation of Article 8 of the Convention with regard to a statutory scheme developed in France to compensate parents for the costs of children with disabilities, even when the parents would have chosen not to have the child in the absence of a mistake by the State hospital regarding the diagnosis of a genetic defect (*Maurice v. France* [GC], 2005; *Draon v. France* [GC], 2005; *N.M. and Others v. France* (merits), 2022). The Court also recognises a wide margin for States to determine the amount of aid given to parents of children with disabilities (*La Parola and Others v. Italy* (dec.), 2000).

362. The Court has examined other cases about disability benefits under Article 14 (prohibition of discrimination) taken with Article 1 of Protocol No. 1 or Article 8 of the Convention:

- *Koua Poirrez v. France*, 2003, concerning the refusal to grant a disability benefit to a foreigner with physical disability on account of his nationality (violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1);
- *Glor v. Switzerland*, 2009, concerning the obligation to pay a military-service exemption tax by a person who was declared unfit for military service due to diabetes, as the competent tax authorities considered his disability a minor one (violation of Article 14 taken in conjunction with Article 8; see also *Ryser v. Switzerland*, 2021);
- *Di Trizio v. Switzerland*, 2016, concerning the refusal of a disability allowance to the applicant arising out of the method of calculation of invalidity benefits due to her choice to work part-time after giving birth (violation of Article 14 taken in conjunction with Article 8);
- *Guberina v. Croatia*, 2016, concerning the failure to take account of the needs of an applicant child with disabilities when determining the applicant father's eligibility for tax relief, on the purchase of a suitably adapted property (violation of Article 14 read in conjunction with Article 1 of Protocol No. 1);
- *Saumier v. France*, 2017, concerning a difference in the amount of damages recoverable, depending on whether the injury or illness at stake is caused by negligence of an employer or of a third party (no violation of Article 14 read in conjunction with Article 1 of Protocol No. 1);
- *Belli and Arquier-Martinez v. Switzerland*, 2018, concerning the discontinuation of non-contributory disability benefits owing to the residence abroad of the applicants: the first applicant had been deaf since birth, had difficulties speaking her mother tongue and had no capacity of discernment on account of a severe disability which had required comprehensive therapeutic provision throughout her life and the mother, the second applicant, provided the requisite care and was also her guardian (no violation of Article 14 taken in conjunction with Article 8);

- *J.D. and A v. the United Kingdom*, 2019, concerning the lack of distinction made in favour of certain categories of vulnerable social housing tenants in the application of the amended housing benefit scheme (no violation of Article 14 read in conjunction with Article 1 of Protocol No. 1 in respect of the first applicant and violation of that same provision in respect of the second applicant);
- *Popović and Others v. Serbia*, 2020, concerning the alleged discriminatory treatment of civilian beneficiaries of disability benefits, who were in receipt of a lower amount of the same benefit than those classified as military beneficiaries, despite having exactly the same paraplegic disability (no violation of Article 14 read in conjunction with Article 1 of Protocol No. 1);

363. Procedural issues examined under Article 6 of the Convention may also arise in relation to proceedings concerning disability benefits (see, for example, *Mocie v. France*, 2003; *Hamzagić v. Croatia*, 2021, and *Đurić v. Serbia*, 2024)[21].

364. Further details concerning disability benefits can be found in the Guide on Social Rights.

VIII. Right to respect for private and family life[22]

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Right to private life, home and correspondence

365. The applicability of Article 8 and the Court's approach to situations pertaining to assisted suicide (Autonomy – End of life), access to health care and social services (Autonomy – Independence), independent living (Autonomy - Independence) and accessibility (Equality – Accessibility) has been described in the chapters above.

366. The Court has also examined a number of other issues related to respect for private life, home and correspondence of persons with disabilities.

367. *Harassment.* Under Article 8, States have in some circumstances a duty to protect the moral integrity of an individual from acts of other persons. The Court has also held that States have a positive obligation to ensure respect for human dignity and the quality of life in certain respects. The Court found ongoing harassment of an adult with intellectual and physical disability by minors to have affected the private and family life of his mother, who had been his caregiver. By not having put in place adequate and relevant measures to prevent further harassment of an adult with disability, the authorities had failed to afford adequate protection in that respect to his mother (*Đorđević v. Croatia*, 2012, §§ 151-53).

[21] See the Chapter on Access to court and procedural guarantees above.
[22] For further details see the Guide on Article 8 - Right to respect for private and family life

368. *Disclosure of highly sensitive personal information*. In *Mockutė v. Lithuania*, 2018, the applicant complained that a psychiatrist, at a hospital where she had been confined, had disclosed information about her health and private life to journalists and to her mother. The Court held that information regarding a mental health related condition by its very nature constitutes highly sensitive personal data regardless of whether it is indicative of a particular medical diagnosis. Disclosure of such information therefore fell within the ambit of Article 8 (§ 94). Considering that such interference with the applicant's right to respect for her private life had not been "in accordance with the law", the Court found a violation of Article 8 of the Convention.

369. In *A.P. v. Armenia*, 2024, a minor with intellectual disability lodged a civil claim as a consequence of the sexual abuse suffered by her. Her request that her claim be adjudicated in camera and her identity and personal details not be disclosed were not examined. The domestic court decision, which contained a number of details, concerning both the grounds for her claim and the criminal case against the perpetrator, have been published in a publicly available online legal database. The Court pointed out the particular vulnerability of the applicant as a minor with a disability and as a victim of sexual abuse. It found that, due to the disclosure of that information, the applicant and her family had been left in constant uncertainty as to whether someone would have been able to identify the applicant as a victim of a sexual crime – something that would certainly have been even more traumatising for someone who had lived in a small village where traditional attitudes prevailed.

370. *Conviction for manufacturing cannabis for personal treatment*. The case of *Thörn v. Sweden*, 2022, concerned an applicant confined to a wheelchair with severe chronic pain who was convicted for manufacturing cannabis for his personal treatment without prescription. The Court considered that, in striking the balance between the applicant's interest in having access to pain relief and the general interest in enforcing the system of control of narcotics and medicines, the domestic authorities had remained within their wide margin of appreciation.

371. *Suspension of a driving licence*. The case of *Kholodov v. Ukraine* (dec.), 2016, concerned the suspension of a driving licence for a traffic offence concerning an applicant with a physical disability who alleged an excessive penalty given his medical condition. The Court admitted that the nine-month driving ban had repercussions on the applicant's everyday life. In that sense it could be admitted that such a penalty constituted an "interference" with the applicant's right under Article 8 (§ 20). It nevertheless found no breach of that provision considering the fact that the applicant's disability had been taken into account to reduce the term of the suspension and that, contrary to other types and degrees of disability, the applicant's ailment did not as such prevent the imposition of a driving ban (§ 27).

372. *Access to information regarding hazardous activities.* In *Vilnes and Others v. Norway*, 2013, the applicants were former divers who, as a consequence of their professional activities, suffered damage to their health resulting in disability. The Court found a violation of Article 8 of the Convention on account of the State's failure to ensure that essential information regarding the risks associated with the use of decompression tables were available to divers. It considered that, in the light of the authorities' role in authorising diving operations and protecting divers' safety, and of the uncertainty and lack of scientific consensus at the time regarding the long-term effects of decompression sickness, a very cautious approach had been called for.

373. *Access to information about paternity*. In *A.M.M. v. Romania*, 2012, the Court held that procedures must exist to allow particularly vulnerable children, such as those with disabilities, to access information about their paternity (§§ 58-65). The domestic courts had not struck a fair balance between the applicant's right to have his interests safeguarded in the paternity proceedings, notably by ensuring his adequate representation, and the right of his putative father not to take part in the proceedings or to refuse to undergo a paternity test.

374. *Restriction of access to one's home*. The case of *Cherkun v. Ukraine* (dec.), 2019, concerned an alleged violation of the applicant's right to respect for her home as a result of an extension illegally

built by her neighbour which resulted in the passage to her house having ceased to comply with the domestic requirements in terms of width and accessibility for emergency vehicles. However, in light of the fact that the applicant had not made any detailed submissions regarding the nature of her disability or that of her husband and the circumstances of the case, the Court was not convinced that the difficulties caused by the neighbour's construction were serious enough to affect adversely, to a sufficient extent, the applicant's enjoyment of the amenities of her home and the quality of her private and family life (see also *Neagu v. Romania* (dec.), 2019, concerning an alleged lack of wheelchair access to the applicant's residential building following works carried out by the owners' association).

