January 2023
This factsheet does not bind the Court and is not exhaustive

Prisoners' health-related rights

See also the factsheets on "COVID-19 health crisis", "Detention conditions and treatment of prisoners", "Detention and mental health" and "Hunger strikes in detention".

"… [U]nder Article 3 [of the European Convention on Human Rights], the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance …" (*Kudła v. Poland*, judgment (Grand Chamber) of 26 October 2000, § 94).

Medical assistance for prisoners with a physical illness

Mouisel v. France

14 November 2002

Serving a prison sentence of fifteen years, the applicant was diagnosed with lymphatic leukaemia in 1999. When his condition worsened, he underwent chemotherapy sessions in a hospital at daytime. He was put in chains during the transport to the hospital and claimed that during the chemotherapy sessions his feet were chained and one of his wrists attached to the bed. He decided to stop the treatment in 2000, complaining of these conditions and of the guards' aggressive behaviour towards him. He was subsequently transferred to another prison in order to be closer to the hospital and in 2001 released on licence subject to an obligation to undergo medical treatment or care. Relying on Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, the applicant complained that he had been kept in detention despite being seriously ill and of the conditions of his detention.

The European Court of Human Rights found that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights in respect of the period until the applicant's release on licence, holding in particular hat although his condition had become increasingly incompatible with his continued detention as his illness progressed, the prison authorities had failed to take any special measures. In view of his condition, the fact that he had been admitted to hospital, the nature of the treatment, the Court considered that handcuffing the applicant had been disproportionate to the security risk posed. This treatment further fell foul of the recommendations of the European Committee for the Prevention of Torture (CPT) regarding the conditions in which prisoners are transferred and medically examined.

Sakkopoulos v. Greece

15 January 2004

Suffering from cardiac insufficiency and diabetes, the applicant submitted that his state of health was incompatible with his continued detention.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that the applicant's medical condition had indisputably given cause for concern. However, it did not appear

from the evidence that the deterioration of his health during his detention was attributable to the prison authorities. Furthermore, the Greek authorities had in general complied with their obligation to protect the applicant's physical integrity, in particular by providing appropriate medical care. That being so, it had not been established that the conditions of the applicant's detention had amounted to treatment in breach of Article 3 of the Convention.

Tekin Yıldız v. Turkey

10 November 2005

The applicant, who had been sentenced to a prison term for membership of a terrorist organisation, embarked on a prolonged hunger strike while in detention which culminated in his developing Wernicke-Korsakoff syndrome (encephalopathy consisting in the loss of certain cerebral functions, resulting from a deficiency of vitamin B1 (thiamine)). His sentence was suspended for six months on the ground that he was medically unfit, and the measure was extended on the strength of a medical report which found that his symptoms had persisted. In the light of the results of the next examination, his sentence was suspended until he had made a complete recovery. The applicant was arrested on suspicion of having resumed his activities and was sent back to prison. Despite an early ruling that he had no case to answer, he remained in prison for eight months[1].

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that the applicant's state of health had been consistently found to be incompatible with detention, and there was no element to cast doubt on those findings. The domestic authorities who had decided to return the applicant to prison and detain him for approximately eight months, despite the lack of change in his condition, could not be considered to have acted in accordance with the requirements of Article 3. The suffering caused to the applicant, which had gone beyond that inevitably associated with detention and the treatment of a condition like Wernicke-Korsakoff syndrome, had constituted inhuman and degrading treatment. The Court also held that a violation of Article 3 of the Convention would occur if the applicant were to be sent back to prison without there being a significant improvement in his medical fitness to withstand such a move.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further judged it necessary, on an exceptional basis, to indicate to the respondent State the measures it considered appropriate to remedy certain problems which had come to light regarding the official system of forensic medical reports in operation in Turkey.

Serifis v. Greece

2 November 2006

The applicant alleged that, given his state of health – his left hand has been paralysed since a road-traffic accident and, in addition, he was suffering from multiple sclerosis –, his continued detention amounted to inhuman treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Noting in particular that it was clear from the case file that, despite the seriousness of the disease from which the applicant suffered, the Greek authorities had procrastinated in providing him with a form of medical assistance during his detention which would correspond to his actual needs, the Court considered that the manner in which they had dealt with the applicant's health during the first two years of his imprisonment had subjected him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention.

[1]. The European Court of Human Rights conducted a fact-finding mission to Turkey in connection with a group of 53 similar cases, inspecting prisons together with a committee of experts with a mandate to assess the applicants' medical fitness to serve custodial sentences.

Holomiov v. the Republic of Moldova

7 November 2006

The applicant alleged that he was detained in inhuman and degrading conditions and that he had not been provided with proper medical care. According to medical certificates submitted by him he suffered from a number of serious illnesses including chronic hepatitis, second-degree hydronephrosis, chronic bilateral pyelonephritis with functional impairment of the right kidney, hydronephrosis of the right kidney with functional impairment, and chronic renal failure.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that the parties disagreed about the availability of medical care in prison. It considered, however, that the core issue was not the lack of medical care in general but rather the lack of adequate medical care for the applicant's particular conditions. In the present case, the Court observed in particular that, while suffering from serious kidney diseases entailing serious risks for his health, the applicant had been detained for almost four years without appropriate medical care. It therefore found that the applicant's suffering has constituted inhuman and degrading treatment.

See also: **Marian Chiriță v. Romania**, judgment of 21 October 2014.

Tarariyeva v. Russia[2]

14 December 2006

In this case the applicant complained in particular that her son had died in custody as a result of inadequate and defective medical assistance and that those responsible had not been identified and punished. She also complained about the lack of medicines during her son's detention at a colony, his handcuffing in a public hospital, and the conditions of his transport from the public hospital to the prison hospital.

The Court observed that the existence of a causal link between the defective medical assistance administered to the applicant's son and his death was confirmed by the domestic medical experts and was not disputed by the Russian Government. It found that there had therefore been a **violation of Article 2** (right to life) of the Convention, on account of the authorities' failure to protect the applicant's son's right to life. It further held that there had been a **violation of Article 2** on account of the authorities' failure to discharge their positive obligation to determine, in an adequate and comprehensive manner, the cause of death of the applicant's son and to bring those responsible to account.

As regards handcuffing at the civilian hospital, having regard to the applicant's son's state of health, to the absence of any cause to fear that he represented a security risk and to the constant supervision by armed police officers, the Court found that the use of restraints in those conditions had amounted to inhuman treatment, in **violation of Article 3** of the Convention.

Lastly, as regards the conditions of the applicant's son's transport to the prison hospital, having regard to his serious condition, the duration of the journey and the detrimental impact on his state of health, the Court found that his transport in a standard-issue prison van must have considerably contributed to his suffering and had therefore amounted to inhuman treatment, in **violation of Article 3** of the Convention.

Testa v. Croatia

12 July 2007

Serving a prison sentence on counts of fraud, the applicant, who has chronic hepatitis (Hepatitis C) with a very high level of viremia (presence of viruses in the blood), complained in particular about the lack of adequate medical treatment and check-ups, the inadequate diet and lack of opportunity to have sufficient rest.

Considering that the nature, duration and severity of the ill-treatment to which the applicant had been subjected and the cumulative negative effects on her health could

[2]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

qualify as inhuman and degrading treatment, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that the lack of requisite medical care and assistance for the applicant's chronic hepatitis coupled with the prison conditions which she had had to endure for more than two years had diminished the applicant's human dignity and aroused in her feelings of anguish and inferiority capable of humiliating and debasing her and possibly breaking her physical or moral resistance.

See also: **Szwed-Wójtowicz v. Poland**, decision (inadmissible) of 21 April 2015.

Hummatov v. Azerbaijan

29 November 2007

The applicant, who had a number of serious diseases, including tuberculosis, alleged in particular that the Azerbaijani authorities had knowingly and willingly contributed to a serious deterioration in his health by denying him adequate medical treatment in prison.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the medical care provided to the applicant in prison in the period after 15 April 2002 had been inadequate[3] and must have caused him considerable mental suffering which had diminished his human dignity and amounted to degrading treatment.

See also: **Vasyukov v. Russia**[4], judgment of 5 April 2011.

Kotsaftis v. Greece

12 June 2008

The applicant, who was suffering from cirrhosis of the liver caused by chronic hepatitis B, complained about the conditions of his detention on account, in particular, of the lack of treatment appropriate to his state of health. In March 2007, under Rule 39 (interim measures) of the Rules of Court, the Court requested Greece to order the transfer of the applicant to a specialised medical centre so that he could undergo all the necessary tests and remain in hospital until his doctors considered that he could return to prison without his life being endangered.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that, during the period between 9 June 2006 and 15 March 2007, the Greek authorities had not fulfilled their obligation to safeguard the applicant's physical integrity, in particular by providing him with the appropriate medical care. The Court noted in particular that, during that period, contrary to the findings of the expert reports drawn up, the applicant had been kept in detention without being given a special diet or treatment with the appropriate drugs, and had not undergone tests in a specialist medical centre. Moreover, an operation scheduled for a particular date had not been performed until one year later. The Court also deplored the fact that the applicant, who was suffering from a serious and highly infectious disease, had been detained along with ten other prisoners in a cell measuring 24 square metres. Lastly, despite the fact that the competent authorities had been informed that he was suffering from cirrhosis and that his condition necessitated appropriate treatment, it was not until measures had been indicated by the Court that the applicant began to receive regular check-ups.

Poghosyan v. Georgia

24 February 2009

This case concerned the structural inadequacy of medical care in prisons, in particular as regards the treatment of Hepatitis C. The applicant complained in particular that his

[3]. By the time of the entry into force of the European Convention on Human Rights in Azerbaijan on 15 April 2002, the applicant had already suffered for several years from a number of serious illnesses, including tuberculosis. The fact that he had continued to complain about those illness until his release in September 2004 indicated that he had still needed regular medical care after 15 April 2002, which was the period within the Court's competence.
[4]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

discharge from the prison hospital had been premature and that he had not received proper medical care while in prison.
The Court, finding that the applicant had not received treatment for his viral hepatitis C while in custody, held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It considered in particular that it was not enough to have the patient examined and a diagnosis made. To protect the prisoner's health it was essential to provide treatment corresponding to the diagnosis, as well as proper medical supervision.
Furthermore, noting that almost forty applications concerning the lack of medical care in Georgian prisons were at the time pending before the Court, the Court found that there was a systemic problem concerning the administration of adequate medical care to prisoners infected, *inter alia*, with viral hepatitis C. It consequently invited Georgia, under **Article 46** (binding force and execution of judgments) of the Convention, to take legislative and administrative steps, without delay, to prevent the transmission of viral hepatitis C in prisons, to introduce screening arrangements for this disease and to ensure its timely and effective treatment.

See also: **Ghavtadze v. Georgia**, judgment of 3 March 2009.

V.D. v. Romania (no. 7078/02)

16 February 2010

Having serious dental problems (he has virtually no teeth), the applicant required a dental prosthesis, a fact recorded by doctors on several occasions while he was in prison. But he was unable to obtain them as he did not have the means to pay.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that, as far back as 2002, medical diagnoses had been available to the authorities stating the need for the applicant to be fitted with dentures, but none had been provided. As a prisoner, the applicant could obtain them only by paying the full cost himself. As his insurance scheme did not cover the cost and he lacked the necessary financial resources – a fact known to and accepted by the authorities – he had been unable to obtain the dentures. These facts were sufficient for the Court to conclude that the rules on social cover for prisoners, which laid down the proportion of the cost of dentures which they were required to pay, were rendered ineffective by administrative obstacles. The Romanian Government had also failed to provide a satisfactory explanation as to why the applicant had not been provided with dentures in 2004, when the rules in force had provided for the full cost to be met by the State. Hence, despite the concerns about his health the applicant had still not been fitted with dentures, notwithstanding new legislation enacted in January 2007 making them available free of charge.

Slyusarev v. Russia[5]

20 April 2010

The applicant was arrested in July 1998 on suspicion of armed robbery. At some point during his arrest, his glasses were damaged. They were subsequently confiscated by the police. According to the applicant, although both he and his wife made several requests for their return, he did not recover his glasses until December 1998. In the interim, following an order by the competent prosecutor, he had been examined by an ophthalmologist in September 1998, who had concluded that his eyesight had deteriorated and prescribed new glasses, which the applicant received in January 1999. The applicant alleged that the confiscation of his glasses for five months had amounted to a treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention.
In the circumstances of the case, the Court found that the treatment complained of by the applicant had to a large extent been attributable to the authorities and, given the degree of suffering it had caused and its duration, had been degrading, in **violation of**

[5]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

Article 3 of the Convention. The Court observed in particular that taking the applicant's glasses could not be explained in terms of the "practical demands of imprisonment" and had been unlawful in domestic terms. The Russian Government had further not given any explanation for these shortcomings. Nor did they explain why the applicant had only been examined by a specialist after two and half months' detention and why it had taken another two and a half months to provide him with new glasses.

Ashot Harutyunyan v. Armenia

15 June 2010

The applicant suffered from a number of illnesses prior to his detention, including an acute bleeding duodenal ulcer, diabetes and a heart condition. He complained in particular that he had not received adequate medical care in detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that, given the number of serious illnesses from which the applicant suffered, he had clearly been in need of regular care and supervision. There was, however, no medical record to prove that the surgery recommended by his doctors had ever been carried out. There was no record in the applicant's medical file of his receiving any check-up or assistance from the detention facility's medical staff. Especially worrying was the fact that his heart attack in July 2004 had coincided with several unsuccessful attempts by his lawyer to draw the authorities' attention to the applicant's need for medical care. In any event, the Court pointed out, a failure to provide requisite medical assistance in detention could be incompatible with Article 3 of the Convention even if it did not lead to a medical emergency or otherwise cause severe or prolonged pain. The applicant was clearly in need of regular medical care and supervision, which was denied to him over a prolonged period. His lawyer's complaints had met with no substantive response and his own requests for medical assistance had gone unanswered. This must have caused him considerable anxiety and distress, beyond the unavoidable level of suffering inherent in detention.

See also: **Davtyan v. Armenia**, judgment of 31 March 2015.

Xiros v. Greece

9 September 2010

Serving a prison sentence for participation in the activities of a terrorist organisation, the applicant suffered from the consequences of a serious injury, caused by the explosion of a bomb in his hands while he was preparing an attack in 2002. In particular, he had serious health problems affecting his sight, hearing and movements. As his vision had worsened despite having undergone a number of eye operations, he applied for a stay of execution of his sentence in 2006 so that he could undergo hospital treatment in a specialist eye clinic, in line with the recommendations of three of the four specialists who had examined him. This application was rejected by the domestic court.

The Court found a **violation of Article 3** (prohibition of degrading treatment) of the Convention, on account of the shortcomings in the treatment provided for the applicant's eyesight problems. While it was not the Court's task to rule in the abstract how the domestic court should have dealt with the application for external hospital treatment, it would have been preferable for that court to request an additional expert report on the controversial question whether this treatment was necessary instead of itself taking a decision on an essentially medical issue. Those considerations were lent further weight by the fact that the medical care likely to be provided in prison where the applicant was detained fell some way short of what would be available in a hospital, according to various reports, including one from the European Committee for the Prevention of Torture (CPT).

Vladimir Vasilyev v. Russia[6]

10 January 2012

While serving a life sentence, the applicant had a toe of his right foot and the distal part of his left foot amputated due to frostbite, but was unable to obtain appropriate orthopaedic footwear. The applicant maintained before the Court that the lack of such footwear caused him pain and difficulties keeping his balance during long routine line-ups or while cleaning his cell.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed that at least one medical facility where the applicant had been detained in 1996 confirmed that he had been in need of such orthopaedic footwear, whereas another facility where he had stayed in 2001 gave a completely different justification for failing to provide him with it. However, in the absence of any indication that the applicant's condition had improved after 2001, or that it had been properly reassessed, it was incumbent on the national authorities to react to the applicant's situation of which they had been well aware. The lack of any appropriate solution to the applicant's problem between 2005 and 2011 had caused him distress and hardship amounting to degrading treatment.

See also: **Ostrowski v. Poland**, decision (inadmissible) of 1 September 2015, concerning the applicant's complaint that no adequate measures had been taken by the authorities with a view to accommodating his impaired hearing.

Iacov Stanciu v. Romania

24 July 2012

Sentenced to 12 years and 6 months' imprisonment in September 2002, the applicant was detained in seven detention facilities between his arrest in January 2002 and his release on probation in May 2011. He alleged in particular that he had developed a number of chronic and serious diseases in the course of his detention, including numerous dental problems, chronic migraine and neuralgia, and complained about the lack of proper treatment and monitoring in detention.

The Court found that the prison conditions to which the applicant had been exposed had amounted to inhuman and degrading treatment in **violation of Article 3** of the Convention. It was, in particular, not satisfied that the applicant had received adequate medical care during his detention. No comprehensive record had been kept of his health condition or the treatment prescribed and followed. Therefore, no regular and systematic supervision of his state of health had been possible. No comprehensive therapeutic strategy had been set up to cure his diseases or to prevent their aggravation. As a result, the applicant's health had seriously deteriorated over the years.

Gülay Çetin v. Turkey

5 March 2013

The case concerned a person who complained that she had been kept in prison, initially pending trial and later following her conviction for murder, despite suffering from advanced cancer. She alleged in particular that the authorities had refused to release her pending trial, to suspend her detention or to grant a presidential pardon, and alleged that this had exacerbated her physical and mental suffering. She died of her illness in an hospital's prison ward and her father, mother, sister and brother pursued the proceedings she had instituted before the Court.

The Court observed that in accordance with Article 3 (prohibition of inhuman or degrading treatment) of the Convention, the health of prisoners sometimes called for humanitarian measures, particularly where an issue arose as to the continued detention of a person whose condition was incompatible in the long term with a prison environment. In the present case, it concluded that the conditions of the applicant's detention, both before and after her final conviction, had amounted to inhuman and degrading treatment, **contrary to Article 3**, and that she had been discriminated

6. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

against in that, while in pre-trial detention, she had not been eligible for the protective measures applicable to convicted prisoners suffering from serious illnesses, in **violation of Article 3 taken in conjunction with Article 14** (prohibition of discrimination) of the Convention. Lastly, the Court recommended under **Article 46** (binding force and execution of judgments) that the Turkish authorities take measures to protect the health of prisoners with incurable diseases, whether they were being held pending trial or following a final conviction.

Nogin v. Russia[7]

15 January 2015

Suffering from an insulin-dependent form of diabetes since the age of four, the applicant maintained, *inter alia*, that he had not received appropriate medical treatment for his condition while in detention following his conviction. He alleged in particular that he had not been provided with eye surgery in due time.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading) of the Convention on account of the Russian authorities' failure to provide the applicant with the timely medical care during his detention in the detention facility in question.

Cătălin Eugen Micu c. Roumanie

5 January 2016

The applicant alleged, among other things, that he had caught hepatitis C while in prison and that the competent authorities had not fulfilled their obligation to provide him with appropriate medical treatment.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading) of the Convention. It noted in particular that the spread of transmissible diseases should be a major public health concern, especially in prisons. For the Court, it would therefore be desirable if, with their consent, prisoners could benefit, within a reasonable time after being committed to prison, from free screening for hepatitis or HIV/AIDS. The existence of such as possibility in the present case would have facilitated the examination of the applicant's allegations as to whether or not he contracted the disease in prison. However, in the applicant's case, although the disease in question was diagnosed when he was under the responsibility of the prison authorities, it was not possible for the Court, in the light of the evidence, to conclude that this was the result of a failure by the State to fulfil its positive obligations. As further regards the medical treatment for hepatitis C in prison, the Court found that the authorities had satisfied their obligation to provide the applicant adequate medical treatment for his condition.

Mozer v. the Republic of Moldova and Russia[8]

23 February 2016 (Grand Chamber)

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

The Court concluded that the Republic of Moldova, having fulfilled its obligations in respect of the applicant by making significant legal and diplomatic efforts to support him, had not violated his rights under the Convention. At the same time, having regard to its finding that Russia had exercised effective control over the "MRT" during the period in question, it concluded that Russia was responsible for the violations of the Convention. Concerning the applicant's allegation that he had not been given the medical assistance required by his condition during his detention, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention *by Russia*. It observed in particular that although the doctors had considered

7. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
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the applicant's condition to be deteriorating and the specialists and equipment required to treat him to be lacking, the "MRT" authorities had not only refused to transfer him to a civilian hospital for treatment but they had also exposed him to further suffering and a more serious risk to his health by transferring him to an ordinary prison. It was indisputable that he had suffered greatly from his asthma attacks. The Court was also struck by the fact that his illness, while considered serious enough to warrant the transfer to a civilian hospital of a convicted person, had not been a ground for the transfer of a person awaiting trial. Given the lack of any explanation for the refusal to offer him appropriate treatment, the Court found that the applicant's medical assistance had not been adequately secured. Furthermore, on the basis of the data available to the Court, it also found it established that the conditions of the applicant's detention had amounted to inhuman and degrading treatment within the meaning of Article 3.

Kolesnikovich v. Russia[9]

22 March 2016

The applicant, who had problems with an ulcer as well as brain and spinal injuries, alleged that his health had deteriorated in detention, in particular because of the failure to provide him with the medication he had been prescribed with for treating his illnesses. He also maintained that the prison doctors had merely provided symptomatic treatment to him and had failed to adopt a long-term therapeutic strategy. He lastly submitted that he had not had an effective avenue through which to complain about the inadequacy of his medical care in detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular that, even though the authorities had become promptly aware of the applicant's health problems, he had been left without any medical supervision during the first two years of his detention, until his health had worsened to the extent that he could no longer take part in court hearings. His delayed admission to the prison hospital, combined with the failure to provide him with some of the required medication in order to, at least, relieve his severe stomach pain, had also been a serious shortcoming. The Court was further not convinced that the authorities had properly assessed the complications of the applicant's condition. His treatment had lacked a strategy aimed at reducing the frequency of ulcer recurrence and had therefore been patently ineffective. A major flaw in that respect was the failure to perform the *Helicobacter pylori* test. Moreover, the authorities did not seem to have assessed the compatibility of the applicant's treatment with nonsteroidal anti-inflammatory drugs for his spinal problems with his ulcer disease, even though such medication could induce gastrointestinal bleeding and deterioration of the patient's condition. The Court found that all those shortcomings, taken cumulatively, had amounted to inhuman and degrading treatment. In this case the Court also held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention.

Yunusova and Yunusov v. Azerbaijan

2 June 2016

This case concerned the allegation by the applicants, husband and wife and well-known human rights defenders and civil society activists, that their medical care in detention had been inadequate. Both had several serious medical problems prior to their arrest. The first applicant suffered from chronic hepatitis C, diabetes, gallstones, a cyst in the left kidney and had had surgery for cataracts. The second applicant suffered from chronic hypertension. These diagnoses were immediately confirmed upon the applicants' admission to prison when they were examined by a doctor and underwent various medical tests. During the proceedings before the European Court, the couple had notably been granted their request – under Rule 39 (interim measures) of the Rules of Court – to be provided with adequate medical care in prison.

9. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

In this case the Court held that there had been **a violation of Article 34** (right of individual petition) and **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that, despite monthly information reports having been provided about the couple's health and medical examinations following the issuing of the interim measure, the Azerbaijani Government had failed to submit medical evidence – such as medical prescriptions or doctors' recommendations – to back up their claim that the couple's health had been stable and had not required a transfer to a medical facility. The very purpose of the interim measure granted by the Court, namely to prevent the couple's exposure to inhuman and degrading suffering in view of their poor health and to ensure that they received adequate medical treatment in prison, had thus been impaired. Moreover, drawing inferences from the Government's failure to provide full information on the medical treatment provided to the couple, the Court concluded that they had not been provided with adequate medical treatment in detention. As a result of that inadequate medical treatment, the couple had been exposed to prolonged mental and physical suffering, amounting to inhuman and degrading treatment.

Kondrulin v. Russia[10]

20 September 2016

This case concerned a complaint brought by a prisoner about his inadequate medical care in detention; he then died from cancer while serving his sentence, leaving no known relatives, and the Court had to consider the question of whether the NGO whose lawyers represented him in the domestic proceedings had legal standing to continue his case.

The Court found that, in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, the applicant's lawyers, who had represented him in his proceedings against the domestic authorities and who had continued to do so even after his death without the authorities ever having expressed any objections, had legal standing to continue the application. It noted in particular that, in such cases as the applicant's, not leaving it open to associations to represent victims ran the risk of allowing a State to escape accountability under the Convention. Furthermore, drawing inferences from the Russian Government's failure to comply with the Court's interim measure requesting an independent medical examination of the applicant, the Court concluded that the authorities had not provided him with the medical care he had needed, thus exposing him to prolonged mental and physical suffering. In the present case, the Court held that there had been a **violation of Article 34** (right of individual petition) of the Convention, on account of the State's failure to comply with the interim measure in which it had requested an independent medical examination of the applicant, and a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, on account of the authorities' failure to provide the applicant with the medical care he had needed.

See also: **Ivko v. Russia**[11], judgment of 15 December 2015.

Dorneanu v. Romania

28 November 2017

This case concerned the living conditions and care provided in prison to the applicant who was suffering from terminal metastatic prostate cancer. The applicant complained that his immobilisation in his hospital bed had amounted to inhuman treatment and that his state of health was incompatible with detention. He died after eight months in detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the Romanian authorities' treatment of the applicant had not been compatible with the provisions of Article 3, and that they had subjected him to inhuman treatment while he was terminally ill. The Court noted in particular that the authorities had not taken into account the realities of the

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applicant's personal situation, and had not examined whether in practice he was fit to remain in detention. Accordingly, the decisions by the national authorities showed that the procedures applied had prioritised formalities over humanitarian considerations, thus preventing the dying applicant from spending his final days in dignity.

Machina v. the Republic of Moldova

17 January 2023[12]

This case concerned the medical care of the applicant – who, since receiving an injury to her spinal cord in 2003, had suffered from spastic paraplegia (muscle weakness and stiffness affecting the lower limbs) – while serving a custodial sentence between 2011 and 2016, during which she was also diagnosed as having contracted the hepatitis C virus. She had made various and essentially fruitless complaints to the authorities, seeking in particular an order for the conditions of her detention to be improved. The applicant submitted inter alia that she had received inadequate medical care whilst in prison.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention with regard to the State's failure to prevent the transmission of HCV in prison. It also held that there had been a **violation of Article 3** with regard to the absence of necessary medical care in prison. Lastly, the Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention, finding that, on account of the lack of adequate medical care for the applicant whilst she was in prison it had not be shown that there had been effective remedies available in respect of this complaint.

HIV-positive detainees

Kats and Others v. Ukraine

18 December 2008

The applicants alleged in particular that the Ukrainian authorities were responsible for the death of their respective daughter and mother, who was schizophrenic and infected with HIV, as they had failed to provide her with adequate medical care during her pre-trial detention.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention on account of the Ukrainian authorities' failure to protect the applicants' relative's right to life. It found in particular that, given the vulnerability of those who were HIV-positive to other serious diseases, the applicants' relative, refused access to a specialist hospital or the prison's medical wing, had been provided with a striking lack of medical attention to her health problems. Indeed, although she had been suffering from numerous serious diseases, her treatment had been very basic. Furthermore, the prison management's application for her urgent release had only been accepted after seven days and the decision to release her had then been processed with a four-day delay, during which time she had already died. Lastly, the Ukrainian Government had not contested the accuracy of a report which had concluded that inadequate medical assistance during the applicants' relative's detention had indirectly caused her death; nor had the Government produced any other medical evidence to refute that conclusion. The Court also concluded that Ukraine had failed to conduct an effective and independent investigation into the death, in further **violation of Article 2** of the Convention.

Aleksanyan v. Russia[13]

22 December 2008

This case concerned in particular the lack of medical assistance to a HIV-positive detainee and the Russian State's failure to comply with measures in connection therewith indicated by the Court under Rule 39 (interim measures) of the Rules of Court. In November 2007 the Court had invited the Russian Government to secure immediately

[12]. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the European Convention on Human Rights..

[13]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

the applicant's in-patient treatment in a hospital specialised in the treatment of AIDS and concomitant diseases and to submit a copy of his medical file. In February 2008 the trial in the applicant's case was suspended due to his poor health. He was placed in an external haematological hospital where he was guarded round-the-clock by policemen; the windows of his room were covered with an iron grill. He was still there when the Court adopted its judgment.

The Court found in particular that the national authorities had failed to take sufficient care of the applicant's health at least until his transfer to an external hospital. This had undermined his dignity and entailed particularly acute hardship, causing suffering beyond that inevitably associated with a prison sentence and the illnesses he suffered from, which had amounted to inhuman and degrading treatment, in **violation of Article 3** of the Convention. Furthermore, by failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, the Russian Government had **failed to honour its commitments under Article 34** (right of individual petition) of the Convention. Lastly, having regard to its findings of violations of the Convention, and especially in view of the gravity of the applicant's illnesses, the Court considered that the applicant's continued detention was unacceptable. It accordingly concluded that, in order to discharge its legal obligation under **Article 46** (binding force and execution of judgments) of the Convention, the Russian Government was under an obligation to replace detention on remand with other, reasonable and less stringent, measures of restraint, or with a combination of such measures, provided by Russian law.

Khudobin v. Russia[14]

26 October 2010

HIV-positive and suffering from several chronic diseases, including epilepsy, pancreatitis, viral hepatitis B and C, as well as various mental illnesses, the applicant contracted several serious diseases (including measles, bronchitis and acute pneumonia) during his detention. Owing to his ailments the applicant was often placed in a hospital unit for patients with contagious diseases which was part of the detention centre. He alleged in particular that he did not receive adequate medical treatment in the remand prison.

The Court found that the applicant had not been given the medical assistance he needed, in **violation of Article 3** (prohibition of degrading treatment) of the Convention. In particular, the fact that he was HIV-positive and suffered from a serious mental disorder increased the risks associated with any illness he suffered during his detention and intensified his strong feeling of insecurity on that account.

While the Court accepted that the medical assistance available in prison hospitals might not always be at the same level as in the best medical institutions for the general public, it underlined in this case that the State had to ensure that the health and well-being of detainees were adequately secured by providing them with the requisite medical assistance.

See also, among others: **A.B. v. Russia (no. 1439/06)** and **Logvinenko v. Ukraine**, judgments of 14 October 2010; **Kozhokar v. Russia**, judgment of 16 December 2010; **Koryak v. Russia**, judgment of 13 November 2012; **E.A. v. Russia (no. 44187/04)**, judgment of 23 May 2013; **Khayletdinov v. Russia**, judgment of 12 January 2016[15].

Shchebetov v. Russia[16]

10 April 2012

After spending a few years in prison for theft and robbery, the applicant was sentenced anew in 2005 to nine years' imprisonment for aggravated robbery. He was found to have tuberculosis and HIV when tested in prison in 1998 and 2002 respectively, while his earlier medical tests of 1997, when he had been in a temporary detention facility, had been negative. The applicant complained in particular that he had been infected with HIV and tuberculosis in detention.

[14]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
[15]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
[16]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

The Court held that there had been **no violation of Article 2** (right to life) of the Convention on account of the applicant's contraction of the HIV virus in detention or on account of the authorities' failure to carry out a thorough and expeditious investigation into the applicant's complaint concerning his infection with HIV, and declared **inadmissible** as being manifestly ill-founded the part of the application dealing with alleged violation of **Article 3** (prohibition of inhuman or degrading treatment) of the Convention. The Court noted in particular that the materials in the case file did not provide a sufficient evidential basis to find "beyond reasonable doubt" that the Russian authorities were responsible for the applicant's contraction of the HIV infection. Moreover, the material available to the Court showed that the authorities had utilised all the means at their disposal in the light of the correct diagnosis of the applicant's condition, prescribing appropriate prophylactic treatment and admitting the applicant to medical institutions for in-depth examinations.

Salakhov and Islyamova v. Ukraine

14 March 2013

This case concerned the lack of appropriate medical care given to a detainee, who died from AIDS two weeks after he was released from detention. His mother continued the application before the Court on his behalf and introduced her own complaints. The applicants complained in particular about the inadequate medical care during the first applicant's detention, unjustified delays in his hospitalisation and permanent handcuffing once he was actually hospitalised. They also complained that the State had failed to protect his life. The second applicant further alleged mental suffering on account of the fact that she had had to witness her son dying without adequate medical care while being in totally unjustified detention, subjected to permanent handcuffing and confronted with the indifference and cruelty of the authorities. Lastly, the applicants complained that in June 2008 it had taken the Ukrainian authorities three days to comply with the Court's indication under Rule 39 (interim measures) of the Rules of Court to immediately transfer the first applicant to hospital for appropriate treatment.

The Court found **violations of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the first applicant, on account of the inadequate medical care provided to him both in the detention facilities and in hospital, and on account of his handcuffing in hospital. It also found a **violation of Article 2** (right to life) of the Convention, on account of the authorities' failure to protect the first applicant's life and on account of their failure to conduct an adequate investigation into the circumstances of his death.

The Court further held that there had been a **violation of Article 3** (inhuman treatment) of the Convention in respect of the second applicant, on account of her suffering.

The Court lastly found that Ukraine had **failed to meet** its **obligations under Article 34** (right of individual petition) of the Convention by not complying promptly with the Court's indication under Rule 39 (interim measures) of the Rules of Court to immediately transfer the first applicant to hospital for appropriate treatment.

Fedosejevs v. Latvia

19 November 2013 (decision on the admissibility)

In this case, the applicant, who suffered from HIV and HCV infections, complained under Article 3 (prohibition of inhuman or degrading treatment) of the Convention about the inadequacy of the medical treatment he had received in prison.

The Court declared the application **inadmissible** as being manifestly ill-founded. As regards the applicant's HIV infection, it noted that a specific blood test – CD4 cell count – was carried out every two to six months. According to the relevant World Health Organisation (WHO) recommendations, this test was required in order to identify whether a HIV positive patient needed antiretroviral treatment. The Court observed that throughout the period complained of the applicant's cell count had never dropped below the relevant threshold, which the WHO regarded as decisive for starting the treatment in question. The Court further noted that, as regards his Hepatitis C infection, the applicant

received symptomatic therapy, including hepatoprotectives and vitamins, and his other medical issues were also appropriately attended.
See also: **Kushnir v. Ukraine**, judgment of 11 December 2014.

Martzaklis and Others v. Greece

9 July 2015
This case concerned the conditions of detention of HIV-positive persons in the psychiatric wing of Korydallos Prison Hospital. The applicants complained in particular of their "ghettoisation" in a separate wing of the hospital and the authorities' failure to consider whether those conditions were compatible with their state of health. They also alleged that they had not had access to an effective domestic remedy by which to complain of their conditions of detention and their medical treatment in the prison hospital.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) **taken alone and in conjunction with Article 14** (prohibition of discrimination) of the Convention. It found established the inadequate physical conditions and sanitation facilities for persons detained in the prison hospital, and also the irregularities in the administration of the appropriate medical treatment. It also considered that the applicants had been subjected to physical and mental suffering going beyond the suffering inherent in detention and that their segregation had not been objectively and reasonably justified. In this connection, the Court could not criticise the authorities' initial intention to move the HIV-positive prisoners to the prison hospital in order to provide them with a greater degree of comfort and regular supervision of their medical treatment. However, as these had not materialised, the move to the prison hospital had not had the intended effect. Further noting that the applicants had not had available to them a remedy enabling them to lodge an effective complaint concerning their conditions of detention in the prison hospital or to apply for conditional release, the Court held that the domestic remedies did not satisfy the requirements of **Article 13** (right to an effective remedy) of the Convention, in violation of that Article.
See also: **Zabelos and Others v. Greece**, judgment of 17 May 2018.

Dikaiou and Others v. Greece

16 July 2020
This case concerned the conditions of detention of six women, HIV/AIDS sufferers, who were held in the prison of Thebes before or after final conviction. The applicants complained in particular of a lack of care adapted to their state of health. They also argued that they were discriminated against for having HIV/AIDS, on account of being placed together in the same collective cell, entailing their "ghettoisation" and "stigmatisation". Lastly, they complained about the lack of an effective remedy by which to complain about their detention conditions.
The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **taken separately or together with Article 14** (prohibition of discrimination). It found, in particular, that the general conditions of the applicants' detention had been satisfactory. It also took the view that their placement together in the same collective cell had pursued a legitimate aim (considerations of efficiency in handling the group and in prison management) and it did not detect any intention on the part of the authorities to segregate them. The Court further observed that the authorities had not failed in their duty to provide the applicants with medical assistance in accordance with their health-related needs. However, the Court held that there had been a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 3**, finding that neither the preventive remedy nor the compensatory remedy under Greek law had been effective in enabling the applicants to complain about the conditions in which they were held. Lastly, the Court declared the applicants' complaint that prisoners held prior to final conviction were treated differently from those serving a sentence **inadmissible**, as being manifestly ill-founded, finding no difference in treatment between prisoners held before and after a final conviction with regard to the Greek legislation governing release on health grounds.

Treatment of disabled prisoners

Price v. the United Kingdom

10 July 2001

A four-limb deficient thalidomide victim who also suffers from kidney problems, the applicant was committed to prison for contempt of court in the course of civil proceedings. She was kept one night in a police cell, where she had to sleep in her wheelchair, as the bed was not specially adapted for a disabled person, and where she complained of the cold. She subsequently spent two days in a normal prison, where she was dependent on the assistance of male prison guards in order to use the toilet.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention. It found in particular that to detain a severely disabled person in 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, constituted a degrading treatment contrary to Article 3 of the Convention.

Vincent v. France

24 October 2006

The applicant was serving a ten-year prison sentence imposed in 2005. Paraplegic since an accident in 1989, he is autonomous, but cannot move around without the aid of a wheelchair. He complained in particular that the conditions in which he was detained in different prisons were not adapted to his disability.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention on account of the fact that it had been impossible for the applicant, who is a paraplegic, to move autonomously around Fresnes Prison, which was particularly unsuited to the imprisonment of persons with a physical handicap who could move about only in a wheelchair. The Court further declared the **remainder of the application inadmissible** (manifestly ill-founded).

Hüseyin Yıldırım v. