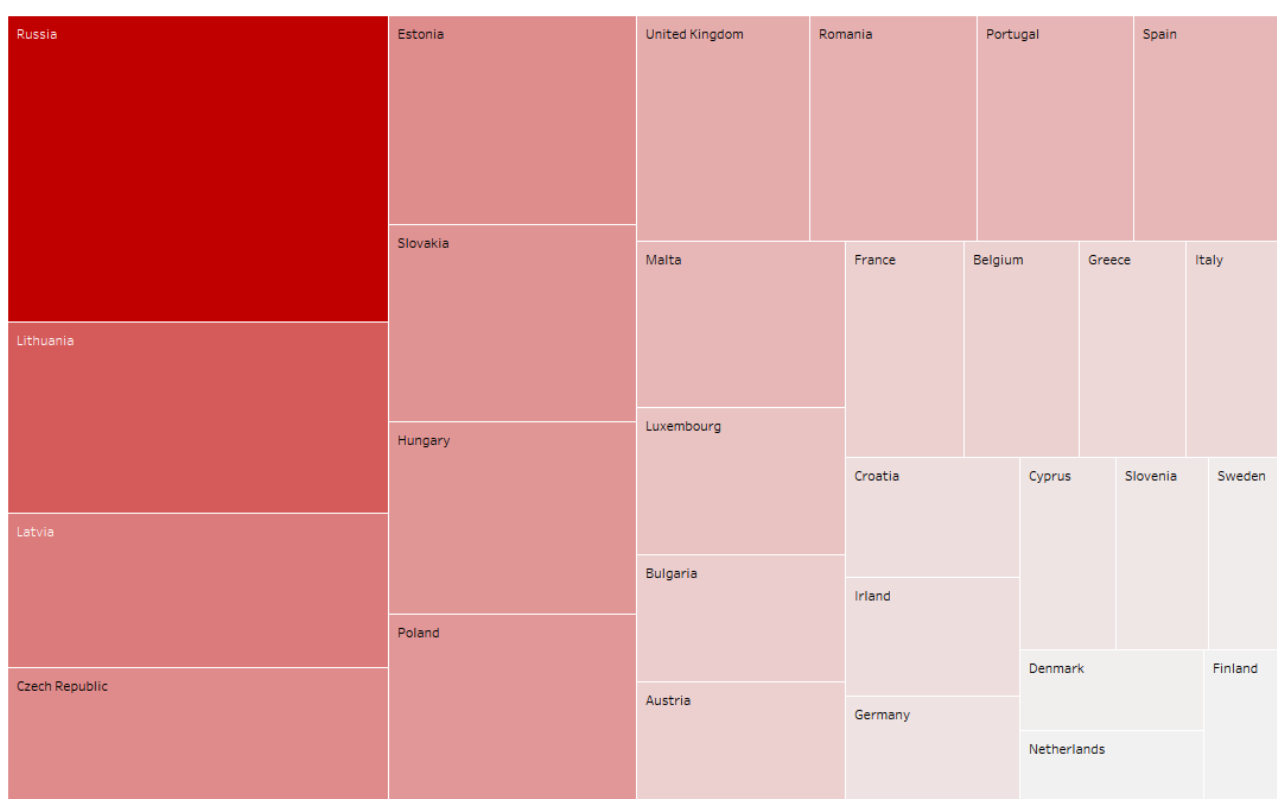


The European Court of Human Rights and the protection of fundamental rights in prison

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Introduction

The protection of fundamental rights in prison and the improvement of prison conditions are the main goals of a number of organisations in every part of the world. Deprivation of liberty is a common feature in all our cultures and the constant struggle to reduce the use of incarceration, humanize detention and avoid discriminations and inequalities in its use is as long as the history of prison itself.

In this struggle over the years the human rights defenders have not had many allies. Public opinion is not so well disposed towards offenders, while politicians are more and more willing to show their toughness on crime, especially when they don't want to, or don't know how to, be tough on the social inequalities that are among the causes of crime.

In other words, prisoner's rights have never been a popular topic. Yet, there has always been a common culture and a common set of tools that human rights defenders could turn to for help: the culture and the system of the international human rights legislation, the body of international laws designed to promote human rights on global, regional, and domestic levels. Our countries are partners of several international human rights instruments, that is: declarations not legally binding, adopted by bodies such as the United Nations General Assembly, and conventions, which are legally binding instruments concluded under international law. In some cases these mechanisms can have only a limited impact, when their decisions are not binding and there is no mechanism to oversee their implementation. However, even in these cases their role can be extremely important for human rights defenders.

But there are other cases when binding conventions set up very effective mechanisms for the protection and the promotion of fundamental rights, as in the case of the European Convention on Human Rights, drafted in 1950 and entered into force on 3 September 1953. 47 States are party to the Convention.

Several provisions of the Convention can have an impact on prison conditions and in particular its Article 3 on the prohibition of torture: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

In January 1959, on the basis of Article 19 of the Convention, was established the European Court of Human Rights with the mandate of ensuring the enforcement and implementation of the European Convention in the member States of the Council of Europe. The Court is based in Strasbourg, France, and decides on applications alleging that a contracting State has breached one or more of the provisions set out in the Convention and its protocols. Applications can be lodged by individuals, group of individuals or one or more States.

The case law of the European Court of Human Rights, reported in the following pages using materials made available over the years by the Court itself, created a set of standards for detention that can be used by human rights defenders not only to strengthen their cases in front of public opinion, Courts and decision makers, but also to go to the Court itself to get decisions that can be used to improve prison conditions in their Country.

This happened several times in the past, for instance in the recent cases "Ananyev and others v. Russia" and "Torreggiani and Others v. Italy", two pilot judgements in which the Court found

structural problems related to inadequate conditions of detention and lack of effective remedies against relevant violations both in Russia and in Italy.

Similar decisions can lead to radical changes within a national penitentiary system. In both the cases mentioned, civil society organisations in Russia and Italy contributed in bringing them to the Court and campaigned after the decisions advocating for radical reforms.

The following pages intend to present to civil society organisations possible areas to be explored in order to use the European Court of Human Rights to protect fundamental rights and improve prison conditions in Europe.

Irina Protasova (Man and Law)

Alessio Scandurra (Antigone)

Detention and mental health

A rather high percentage of detainees suffer from mental issues, sometimes born as a consequence of their imprisonment or as a worsening of previously existing conditions. To provide these persons with adequate treatment and proper medical assistance is thus of the outmost importance, in order to guarantee health and safety for the ill detainees and for the rest of them. Detention facilities ought to be able to cope with cases of even serious mental diseases, both having a well-trained medical staff and a suitable place for the required treatment.

Furthermore, under the category of mental health issues to be taken into account, fall suicidal tendencies too, which unfortunately are not unusual at all within the prison environment and need to be paid great attention when taking care of prisoners' health.

Any ill-treatment of prisoners with mental health issues, any non-compliance with relevant regulations and standards and any violation of prisoners' rights regarding mental healthcare and treatment of mental diseases, represent a violation of Article 3 of the European Convention on Human Rights, Prohibition of Torture: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." If negligence and non-compliance with the linked regulation on the matter concern suicidal tendencies, they can also be regarded as violations of Article 2 of the Convention, Right to Life.

Below is a list of the main prisoners' rights regarding mental health, with reference to the European regulations on the topic and a few relevant examples of sentences by the European Court of Human Rights, assessing violations of such prescriptions.

Detainees suffering from mental diseases have the right:

- To have access to a healthcare service as close as possible to the general one, therefore having at disposal at least a medical practitioner and a trained nurse with knowledge of mental health, in order for them to decide the most appropriate treatment (COE European Prison Rules, Part. III Healthcare; COE Recommendation No. R (98)7, section D and CPT Standard on healthcare services in prison, section b. ii, 41).

Sentence [Güveç v. Turkey \(20 January 2009\)](#): a fifteen years old boy was tried before an adult court and sentenced to an adult prison, where his psychological problems were never acknowledged and properly treated, thus leading to several suicide attempts. The Court recognize the fact as a violation of Article 3 of the Convention as the detainee was sent to an inappropriate detention facility and was not given an adequate medical care.

- To be put in condition of being appropriately treated with any kind of therapy program the doctor decides to be the most adequate (pharmacological, psychotherapeutic, occupational), also ensuring detention in a suitable environment (CPT Standard on healthcare services in prison, section b. ii, 41).

Sentence [Murray v. the Netherlands \(26 April 2016\)](#): the man, convicted to a 20 years sentence, complained that he was never treated for his psychiatric problems nor provided for with a special detention regime. The Court found his complaint to truly show a violation of Article 3 of the Convention, as the detainee was examined by a psychiatrist and found suffering from a mental disease, but never properly treated during his detention.

Sentence [Ticu v. Romania \(1 October 2013\)](#): the applicant, who suffered from delays in his physical and mental development, complained about the poor detention conditions of the prisons he was detained into, especially due to overcrowding issues. The Court held that there was a violation of the Article 3 of the Convention in

place, as the detention conditions of the prison were not suitable for any detainee with the medical conditions of the applicant, who was supposed to be guaranteed appropriate medical assistance and to be nursed in a dedicated hospital facility.

- When diagnosed with a mental health condition, to be held in adequate civil mental hospitals or, if confinement is unavoidable, to be nursed in a dedicated facility within the prison, where prisoners can be held under observation and receive the appropriate treatments. When a transfer from the prison to a hospital facility is needed, it has to be regarded as priority, thus avoiding falling into delays or deferments of the procedure (COE Recommendation No. R (98)7, section D; CPT Standard on healthcare services in prison, section b. ii, 43; COE European Prison Rules, Part. III Healthcare).

Sentence [Raffray Taddei v. France \(21 December 2010\)](#): the applicant complained about her detention, in consideration of her number of psychiatric conditions, including anorexia and Munchausen's syndrome. The Court recognized a violation of Article 3 of the Convention by the national authorities in not having provided for her need for assistance and care in an adapted facility.

- To be subject to isolation or physical restraint only when it is considered absolutely necessary by a doctor and in case of violent or dangerous detainees with severe mental conditions. Physical restraint can never be used as a punishment and should never be prolonged over the length of time strictly necessary. It must also be recorded in the detainee's personal file, indicating time and length of the restraint. (CPT Standard on healthcare services in prison, section b. (ii) 44)

Sentence [Kucheruk v. Ukraine \(6 September 2007\)](#): the Court was asked to deliberate on the case of a detainee, suffering from schizophrenia, handcuffed in solitary confinement and subject to inadequate medical care. The Court found the case a violation of Article 3 of the Convention for the unjustified recourse to solitary confinement, not supported by any medical treatment or any kind of assistance able to cope with the prisoner's mental health conditions.

- To be especially assisted, monitored and taken care of when showing suicidal tendencies, in order to prevent any behavior threatening someone's own safety. This also includes being held in condition of not having access to any possible mean of killing oneself. The prison staff should be trained to recognize indication of suicidal risk and contexts which may favour suicide intentions (for example pre-trial and right after trial periods). (CPT Standard on healthcare services in prison, section d. (iii); COE European Prison Rules, Part. III Healthcare; COE Recommendation No. R (98)7, section D)

Sentence [Ketreb v. France \(19 July 2012\)](#): the application to the Court was made by the sister of a detainee, who hung himself in prison, claiming that her brother was not given adequate assistance and a proper monitoring while put in a disciplinary cell, a condition not at all suitable to his mental conditions. The Court found French authorities guilty of having omitted to protect the prisoner's right to life, thus going against Article 2 of the Convention. The state of the detainee was such that it should have been clear that he could not be put safely in a disciplinary cell, but rather that he needed psychiatric assistance, thus also infringing Article 3 of the same.

Sentence [Coselav v. Turkey \(9 October 2012\)](#): the case presented to the Court was about a 16 years old boy who killed himself in an adult prison. The Court found the Turkish authorities to deliberately go against Article 2 of the Convention by being guilty of neglecting the boy's psychological problems and of even threatening him with disciplinary sanctions for the previous suicide attempts, instead of assisting him in trying to prevent such behaviours and providing him with an appropriate medical care.

Detention conditions and treatment of prisoners

Detention conditions and treatment of prisoners ought to comply with given prescriptions on the national and international level, concerning different aspects of prisoners' everyday life. Prisoners are deprived of their freedom but they must be granted decent life conditions and must not be deprived of anything else which is in their right, as it would be regarded as degrading and detrimental of their dignity. Regulations on the matter generally look at two main aspects of life in prison: the space of detention and its quality (hygiene, size of the cell, number of cellmates, etc.), and the prisoner's treatment (relationship with cellmates and police agents, juvenile detention, repeated transfers).

Any ill-treatment of prisoners, any non-compliance with relevant regulations and standards and any violation of prisoners' rights regarding detention conditions, represent a violation of Article 3 of the European Convention on Human Rights, Prohibition of Torture: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

Below is a list of the main prisoners' rights regarding detention conditions and treatment, with reference to the European regulations on the topic and a few relevant examples of sentences by the European Court of Human Rights, assessing violations of such prescriptions.

All detainees have the right:

- to be accommodated in a living space respectful of human dignity and privacy, in compliance with requirements of health and hygiene and in consideration of climatic conditions, in order to make sure an adequate supply of air, lighting, heating and ventilation is provided. Prisoners should also be given choice, when possible, before being required to share a sleeping accommodation, as single occupancy should be preferred. Anyway, only prisoners suitable to be associated with each others should share the accommodation (COE European Prison Rules Part II Conditions of Imprisonment; CPT Standard on Imprisonment, 50).

Sentence [Modârcă v. Moldova \(10 May 2007\)](#): the applicant complained about spending nine months in a cell with three more detainees, with very limited access to daylight, not properly heated and ventilated, with discontinuous electricity and water supplies. Furthermore, the detainee was never provided with clothes and bed linens, and the daily allowance per prisoner was 0.28 euro, way too little for him to afford adequate food, clothes or furnishing in the cell. The effect of these many malfunctions summed up, was recognised to violate Article 3 of the Convention as inhuman or degrading treatment.

- to be guaranteed the minimum standard for personal living space of:
 - for a single-occupancy cell, 6m² of living space, plus sanitary facility;
 - for a multi-occupancy cell, 4m² of living space, plus fully-partitioned sanitary facilityThese general standards vary according to the facility: temporary custody cells in police stations do not need to comply with these, as well as spaces for mental health treatment in prison, which ought to be bigger. Also, these standards are not absolute: living spaces smaller than these do not necessarily imply inhuman treatment, if they are balanced, for example, with the chance of spending most of the day outside the cell, in activities such as workshops, classes and training. It is considered degrading treatment when unsuitable living space conditions sum up with other issues such as lack of hygiene, particularly serious overcrowding, lack of air and lighting, etc. (CPT Standard Living space per prisoner in prison establishments).

Sentence [Mandic and Jovic v. Slovenia and Štrucl and Others v. Slovenia \(20 October 2011\)](#): the applicants,

both complaining about living conditions in Ljubljana prison, reported spending several months in a cell with a personal space of 2.7m², with an average temperature in August of 28°. The Court recognised the living conditions of the applicants to have caused them avoidable distress and thus had amounted to degrading treatment.

Sentence [Torreggiani v. Italy \(8 January 2013\)](#): the applicant complained that the conditions of overcrowding in two Italian prisons amounted to inhuman and degrading treatment. The Court held that the living space was far below the recommended 4m² and that additional issues such as lack of hot water and inadequate lighting and ventilation led to an increase in the suffering which can be regarded as a violation of Article 3 of the Convention.

- to have access to sanitary facilities that are hygienic and respect privacy and to be provided with facilities allowing prisoners to have a bath or a shower possibly once a day, or at least twice a week, with a temperature suitable to the climate (COE European Prison Rules Part II Conditions of Imprisonment; CPT Standard on Imprisonment, 49-50).

Sentence [Rezmives and Others v. Romania \(25 April 2017\)](#): in addition to the complaint for overcrowding, the applicant raised attention on the poor sanitary conditions, namely the inadequate sanitary facilities, the lack of hygiene, the presence of rats and insects in the cells. The Court held that, given the circumstances, living conditions of the applicant implied a violation of Article 3 of the Convention for their being degrading; furthermore, since this was not an isolated case, the Court exhorted the Romanian government to implement measures improving detention standards.

Sentence [Peers v. Greece \(19 April 2001\)](#): the applicant complained about his detention in a segregation unit, where he was sharing a small cell with another detainee, with poor ventilation and lighting conditions and with an open toilet often malfunctioning, forcing the two prisoners to a complete lack of privacy. The Court held that the segregation of the prisoner in such space, lacking an adequate sanitary facility, amounted to inhuman or degrading treatment, thus violating Article 3 of the Convention.

- to be ensured safety, with regard to other prisoners, prison staff and visitors. Any risk of violence should be reduced to the minimum (COE European Prison Rules, Part IV Good Order, 52).

Sentence [Yuriy Illarionovich Shchokin v. Ukraine \(3 October 2013\)](#): the application to the Court regarded the applicant's son, dead as a consequence of torture by other inmates and possibly a police officer during his detention in a penal colony. The Court found the authorities to have violated Article 2 of the Convention, for not having protected the prisoner's right to life and Article 3 of the Convention for his being subjected to acts of torture and for the lack of adequate investigations on such acts.

- to be subject to special security measures involving the use of force by police officers only as a last resort, in situations of danger or particular violence. A prisoner who has been subjected to any mean of force has the right to be examined and treated by a doctor. The use of force involving physical restraint has to cease at the first possible opportunity and must be carefully reported. It must never be intended as a punishment (COE European Prison Rules, Part IV Good Order; CPT Standard on Imprisonment, 53-55).

Sentence [Tali v. Estonia \(13 February 2014\)](#): the applicant complained about having been ill-treated by police officers, concerning in particular being used pepper spray against and being strapped to a restraint bed. The Court found the officers guilty of a violation of Article 3 of the Convention, in particular for the use of pepper spray, that can cause serious medical issues and was considered unnecessary, given the fact that the prisoner had already been brought under control. As far as the restraint is concerned, the Court underlined that such measures are never to be used as a punishment, but only as a mean of protection from self-harm for violent detainees, therefore amounting in this case to degrading treatment.

- to be strip searched by staff members of the same gender and never to be exposed to

humiliation of any kind during the search process. They also have the right to be present when prison staff search their personal belongings, unless otherwise required for investigation purposes or threats to the safety of the staff (COE European Prison Rules, Part IV Good Order).

Sentence [Iwańczuk v. Poland \(15 November 2001\)](#): the applicant was allowed to vote on parliamentary elections; to do so, a group of police agents told him he would have needed to undergo a body search. The detainee got undressed except for his underwear and was ridiculed, verbally abused and humiliated with remarks about his body. He was then asked to get naked and, after his refusal to do so, was prohibited to vote and taken back to his cell. The Court found the applicant to have been subjected to degrading treatment, acknowledging a violation of Article 3 as the request to strip naked was found unjustified and unnecessary and the search was conducted inappropriately.

Sentence [Frérot v. France \(12 June 2007\)](#): the applicant complained about being strip searched each time he left the visiting room in Fresnes prison and being taken to a disciplinary cell for having refused. The Court acknowledged a violation of Article 3 in consideration of the fact that the detainee had been subjected to different kinds of searches in different prisons, but none of them was as strict as the one he had to undergo in Fresnes, that prescribed searches even in his intimate parts. Furthermore, too large discretion on the search procedures was left to the prison governor.

- to be held in solitary confinement, unless it is on their own request, as short as possible and only as a last resort for disciplinary purposes. According to CPT standard on the matter, solitary confinement needs to be: proportionate, lawful, accountable, necessary and non-discriminatory. Whatever the reason for solitary confinement (court decision, disciplinary sanction, preventative measure, protection), the detainee is entitled to have medical assistance when asked. The assessment of the detainee's physical and psychological conditions ought to be recorded on a written statement. Also, detainees in solitary have the right to be guaranteed the same standards concerning the size and quality of their living spaces as in regular detention. (CPT Standard on Imprisonment, 56; CPT Standard on Solitary Confinement; COE European Prison Rules, Part IV, Good Order).

Sentence [Ilascu and Others v. Moldova and Russia \(8 July 2004\)](#): the applicant, a political opponent accused of terrorism, was held for 8 years in strict isolation in the death row, as at the time he was sentenced to death (and later released). He had no contact with other people, no news from the outside, no right to contact his lawyer or to see or talk to his family. His cell was also unheated, he was not fed as a punishment and not given medical care. The Court found such conditions to be a serious violation of Article 3 and to amount to degrading and inhuman treatment.

Sentence [X. v. Turkey \(no. 24626/09\) \(9 October 2012\)](#): the applicant complained about being put in solitary confinement after having reported being abused and bullied by his cellmates for his homosexuality. The Court noted that the confinement caused the applicant distress and was detrimental of his dignity, thus violating Article 3 of the Convention. In addition to this, given the fact that the reason for confinement was not protection, but rather the detainee's sexual orientation, the Court found in it a violation of Article 14 (prohibition of discrimination) too.

- to be transferred, when needed, in a way that safeguards the detainee's physical and psychological well being and guarantees he does not lose contact with his family and lawyer (CPT Standard on Imprisonment, 57).

Sentence [Bamouhammad v. Belgium \(17 November 2015\)](#): the applicant claimed the treatment he received to be inhuman and degrading, and to have affected his mental health. He also complained about the lack of remedies for his health condition, as he was suffering from Ganser Syndrome. The Court held that the execution of his detention, including extremely frequent transfers and repeated special measures, in addition to the inadequacy of the treatment and the refusal of adopting an alternative to detention for such case, amounted

to a violation of Article 3 of the Convention.

So far detainees' rights concerning detention conditions and treatment. This general standards, as well as those on medical care, apply to all the categories of detainees (foreigners, women, etc.); nevertheless, a special attention and specific prescriptions address juvenile detention, concerning in particular youths exceptionally held in adult prisons. Such detainees have the right to have access to the social, psychological and educational services that are available to children in the community; they also have the right to be held in an area of the prison separate from that of the adults, unless this is against the interest of the detainee himself. (COE European Prison Rules, Part II, Conditions of Imprisonment).

Sentence [Güvec v. Turkey \(20 January 2009\)](#): a fifteen years old boy was tried before an adult court and sentenced to an adult prison, where his psychological problems were never acknowledged and properly treated, thus leading to several suicide attempts. The Court recognize the fact as a violation of Article 3 of the Convention as the detainee was sent to an inappropriate detention facility and was not given an adequate medical care.

Hunger strikes in detention

Hunger strikes are often used as a mean of protest in prison: detainees undertake strikes for personal or collective reasons, linked to detention conditions or on a more general ground to raise attention on issues. Far from being interpreted for what they are, expression of discomfort, hunger strikes sometimes incur in strict reactions by the authorities, to the extent of using force-feeding, a medical practice that should be reserved to cases of patients at a serious risk for their life.

Violations of the regulations on health care and use of force, the two main aspects under which hunger strikes fall, are considered transgressive of Article 3 of the Convention, prohibition of torture.

Prisoners have the right:

- to undertake a hunger strike, for any reason, as a personal choice. In accordance to the right of refusal of care for prisoners, they are also entitled to not be forcibly fed, unless they are losing their consciousness due to the lack of proper nutrition and thus threatening their own well being; even so, the forced feeding ought to be carried out with proper means as prescribed by the general rules on health care and never cause harm or humiliation to the detainee (CPT Standard Health care services in prison, 47).

Sentence [Nevmerzhitsky v. Ukraine \(5 April 2005\)](#): the applicant complained about being subjected to force-feeding several times during his hunger strike, that caused him serious physical and psychological harm. He was handcuffed and forced to swallow a nutritional mixture from a rubber tube. Moreover, he was denied adequate medical treatment and put in isolation for 10 days during the hunger strike. The Court held the authorities responsible for a violation of Article 3 of the Convention: the force-feeding was performed without showing medical evidence of its necessity, thus being arbitrary, and carried out with restraints and use of force that amounted to torture.

Sentence [Ciorap v. Republic of Moldova \(19 June 2007\)](#): the applicant complained about his conditions of detention, force-feeding and the fact that his complaints were dismissed by the national courts because he had not paid the court fees. The Court found the authorities guilty of a violation of Article 3 of the Convention: force-feeding was not proved necessary by any medical evidence, but rather it was performed for discouraging the detainee to continue his strike. The Court also condemned the method of force-feeding, involving the use of handcuffs and mouth openers which caused severe pain to the applicant. In addition to this, there was a violation of Article 6 (right to a fair trial) of the Convention: given the very serious circumstances of the complaint, the prisoner should have been exempted from paying the court fees.

- not to be subjected to harm or use of force that overstep the limits prescribed by related European rules. Hunger strikes are never a sufficient reason for using force against detainees, unless they seriously threaten order and security in the prison (COE European Prison Rules, Part IV Good Order).

Sentence [Karabet and Others v. Ukraine \(17 January 2013\)](#): the applicant participated in a hunger strike to protest about their conditions of detention. A week later the prison authorities conducted an operation involving officers and special forces to identify the organisers of the strike and transfer them to a different facility. The applicants, who were among them, also complained about being ill-treated during the operations and transfer, and that their personal belongings had not been returned to them after the transfer. The Court held that there was a violation of Article 3 in the use of force, as the strike was reported to be peaceful and no episode of violence happened during it. The authorities' unexpected action had been disproportionate and intended for punishment; furthermore, it caused distress and humiliation in the applications, thus amounting to degrading treatment. Finally, the failure of returning personal belongings could be considered as a violation of Article 1 of the Convention (protection of property).

In some cases, the Court can take the decision to prescribe an interim measure in the interest of all the parties involved, to solve a situation of conflict. As hunger strikes are often intended to manifest a protest or to denounce something, conflict may arise between the detainees performing the strike and the prison authorities: in some cases the Court intervened by indicating an interim measure considered suitable to solve the issue on both sides (ECHR Rules of Court, 39).

Sentence [Ilascu and Others v. Moldova and Russia \(8 July 2004\)](#): the applicants complained about their proceedings leading to an unlawful detention and about their conditions of detention. One of them started a hunger strike to protest about such conditions and about the authorities' refusal to deliver him a parcel from his wife with food and a fur hat. The Court indicated an interim measure to the Moldovan and Russian authorities so that the applicant on hunger strike could have conditions consistent with his rights. The authorities were also invited to provide evidence of the application of the measure. On the other hand the applicant was invited to end his strike.

Migrants in detention

Migrants' detention has become a very relevant matter in the latest years, therefore the CPT focuses special attention on the issues related to the deprivation of liberty and conditions of detention of these persons.

Deprivation of liberty for foreigners is justified when they are violating the legislation on aliens, thus being guilty of administrative offences such as illegal entry or residence. They can be detained while waiting to be repatriated, but their detention should not have a punitive nature, therefore detainees ought to be provided with a regime suitable for their condition.

It is important to stress the difference between immigration detainees and asylum seekers: the latter are waiting for a decision over their request, therefore there is no reason to have them detained or restricted, unless their request is reviewed and rejected, thus becoming detained migrants waiting to be returned to their own countries.

Transgressions of the given prescriptions on the related European documents (including a specific Handbook on European law relating to asylum, borders and immigration), are considered violating Article 5 of the European Convention on Human Rights, known as right to liberty and security, that states the circumstances under which a person can be deprived of his liberty, only after a lawful order of a court.

Any ill-treatment or detention in unsuitable conditions, any behaviour that might deliberately cause harm or distress in the persons detained can be considered as a violation of Article 3 of the Convention, prohibition of torture.

Detained migrants have the right:

- to have access to a lawyer, to a doctor and to be able to inform a relative or a third party about the detention measure. They can also reach out to their consular authorities and have contacts with their family. They are entitled to be informed about their rights through the assistance of an interpreter capable of communicating in a language detainees can understand. An individual detention order needs to be made available right at the outset of the deprivation of liberty or immediately after, stating the reasons for the measure. As a general rule, deprivation of liberty should be considered as a mean of last resort, following a careful examination of each individual case. Detained irregular migrants are entitled to an effective legal remedy enabling them to have a judicial body speedily deciding on the lawfulness of their deprivation of liberty. Such review will entail a hearing with the guarantee of legal assistance and an interpreter, if needed. The need for a continuation of the measure needs to be object of periodic review by an independent authority. In circumstances lacking such procedural provision, detention is to be considered unlawful (CPT Factsheet Immigration Detention, 1-2).

Sentence [**Ilias and Ahmed v. Hungary \(14 March 2017\)**](#): the applicants, Bangladeshi asylum seekers in Hungary, complained about being detained for 23 days in the transit zone without legal basis for such deprivation of liberty or any chance for a judicial review of their situation. The Court found their 23 days confinement to actually amount to detention and thus violate Article 5 of the Convention for not having followed from any reasoned and formal decision, nor having been subjected to a judicial review.

Sentence [**Khlaifia and Others v. Italy \(15 December 2016\)**](#): the application was sent by some migrants arrived in 2011 in Lampedusa following the events of the "Arab Spring", held in a detention centre and later on ships

in Palermo harbour, then repatriated to Tunisia. The Grand Chamber held that the applicants' detention without a clear or accessible basis did not comply with the principle of legal certainty: the refusal-of-entry orders issued by the Italian authorities did not refer to legal and factual reasons for their deprivation of liberty, thus amounting to a violation of Article 5 of the Convention. Lastly, Italian legal system did not provide any mean of obtaining a judicial decision on the lawfulness of their detention.

Sentence [Mikolenko v. Estonia \(8 October 2009\)](#): the applicant complained that after being refused an extension of his residence permit he was detained in a deportation centre from 2003 to 2007. The Court held there had been a violation of Article 5 of the Convention, as detention with a view to deportation does not stay valid for such a long period of time, thus there was a lack of an actual prospect of expulsion and of related proceedings by the authorities.

Sentence [Suso Musa v. Malta \(23 July 2013\)](#): the applicant, an asylum seeker from Sierra Leone, complained that his detention had been unlawful and that he did not have any effective mean to have his detention reviewed. The Court found a violation of Article 5 of the Convention, as the preventative detention of the applicant during the determination of his asylum request had been arbitrary. Besides, such determination took an unreasonable amount of time. In addition to this, he did not have a speedy review of the lawfulness of his detention. Considering that other similar applications might have been presented, the Court also urged Maltese authorities to create a mechanism for reviewing lawfulness of migrants' detention in a reasonable time-limit.

- to be held in specifically designed centers, capable of providing them with appropriate regime and material conditions. Many migrants are halted and initially held in transit zones, police stations, "point of entry" facilities: these are inadequate for prolonged stays, so migrants should remain there for the minimum time necessary (possibly less than 24 hours). They should not be detained in prisons, that are intended to a very different category of detainees (CPT Factsheet Immigration Detention, 3).

Sentence [Z.A. and Others v. Russia \(28 March 2017\)](#): the applicants were four individuals from Iraq, Palestine, Somalia and Syria travelling through Moscow's Sheremetyevo airport. They were denied entry to Russia: three of them ended up spending 5 to 8 months in the airport's transit zone, another stayed there almost two years. The Court held that there had been a violation of Article 5 of the Convention for the applicants' deprivation of liberty in the airport transit zone without any legal basis; furthermore, the conditions of their prolonged detention were unacceptable and humiliating thus amounting to a violation of Article 3 of the Convention.

Sentence [Riad and Idiab v. Belgium \(24 January 2008\)](#): the applicants complained about being detained in the transit zone of Brussels National Airport due to their unlawful entry in Belgium. The Court held that their deprivation of liberty for over 10 days in a place not suitable for detention had amounted to both a violation of Article 5 and of Article 3 of the Convention.

- to be guaranteed appropriate living standards and detention conditions, such as: sufficient living space, lighting, ventilation and heating; toilet facilities; a bed with clean bedding; access to a shower with hot water; clothes and chance to wash or repair them; a personal lockable space; access to food and water in consideration of their dietary habits. They should also be free to move around the detention facility, have exercise opportunities, activities and at least a room for social and recreational purposes. They should have access to visits and means of contact with the outside (CPT Factsheet Immigration Detention, 4-5).

Sentence [A.A. v. Greece \(no. 12186/08\) \(22 July 2010\)](#): the applicant was arrested in Greece after escaping a refugee camp in Lebanon. Palestinian national, he was taken into custody and issued an order of return to his country. He complained about the conditions of Samos detention centre: overcrowded; with no access to hot water, fresh air, phone calls; unhygienic conditions of food, eating and sleeping spaces; skin diseases. The Court held that the detention centre where the applicant was held 3 months clearly violated Article 3 of the Convention, amounting to degrading treatment; in addition to this the Court also condemned the lack of adequate medical assistance.

Sentence [Abdolkhani and Karimnia v. Turkey \(no. 2\) \(27 July 2010\)](#): the applicants, Iranian nationals, were arrested in Turkey for their passports being considered false, regardless of their UNHCR mandate as refugees, and placed in detention in Hasköy police station. The Court held that there had been a violation of Article 3 of the Convention for the 3 months detention of the applicants in the seriously overcrowded basement of the police station.

Sentence [A.F. v. Greece \(no. 53709/11\) \(13 June 2013\)](#): the applicant was arrested at the Feres border post in Greece and refused to have his political asylum request registered. He was held in detention in Feres for about four months and complained about the conditions of detention. The Court held that there had been a violation of Article 3 of the Convention, for the serious overcrowding issue of Feres border post, highlighted by reports from many international organisations, including a visit by the UN Special Rapporteur on torture and the CPT: individual living space was as little as 1m² per person (with numbers such as 123 inmates in a space for 28).

The same rights apply to migrant vulnerable persons; in addition to these, they need to be addressed with specific screening procedures aimed at understanding causes of their vulnerability (e.g. victims of torture); they should also be guaranteed meaningful alternatives to detention, suitable for their specific needs (CPT Factsheet Immigration Detention, 10).

Among the categories considered as vulnerable:

- **Children:** they are central to CPT's concerns; as a general rule, they should not be detained, regardless of their residence or migratory status, and of their being accompanied or separated. Their particular vulnerabilities (age, health, protection needs) ought to be assessed by a qualified person who conducts the interview. Separated or unaccompanied children who are deprived of their liberty have the right to have access to legal assistance and to be assigned a guardian or legal representative, to help them during the proceedings. Children should not be held with adults, unless they are relatives or parents, from whom they should not be separated (CPT Factsheet Immigration Detention, 10).

Sentence [Mubilanzila Mayeka and Kaniki Mitunga v. Belgium \(12 October 2006\)](#): the case concerned a five-year-old Congolese child who was travelling alone to join her mother in Canada, was detained for nearly two months and then removed to her country of origin. The Court held that there had been a violation of Article 3 of the Convention as for the child's conditions of detention: she was detained in a centre intended for adults, without being accompanied and assigned a guardian or a qualified professional to give counseling and educational assistance. Belgian authorities had failed to provide her with adequate care in consideration of her vulnerability, causing serious distress to the child.

Sentence [Rahimi v. Greece \(5 April 2011\)](#): the application regarded the conditions of detention of a minor entered in Greece illegally and detained in the Pagani centre on the island of Lesbos and later released with a view to his expulsion. The Court held there had been a violation of Article 3 of the Convention not only for having failed to assess the needs given by the specific child's vulnerabilities, but also for his detention conditions, amounting to serious degrading treatment even for the short length of the child's stay in the centre (2 days).

- **Women:** considered among vulnerable persons, especially in the case of nursing mothers or pregnant women, they need to be addressed with due attention. Mothers have the right not to be separated by their children and to be accommodated together in specific detention facilities, suitable for their needs and provided with female personnel (CPT Factsheet Immigration Detention, 10).

Sentence [Aden Ahmed v. Malta \(23 July 2013\)](#): the applicant, a Somali national, was detained in Malta after her illegal entry by boat. The Court held that there had been a violation of Article 3 of the Convention regarding the poor condition within the detention centre (cold, lack of access to open air and exercise, inadequate diet,

lack of female personnel) and the fact that the specific vulnerability of the applicant was never properly taken into consideration. She had fragile health and personal emotional situations due to a miscarriage while in detention and to have been separated by her child. Detention in such conditions for over 14 months amounted to degrading treatment.

- **Persons with disabilities:** as they are entitled to the same rights guaranteed to other detainees, when deprived of their liberty they need to be ensured adequate attention to their health condition and need to be assigned to a facility suitable for their physical handicaps, in order for them not to be impaired in having access to living areas, sanitary facilities, activities (CPT Factsheet Immigration Detention, 10).

Sentence [Asalya v. Turkey \(15 April 2014\)](#): the applicant, paraplegic and wheelchair-bound, complained about the conditions of the detention centre he was held in, lacking adequate facilities for a person with disabilities. The Court held that such conditions of detention amounted to a violation of Article 3 of the Convention, as being forced to ask for the help of strangers in performing common living acts such as using the toilet or sleeping on a bed was disrespectful of his dignity and amounted to degrading treatment.

Prisoners' health-related rights

Health care in prison is among the most important matters when it comes to protect prisoners' rights. Therefore, the CPT focuses great attention on monitoring the implementation of European prescriptions and making sure that the provision of care, sanitary facilities and medical assistance comply with given standards. Health care guarantees also concern vulnerable categories, which need to be addressed with special measures, to the extent of exempting them from detention, if their conditions are extremely severe: this applies to persons with serious disabilities, elder detainees, detainees sick with a terminal disease and so forth.

Violations of prisoners' rights related to health are to be regarded as transgressing Article 3 of the Convention on Human Rights, thus amounting to degrading and inhuman treatment. Serious cases of non-compliance with given regulations can even incur in violations of Article 2 of the Convention, right to life, if the medical situations of the detainees involved is so severe to lead to their death.

Prisoners have the right:

- to be seen by a doctor or a qualified nurse as soon as they enter prison; while in detention, prisoners have the right to have access to a medical care as similar as possible to that provided in the outside community, thus being granted medical assistance each time they request it, regardless of their regime of detention. This also include doctor-patient confidentiality. The prison health care service should also provide prisoners with appropriate diets, physiotherapy, rehabilitation and any other special facility which might be needed by prisoners with particular health conditions (CPT Standard Health care services in prison; COE European Prison Rules, Part III Health).

Sentence [Testa v. Croatia \(12 July 2007\)](#): the applicant, suffering from Hepatitis C, complained about the lack of an adequate treatment and check-ups, an inadequate diet and of not being allowed to have sufficient rest. The Court held that there had been a violation of Article 3 of the Convention in view of the ill-treatment to which the applicant was subjected and its cumulative negative effects on his health. In particular, the lack of requisite medical assistance, together with the conditions of imprisonment in which he was held for over two years, were detrimental of his human dignity.

Sentence [Ashot Harutyunyan v. Armenia \(15 June 2010\)](#): the applicant, suffering from a number of illnesses including diabetes, duodenal ulcer and a heart condition, complained about the lack of adequate medical care while in detention. The Court held that given the medical situation of the applicant, the lack of regular care and supervision amounted to a violation of Article 3 of the Convention; furthermore, there was no record to prove the recommended surgery had been carried out, nor any record of check-ups on the applicant by the prison medical staff.

Sentence [Iacov Stanciu v. Romania \(24 July 2012\)](#): the applicant claimed that the many medical conditions developed during his detention, such as dental problems, neuralgia and chronic migraine, were never properly treated and monitored while in prison. The Court found the prison authorities guilty of violating Article 3 of the Convention for not having provided adequate treatment and a systematic supervision of the applicant's conditions. Given the absence of any record concerning his illnesses, no comprehensive therapeutic strategy had been set up to cure him and prevent the aggravation of his diseases.

Sentence [Wenner v. Germany \(1 September 2016\)](#): the applicant, a long-term heroin addict, complained about having been denied drug substitution therapy while in prison. The Court held that there had been a violation of Article 3 of the Convention by the authorities, which failed to examine with the help of a medical expert which therapy could be considered appropriate for the applicant, regardless of their obligation to that effect.

- to be conducted, in the manner required by their state of health, to a fully-equipped civil hospital when the prison medical facility is not suitable for the treatment of specific diseases. While at the hospital, prisoners should not be forcibly attached to their beds or other furniture for custodial reasons, as security needs can be addressed differently, for instance by creating a custodial unit in the hospital (CPT Standard Health care services in prison; COE European Prison Rules, Part III Health).

Sentence [Mouisel v. France \(14 November 2002\)](#): diagnosed with leukaemia, the applicant underwent chemotherapy sessions at a civil hospital and complained that he was put in chains during the transport, his feet chained and a wrist attached to the bed during his therapy. Furthermore, he complained about being kept in detention regardless of his very serious medical conditions (he was released on licence only after two years). The Court held that keeping the applicant in prison and his treatment during the therapy, disproportionate to the actual security risk, were degrading of the applicant's dignity and incompatible with his medical situation, thus amounting to a violation of Article 3 of the Convention.

- to be considered for an alternative to detention when suffering from serious diseases which cannot be properly treated in prison, when diagnosed with a short-term fatal prognosis, when severely handicapped or of advanced age. In these cases the doctor is responsible for drafting a report in consideration of possible alternatives suitable to each medical condition (CPT Standard Health care services in prison).

Sentence [Gülay Çetin v. Turkey \(5 March 2013\)](#): the applicant complained about being held in prison, during pending trial and after being sentenced for murder, despite suffering from advanced cancer. The refusal by the authorities to consider any suspension of her detention or presidential pardon, exacerbated her condition of suffering. She then died in a hospital's prison ward. The Court held the authorities responsible for a violation of Article 3 of the Convention, for not having taken in consideration a recourse to humanitarian measures, thus leaving the applicant in conditions unsuitable to her disease and amounting to degrading treatment.

Sentence [Serifis v. Greece \(2 November 2006\)](#): the applicant complained about his continued detention regardless of his having a hand paralysed and suffering from multiple sclerosis. The Court held that the applicant's conditions of detention and the authorities' procrastination in providing him with adequate medical assistance in consideration of his severe medical issues, amounted to inhuman and degrading treatment, thus violating Article 3 of the Convention.

Health care service in prisons ought to give special attention to the needs of vulnerable detainees, who fall under the category of humanitarian assistance. These patients, due to their specific medical conditions, need special measures tailored to their needs, which prison authorities should provide after an accurate monitoring and reporting on their particular situation. Categories of prisoners normally considered as vulnerable are:

HIV-positive detainee

HIV is a very important matter to be considered by health care services in prison: as a transmittable disease, information need to be spread about its risks and medical controls need to be carried out in order to identify potential carriers, accompanied by adequate counseling. The prison staff has to be properly trained to adopt preventive measures in case of HIV-positivity, concerning non-discrimination and confidentiality. HIV-positive detainees have the right not to be segregated for their medical condition, as it is not a sufficient justification for their isolation (CPT Standard Health care services in prison).

Sentence [Martzaklis and Others v. Greece \(9 July 2015\)](#): the applicants complained in particular about their segregation in a separate wing of the prison hospital and the authorities' failure to consider the compatibility of such allocation with their physical and mental conditions. The Court held that there had been a violation of Article 3 of the Convention and a violation of Article 14 of the Convention, prohibition of discrimination, for having isolated HIV-positive detainees from other inmates without a grounded justification. In addition to this, prison authorities failed to provide the applicants with adequate medical care; on the contrary, they were subjected to physical and mental suffering. Finally, as the applicants could not find an effective domestic remedy to lodge their complaints, the Court held that local authorities also violated Article 13 of the Convention, right to an effective remedy.

Sentence [Khudobin v. Russia \(26 October 2010\)](#): the applicant, already HIV-positive and suffering from a number of chronic diseases, contracted several other serious diseases during his detention and alleged that he was not given appropriate medical treatment, even after having been moved to a specific hospital unit within the detention centre. The Court held that there was a violation of Article 3 of the Convention as the detainee was not given the medical care he was entitled to. Given the applicant's delicate conditions, this was not only degrading for his dignity, but also very risky for his personal health.

Disabled detainees

Prisoners with physical disabilities ought to be subject to special care, able at taking into consideration their special personal needs. This is why disabled prisoners fit into the category of vulnerable detainees and ought to be given the chance to have access to alternatives to detention (CPT Standard Health care services in prison).

Sentence [Hüseyin Yıldırım v. Turkey \(3 March 2007\)](#): the applicant, severely disabled, complained about the conditions of his detention and of his transfers during his trials. The Court held there had been a violation of Article 3 of the Convention as the time spent in prison had caused the applicant unnecessary physical and mental hardship. In particular during transfers, the authorities had failed to provide the applicant with the assistance of medical staff or qualified personnel, thus exposing the applicant to the risk of being moved by unqualified persons. In addition to this, despite the recommendation of an early release by medical authorities, in consideration of the applicant's serious disability, his detention has continued.

Sentence [Arutyunyan v. Russia \(10 January 2012\)](#): the applicant, wheelchair-bound and with many other diseases, including a failing renal transplant and diabetes, complained about his detention conditions. The prison was not adequate to a person on a wheelchair and the applicant was forced to walk up and down the stairs for four floors each day, in order to go from his cell to the medical unit where he received hemodialysis. The Court held that there had been a violation of Article 3 of the Convention, as the authorities had failed to treat the applicant in a way consistent with his disability. Having the applicant forced to go up and down the stairs each day for a very long time after a complicated and tiring medical treatment caused him unnecessary pain and a serious risk to his health, thus amounting to degrading treatment.

Elderly detainees

Elderly prisoners also fall within the vulnerable categories which ought to be regarded with special attention for having particular medical needs and for being affected in a greater measure by unsuitable conditions of detention; they should therefore be provided for with alternatives to detention (CPT Standard Health care services in prison).

Sentence [Contrada \(no. 2\) v. Italy \(11 February 2014\)](#): the applicant, almost 83, complained about the authorities' repeated refusals of his requests for a stay of execution of his sentence, or for its conversion to house arrest, regardless of a consideration for the applicant's age and state of health. The Court held that there had been a violation of Article 3 of the Convention, as the medical report about the applicant's state of health submitted to the attention of the authorities clearly demonstrated that he was unfit to the prison regime applied. In addition to this, the lapse of time

between the applicant's request of house arrest and the moment the request was accepted and he was placed under the new regime (over 9 months), was an additional reason for considering the authorities to have caused the applicant to be subjected to inhuman or degrading treatment.

Prisoners' right to vote

The importance of political representation is acknowledged by Article 3 of Protocol no. 1 of the European Convention on Human Rights, right to free elections: "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". This article aims at preserving the foundations of an effective democracy governed by the rule of law in Contracting States.

Prisoners have the right:

- to participate in elections, referenda and in other aspects of public life, unless otherwise restricted from national law. Restrictions in the exercise of the right to vote can be applied to selected individuals in consideration of the offences that drove to their detention and need to be motivated by serious reasons, such as having acted against the rule of law or having abused a public position. Anyway, restrictions do not have to be taken lightly and need to be proportionate to the offence to which they are linked (COE European Prison Rules, Part II Conditions of Imprisonment, 24).

Sentence [Hirst \(No. 2\) v. the United Kingdom \(6 October 2005\)](#): the applicant complained that, as a prisoner convicted to life sentence, he was subject to a blanket ban on voting in elections. The Court held that there had been a violation of Article 3 of Protocol 1 of the Convention with regard to the automatic restrictions to the exercise of the right to vote due to its status as a convicted prisoner. This decision constituted a pilot sentence concerning the disenfranchisement of prisoners in force in the UK according to section 3 of the Representation of the People Act 1983, that states: "A convicted person during the time that he is detained in a penal institution in pursuance of his sentence [or unlawfully at large when he would otherwise be so detained] is legally incapable of voting at any parliamentary or local government election". The Court found this regulation to be too restrictive and not motivated under the provisions envisaged by the Convention. Therefore, also considering the many applications made over the years with identical remarks on the prohibition to have access to the vote, urged the UK government to make the necessary amendments to the law in order for it to comply with European regulations.

Sentence [Frodl v. Austria \(8 April 2010\)](#): the applicant complained about having been disenfranchised under the National Assembly Election Act, prescribing that a prisoner sentenced to more than one year of detention for an intentional offence was not allowed to vote. The Court found such rule, even though more specific than that applied in the UK, to equally transgress European prescriptions on the admissible motivations for forbidding a prisoner to have access to his right to vote, given the lack of an explicit link between the offence and the exercise of electoral rights. Thus, the Court held that there had been a violation of Article 3 of Protocol 1 of the Convention.

Sentence [Söyler v. Turkey \(17 September 2013\)](#): the applicant, convicted for unpaid cheques, complained about having been forbidden to vote in Turkish elections in 2007, while in detention, and 2011, after his conditional release. The Court held that the prohibition to have access to the right to vote amounted to a violation of Article 3 of Protocol 1 of the Convention: the ban was discriminatory and did not take into account the nature of the offence, the length of the sentence, or the individual conduct. The restriction also had an unprecedented strictness as far as its application even after conditional release was concerned.

Reproductive rights

European Convention for Human Rights set the rights related to family life in Article 8: “Everyone has the right to respect for his private and family life, his home and his correspondence”. The exercise of this right should see no interferences of any kind, unless necessary for public security, prevention of crime or other circumstances to be established by law. When transposed in the prison context, such right falls under the field of health care, and address especially women, as for their relation with children, pregnancy, abortion and potential issues related to motherhood.

Failure in providing medical care when reproductive matters are concerned, inadequate assistance, unjustified prohibition and any other violation of the right to family life are to be considered as transgressing Article 8 of the Convention.

Prisoners have the right:

- to be guaranteed adequate medical treatment in response to their needs and to be informed about the consequence of such treatment or of its lack; they are entitled to seek medical assistance if they find it necessary as well as they are entitled to refuse medical care, unless special defined circumstances occur (CPT Standard Health care services in prison, 47).

Sentence [R.R. v. Poland \(no. 27617/04\) \(26 May 2011\)](#): the applicant, pregnant with a child thought to suffer from a severe genetic abnormality, complained about being denied a timely access to genetic tests she was entitled to by doctors opposed to abortion. Therefore, she got her amniocentesis results too late to ask for a legal abortion and later gave birth to a child with Turner syndrome. Raising the child so severely ill was damaging for her and for her two other children, also in consideration of the fact that her husband left her after the birth. The Court held the prison authorities responsible of a violation of Article 3 of the Convention as failed to provide her with the medical tests she was entitled to and with proper information and counseling. Similarly, there was a violation of Article 8 of the Convention as Polish law did not provide an effective mechanism for having access to tests and medical practices necessary to take an informed and thoughtful decision.

Sentence [Dickson v. United Kingdom \(4 December 2007\)](#): the applicant, sentenced for a minimum of 15 years, complained about having been refused access to artificial insemination facilities in order to have a child with his wife, who was very unlikely to be able to conceive after his release. The Court held that there had been a violation of Article 8 of the Convention as the authorities failed to find balance between public and private interests.

Sentence [Csoma v. Romania \(15 January 2013\)](#): the applicant complained that following complications during a medical treatment to interrupt her pregnancy of a baby diagnosed with hydrocephalus, the doctor was forced to remove her uterus and excise her ovaries to save her life, thus causing her to become permanently unable to bear children. Also, doctor’s liability had not been established, due to deficiencies in the investigation. The Court held that there had been a violation of Article 8 of the Convention for having failed to inform the applicant on the risks involved in the procedure and to give her choice about the medical treatment, thus infringing her right to private life.

Sentence [V.C. v. Slovakia \(no. 18968/07\) \(8 November 2011\)](#): the applicant, hospitalized for the birth of her second son, was sterilized without consent; she signed the consent form while in labour, therefore without full understanding, and under false claims about the consequence of a possible third pregnancy. For such sterilisation, she was then ostracised by the Roma community and left by her husband. The Court held that there had been a violation of Article 3 of the Convention as for the consequence of the applicant’s sterilisation, that caused her physical and psychological suffering. Also, it was regarded as a violation of Article 8 of the Convention the lack of legal safeguards giving special consideration to her reproductive health as a Roma.



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