375. *Respect for home*. In *Zehentner v. Austria*, 2009, the Court found a violation of Article 8 of the Convention on account of the fact that an applicant who lacked legal capacity had been dispossessed of her home without being able to effectively participate in the judicial proceedings and without any possibility to have the proportionality of the measure determined by the courts. The Court emphasised that persons who lack legal capacity are particularly vulnerable and that States may thus have a positive obligation under Article 8 to provide them with specific protection by the law (§ 63).

376. *Right to respect for correspondence*. The case of *Herczegfalvy v. Austria*, 1992, concerned a psychiatric hospital's practice of sending all the applicant's letters to his curator for him to select which ones to pass on to their addressees. Such practice constituted an interference with the applicant's right to respect for his correspondence. The Court found a violation of Article 8 of the Convention because domestic law did not offer the minimum degree of protection against arbitrariness required by the rule of law in a democratic society. In particular, the Court considered that the very vaguely worded provisions did not specify the scope or conditions of exercise of the discretionary power which was at the origin of the impugned measures. It underlined that such specifications appeared all the more necessary in the field of detention in psychiatric institutions since the persons concerned are frequently at the mercy of the medical authorities, so that their correspondence is their only contact with the outside world.

B. Family life

1. Existence of family life

377. Relationships between parents and adult children do not in principle fall within the scope of Article 8 unless "additional factors of dependence, other than normal emotional ties, are shown to exist" (*Emonet and Others v. Switzerland*, 2007, § 35). The Court has found that such additional factors of dependence had been shown to exist in several cases which involved a person with disability:

- *Emonet and Others v. Switzerland*, 2007, concerning an adult who became paraplegic after a serious illness and who needed to be cared for by her mother and her mother's partner with whom she lived (§ 37);
- *Belli and Arquier-Martinez v. Switzerland*, 2018, concerning an adult with a severe disability which required comprehensive therapeutic provision throughout her life and her mother who was also her guardian (§ 65);
- *Bierski v. Poland*, 2022, concerning a father who was one of the close persons who could communicate with his fully incapacitated adult son (§ 47).

378. On the contrary, in *Evers v. Germany*, 2020, the Court held that, in the very specific circumstances of the case, the mere fact that the applicant had been living in a common household with his partner and her daughter with mental disability and that he was the biological father of the latter's child did not constitute a family link which was protected by Article 8 (§ 52) between the applicant and his partner's daughter. In this case, the applicant had likely sexually abused the daughter with mental disabilities, which is why the domestic courts deemed the contact to the daughter detrimental and issued a contact ban.

2. Restrictions of parental rights

379. The general principles established in the Court's case-law concerning the preservation of ties between parents and their children and the crucial importance of the best interests of children can be found in the Guide on Article 8 - Right to respect for private and family life and the Guide on the Rights of the Child.

a. Decision-making process

380. States have an obligation under Article 8 of the Convention to provide protection for the right to respect for private and family life of persons with mental disabilities, particularly when children of such persons are taken into State care. There may clearly be instances where the participation of the parents in the decision-making process will either not be possible or will not be meaningful – for example, where they cannot be traced or are under a physical or mental disability or where an emergency arises. Nonetheless, States must ensure that persons with disabilities are able to participate effectively in proceedings concerning the placement of their children (*B. v. Romania (no. 2)*, 2013; *K. and T. v. Finland* [GC], 2001). In assessing the quality of a decision-making process leading to splitting the family, the Court will see, in particular, whether the conclusions of the domestic authorities were based on a sufficient evidentiary basis (including, as appropriate, statements by witnesses, reports by competent authorities, psychological and other expert assessments and medical notes) and whether the interested parties, in particular the parents, had sufficient opportunity to participate in the procedure in question (*Saviny v. Ukraine*, 2008, § 51).

381. The Court found a violation of the applicant's right to family life in *A.K. and L. v. Croatia*, 2013, where a mother with a mild mental disability was not informed about her son's adoption and was unable to participate in, or to contest, the adoption process. In view of the applicant's mild mental disability and her need for ongoing psychiatric treatment which she was not receiving, the Court considered that the national authorities should have ensured that, in view of the importance of the proceedings at issue for her right to respect for her family life, the applicant's rights and interests were adequately protected by providing her with proper assistance by a lawyer (§§ 72-75).

382. In *Bierski v. Poland*, 2022, the applicant complained that the domestic legal system did not allow him to institute proceedings to seek the regulation of contact arrangements with his young adult son who had severe mental disabilities, which had resulted in the applicant not having any contact with his son for over two years. The Court found no indication that the limitation in the applicant's standing pursued any legitimate aim or could be considered as "necessary in a democratic society" and therefore found a violation of his right to respect for family life (§§ 50-54).

383. The Court examined the effective participation of a child with an autism spectrum disorder in proceedings related to an alleged discrimination in education under Article 8 of the Convention in *S. v. the Czech Republic*, 2024. The Court had to consider whether the applicant's effective participation could be ensured by his and his lawyer's written observations, without an oral hearing. The Court emphasised the rather technical nature of the matter, finding that the applicant's involvement was sufficiently ensured. It also held that the trial judge was justified in requesting a doctor or psychologist to confirm that the applicant could be heard without prejudice to him, given his fears of reviving negative memories.

b. Justifications

384. When taking a decision on the removal of a child, a variety of factors may be pertinent, such as whether by virtue of remaining in the care of its parents the child would suffer abuse or neglect, educational deficiencies and lack of emotional support, or whether the child's placement in public care is necessitated by the state of its physical or mental health. The measure cannot be justified by a mere reference to the parents' precarious situation, which can be addressed by less radical means

than separating the family, such as targeted financial assistance and social counselling (*Saviny v. Ukraine*, 2008, § 50).

385. The Court will scrutinize whether the domestic authorities considered providing parents with disability assistance in bringing up their children instead of deciding on extreme measures such as removing children from parental care. It thus found that the decision to remove children from their blind parents due to a finding of inadequate care was not justified by the circumstances, as the domestic authorities failed to analyse whether the purported inadequacies of the children's upbringing were attributable to the applicants' incapacity to provide care or to their financial difficulties which could have been overcome by social assistance (*Saviny v. Ukraine*, 2008).

386. Similarly, *Kutzner v. Germany*, 2002, concerned the withdrawal of the applicants' parental responsibility for their two daughters, their placement in foster homes and restrictions imposed on contact between the children and the applicants, notably on the ground that the applicants did not have the requisite intellectual capacity to bring up their children. The Court found a violation of Article 8 considering that, the domestic administrative and judicial authorities had disregarded evidence in support of the applicants' emotional and intellectual capacity to bring up their children and had not considered additional measures of support instead of applying to most extreme measure.

387. In this regard, the absence of skills and experience in rearing children can hardly, of itself, be regarded as a legitimate ground for restricting parental authority or keeping a child in public care (*Kocherov and Sergeyeva* v. *Russia*, 2016, § 106, concerning a father with a mild intellectual disability, who spent most of his life in a specialised institution).

388. By contrast, in *R.P. and Others v. the United Kingdom*, 2012, and given the overwhelming evidence that none of the applicants (grandparents and uncle of the child) had the ability adequately to care for him, even with the support of the local authorities, the Court accepted that the removal of the child and his placement had been necessary to protect him from harm (§ 82) (see also, *S.S. v. Slovenia*, 2018, concerning the withdrawal of parental rights from a mother with a mental disability based on her inability to take care of her child).

389. Reliance on a parent's mental disability is not a "sufficient" reason to justify a restriction of parental authority (*Kocherov and Sergeyeva* v. *Russia*, 2016, § 10). Indeed, the sole reliance on a parent's mental health can entail a violation of Article 14 taken in conjunction with Article 8 of the Convention (*Dmitriy Ryabov v. Russia*, 2013; *Cînța v. Romania*, 2020)[23].

390. In *Cînța v. Romania*, 2020, the domestic authorities failed to properly assess the impact that the applicant's mental disability could have had on his parenting skills or the child's safety. While mental disability could be a relevant factor to be taken into account when assessing the capacity of parents to care for their child, relying on this factor as the decisive element, or even as one element among others, can amount to discrimination when, in the circumstances of the case, the mental disability did not have a bearing on the parents' ability to take care of the child.

391. In contrast, the domestic authorities reached a reasoned decision where they relied on evidence, including medical opinions, the opinion of the custody and guardianship authority, the letters from the kindergarten and the children's clinic, the results of the inspections of living conditions, the statement of the child's mother, the letter of reference from the applicant's employer, and the statements of five witnesses and concluded that, given the lack of the applicant's active involvement in the child's upbringing and the applicant's medical condition, leaving the child in his care could pose a danger the child's well-being (*Dmitriy Ryabov v. Russia*, 2013).

392. Where a placement order is made, the role of the domestic courts is to ascertain what steps can be taken to overcome existing barriers and to facilitate contact between the child and the noncustodial parent. For example, the fact that the domestic courts had failed to consider any means

[23] See in this regard the Chapter on Equal participation.

that would have assisted an applicant in overcoming the barriers arising from his disability led the Court to find a violation (*Kacper Nowakowski v. Poland*, 2017, § 95, concerning a deaf father who communicated by sign language while his son was also deaf but could communicate orally).

393. As regard the State's positive obligation to provide persons with disabilities with support measures to facilitate the enjoyment of family life between parents and children, see also the Chapter on Reasonable accommodation.

3. Other issues related to family life

394. *Refusal to attend a relative's funeral*. In *Solcan v. Romania*, 2019, which concerned the refusal to allow the applicant, detained in a psychiatric facility, to attend her mother's funeral, the Court held that the State can refuse an individual the right to attend his or her parents' funerals only if there are compelling reasons and if no alternative solution can be found. The State has a duty to assess each individual request on its merits and to demonstrate that the restriction on the individual's right to attend a relative's funeral is "necessary in a democratic society". The Court found a violation of Article 8 of the Convention because the applicant's request for leave had been refused on the sole ground that domestic law did not provide for such a possibility, without any assessment of her individual situation.

IX. Right to vote[24]

Article 3 of Protocol No. 1 to the Convention

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

395. The Court has held that the presumption in a democratic State must be in favour of the inclusion of all and universal suffrage is the basic principle. This does not mean, however, that Article 3 of Protocol No. 1 guarantees to persons with a mental disability an absolute right to exercise their right to vote (*Caamaño Valle v. Spain*, 2021, § 59). This said, if a restriction on the right to vote applies to a particularly vulnerable group in society that has suffered considerable discrimination in the past, such as persons with mental disabilities, then the State's margin of appreciation is substantially narrower (*Alajos Kiss v. Hungary*, 2010, 42; *Caamaño Valle v. Spain*, 2021, § 55).

396. The Court has accepted that a wide margin of appreciation should be granted to the national legislature in determining whether restrictions on the right to vote can be justified in modern times and, if so, how a fair balance is to be struck and what procedure should be tailored in assessing the fitness to vote of persons with mental disability. The Court will have regard to the question whether there is any evidence that the national legislature sought to weigh the competing interests or to assess the proportionality of the restriction as it stands (*Alajos Kiss v. Hungary*, 2010, § 41).

397. The loss of voting rights on account of placement under partial guardianship could pursue a legitimate aim, namely to ensure that only citizens, capable of assessing the consequences of their decisions and of making conscious and judicious decisions, should participate in public affairs. However, the voting ban imposed as an automatic, blanket restriction, regardless of the person's

[24] For further details see the Guide on Article 3 of Protocol No. 1 - Right to free elections. For issues pertaining to the accessibility of the voting process, and in particular the physical accessibility of polling stations, see the Chapter on Equality.

actual faculties and without any distinction being made between full and partial guardianship is considered an indiscriminate removal of voting rights, incompatible with Article 3 of Protocol No. 1 to the Convention (*Alajos Kiss v. Hungary*, 2010).

398. An absolute ban on voting by any person under partial guardianship, irrespective of his or her actual faculties, does not fall within any acceptable margin of appreciation (*Alajos Kiss v. Hungary*, 2010, 42).

399. The Court further considered that the treatment as a single class of those with intellectual or mental disabilities was a questionable classification, and the curtailment of their rights must be subject to strict scrutiny. It therefore concluded that an indiscriminate removal of voting rights, without an individualised judicial evaluation, could not be considered proportionate to the aim pursued (see also *Anatoliy Marinov v. Bulgaria*, 2022, where the automatic disenfranchisement of an applicant due to a partial guardianship order based on his mental disability, with no individualised judicial review of voting capacity, was also found to be disproportionate).

400. In *Strøbye and Rosenlind v. Denmark*, 2021, the Court also examined the issue of the disenfranchisement of persons divested of their legal capacity. Given that persons with mental disabilities not been in general subject to disenfranchisement under Danish law, that there had been an individualised judicial evaluation following a thorough parliamentary review and that the measure affected a very small number of people, the Court found that the wide margin of appreciation of the respondent State had not been overstepped. There had therefore been no breach of Article 3 of Protocol No. 1 taken alone or in conjunction with Article 14 of the Convention.

401. Similarly, the Court found no violation of those provisions in *Caamaño Valle v. Spain*, 2021, where the law had provided for the deprivation of the right to vote only in respect of the most serious cases of disability and in respect of persons ruled incapacitated by a final and revisable judicial decision. Furthermore, the domestic judicial bodies assessed specifically whether the person in question was incapable of exercising the right to vote and concluded that she lacked the cognitive skills to understand the meaning of a vote and was prone to be influenced very easily.

X. Right to education[25]

Article 2 of Protocol No. 1 to the Convention

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

402. In interpreting and applying Article 2 of Protocol No. 1, account must be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should, so far as possible, be interpreted in harmony with other rules of international law of which it forms part. Therefore, provisions on the right to education set out in instruments such as in the Revised European Social Charter CRPD should be taken into consideration (*G.L. v. Italy*, 2020, § 51; *Enver Şahin v. Turkey*, 2018, § 55).

403. The Court has noted the importance of the fundamental principles of universality and non-discrimination in the exercise of the right to education. Inclusive education has been regarded as the most appropriate means of guaranteeing such fundamental principles, as it is geared to promoting

[25] For further details see the Guide on Article 2 of Protocol No. 1 - Right to education

equal opportunities for all, including persons with disabilities. Inclusive education forms part of the States' international responsibility (*Enver Şahin v. Turkey*, 2018, § 62; *G.L. v. Italy*, 2020, § 53).

404. The former Commission took the view that there was an increasing body of opinion which held that, whenever possible, children with disabilities should be brought up with other children of their own age. That policy could not, however, apply to all children with disabilities. A wide measure of discretion had to be left to the appropriate authorities as to how to make the best use possible of the resources available to them in the interests of children with disabilities generally (*Graeme v. the United Kingdom*, Commission decision, 1990). Hence, according to the Commission, the second sentence of Article 2 of Protocol No. 1 did not require that a child with a severe mental disability should be admitted to an ordinary private school rather than placed in a special school for children with disabilities where a place was guaranteed (*ibid.*).

405. Similarly, the Commission found that the Convention did not require the placing of a child with a serious hearing impairment in a regular school (either with the expense of additional teaching staff which would be needed or to the detriment of the other pupils) rather than in an available place in a special school (*Klerks v. the Netherlands*, Commission decision, 1995). The use of public funds and resources also led to the conclusion that the failure to install a lift at a primary school for the benefit of a pupil with muscular dystrophy did not entail a violation of Article 2 of Protocol No. 1, whether taken alone or together with Article 14 of the Convention (*McIntyre v. the United Kingdom*, Commission decision, 1998). In the same vein, the refusal of one school – not having appropriate facilities – to admit a child with disabilities could not, of itself, be regarded by the Court as a breach by the State of its obligations under Article 2 of Protocol No. 1 to the Convention, or as a systemic negation of the applicant's right to education on the grounds of his disability (*Kalkanlı v. Turkey* (dec.), 2009; see also *Sanlısoy v. Turkey* (dec.), 2016, and *Dupin v. France* (dec.), 2018, concerning children with autism, and *T.H. v. Bulgaria*, 2023, concerning a child diagnosed with hyperkinetic and scholastic-skills disorder).

406. Applying these principles, the Court found a violation of Article 14 read in conjunction with Article 2 of Protocol No. 1 in the following cases[26]:

- *Çam v. Turkey*, 2016, where the applicant was denied an opportunity to study in the Music Academy, solely on account of her visual disability;
- *Enver Şahin v. Turkey*, 2018, which concerned the rejection of a request made by a student with physical disabilities for the university to carry out necessary alterations and works to make the teaching premises accessible;
- *G.L. v. Italy*, 2020, §§ 70-72, concerning a child with non-verbal autism who was not able to receive, due to a lack of financial resources, the specialised assistance to which she was entitled under the relevant legislation.

[26] For further details on equal treatment, and in particular the provision of reasonable accommodation, in education, see the Chapter on Equality.

XI. Immigration[27]

Article 3 of the Convention

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Article 8 of the Convention

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Expulsion and extradition of persons with disabilities

1. Risk of inhuman and degrading treatment

407. The removal by a State Party of a seriously ill person - irrespective of the nature of the illness - may give rise to an issue under Article 3 of the Convention where substantial grounds have been shown for believing that the person concerned, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy (see, for instance, *Savran v. Denmark* [GC], 2021, concerning the removal of a person with schizophrenia to Turkey; *Hukić v. Sweden* (dec.), 2005, concerning the removal of a person with Down syndrome to Bosnia and Herzegovina). In *Savran v. Denmark* [GC], 2021, the Court notably considered that, whilst schizophrenia was a serious mental illness, that condition could not in itself be regarded as sufficient to bring the applicant's complaint within the scope of Article 3 of the Convention.

408. In *S.H.H. v. the United Kingdom*, 2013, a man with disability with an amputated lower right leg and a false limb alleged that he would be at risk of inhuman and degrading treatment if expelled to Afghanistan as a result of his disabilities. The Court however found that the applicant had not demonstrated that, as a result of his disabilities, he would be subjected to an enhanced risk of indiscriminate violence in Afghanistan such as to engage Article 3 of the Convention (§§ 85-87).

409. A person's extradition to another country and to a different, potentially more hostile, prison environment which would result in a significant deterioration in his mental and physical health is capable of reaching the Article 3 threshold (*Aswat v. the United Kingdom*, 2013, concerning a detainee with mental disability who was about to be extradited to the United States, where he was liable to serve his prison sentence in a super-max prison).

2. Respect for private and family life

410. On account of their mental condition, persons with a mental disorder are more vulnerable than an average "settled migrant" facing expulsion (*Azzaqui v. the Netherlands*, 2021, § 54). A person's mental illness has to be adequately taken into account when examining the proportionality of his or her expulsion in view of a criminal offence he or she has committed (*Savran v. Denmark* [GC], 2021, §§ 184, 191-197 and 201). Where an applicant's criminal culpability was excluded on account of his

[27] For further details see the Guide on Immigration.

mental illness, this fact should be adequately taken into account as it might have the effect of limiting the weight to be attached to the "nature and seriousness" of the offence criterion in the overall balancing of interests and, consequently, the extent to which a State could legitimately rely on the applicant's criminal acts as the basis for the expulsion and ban on re-entry (*Savran v. Denmark* [GC], 2021, §§ 193-194; *Azzaqui v. the Netherlands*, 2021, § 5). Regard must further be had to the development made through treatment, the availability, including the availability and accessibility of medication and treatment matching the applicant's need, in the country of destination and the difficulties the person might encounter there due to his mental vulnerability (*ibid*., §§ 59 and 61).

411. As to the criterion of "solidity of family ties" domestic authorities need to take into consideration when the person facing expulsion is the principal caregiver of his or her adult child who has a mental or physical disability (*Nguyen v. Denmark*, 2024, § 33).

B. Detention with a view to expulsion

412. In *Thimothawes v. Belgium*, 2017, which concerned an asylum seeker's detention pending his expulsion under Article 5 § 1 f) of the Convention, it was alleged that the applicant's mental health was such as to place him in the "vulnerable persons" category, which should have induced the authorities to conduct an individual assessment of his situation in order to ascertain whether his detention was necessary and appropriate (§ 72). However, the applicant's mental health did not, of itself, mean that his detention had been unjustified: he had benefited from special care in both the holding centres in which he had been detained and the reports drawn up by the psychological support services had not mentioned any obstacles to his detention (§§ 79-80).

XII. Other matters

A. Prohibition of slavery and forced labour[28]

413. The obligation for lawyers to act as unpaid guardians to persons with mental disabilities does not constitute forced or compulsory labour within the meaning of Article 4 of the Convention considering that such services are not outside the ambit of the normal activities of a practising lawyer and that the applicant had not alleged that there were a significant number of cases in which he had to act as a guardian or that this task was particularly time-consuming or complex (*Graziani-Weiss v. Austria*, 2011).

414. The case of *Radi and Gherghina v. Romania* (dec.), 2016, concerned a person with severe physical disability (the second applicant) who was in the care of his aunt (the first applicant), a qualified nurse who had a contract of employment with the local authority under which she provided permanent care and assistance for the second applicant in return for a salary equal to the national minimum wage. The first applicant argued that the personal-assistance scheme imposed a disproportionate burden – amounting to forced and compulsory labour – on the relatives of persons with disabilities acting as personal assistants. Noting in particular that the first applicant had accepted her work willingly, that there was no indication of any sort of coercion and that she had been free to denounce the contract at any given moment without any consequences for her, the Court considered that she had not been required to perform compulsory work.

[28] For further details see the Guide on Article 4 - Prohibition of slavery and forced labour.

B. Freedom of religion[29]

415. In *Mockutė v. Lithuania*, 2018, a person involuntarily confined in a psychiatric hospital complained that the psychiatrists had prevented her from practising her religion and that they had persuaded her to have a critical attitude towards her religion. The Court recalled that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with (§ 122). The Court accepted that the needs of psychiatric treatment might necessitate discussing various matters, including religion, with a patient, when he or she is being treated by a psychiatrist. That being so, it did not transpire from domestic law that such discussions might also take the form of psychiatrists prying into the patients' beliefs in order to "correct" them when there is no clear and imminent risk that such beliefs will manifest in actions dangerous to the patient or others (§ 129). There had therefore been a violation of Article 9 of the Convention.

C. Right to marriage[30]

416. Limitations on the right to marry laid down in national laws may comprise formal rules, but also substantive provisions based on generally recognised considerations of public interest, in particular concerning capacity (*Delecolle v. France*, 2018, § 52). In *Delecolle v. France*, 2018, the applicant, placed under enhanced protective supervision, complained that he had been unable to marry owing to the fact that his marriage was subject to the authorisation of his supervisor and of the guardianship judge. The Court noted that the obligation placed on the applicant to request prior authorisation for his marriage had been based on the fact that he was under a legal protection order and his request had been refused as it was considered that he was incapable of consenting in an informed manner to his own marriage. Accordingly, and in light of the authorities' margin of appreciation, the Court found no violation of Article 12 of the Convention.

417. In *F.P.J.M. Kleine Staarman v. Netherlands*, Commission decision, 1985, the applicant complained that the provision resulting in a woman losing her disability benefits upon marriage was contrary to Article 12 of the Convention, since it amounted to a sanction on her marriage. However, the Court concluded that the applicant's ability to exercise her right to marry was not in any way interfered with by the withdrawal of her disability benefits.

D. Just satisfaction

418. The Court can take into account the applicant's disability when deciding to afford just satisfaction following the finding of a violation of the Convention or its Protocols and can order measures to ensure that the amount awarded is used in the applicant's best interest.

419. For instance, in *Lashin v. Russia*, 2013, which concerned a legally incapacitated person, the Court took into account the applicant's particular vulnerability due to his mental disorder in the just satisfaction award made in respect of non-pecuniary damage (§ 128). Furthermore, the Court held that if, at the moment of payment of the award, the applicant was still legally incapacitated, the respondent Government had to ensure that the amount awarded was transferred to his legal guardian, on the applicant's behalf and in his best interest (§ 129).

[29] For further details see the Guide on Article 9 - Freedom of thought, conscience and religion.
[30] For further details see the Guide on Article 12 - Right to marry.

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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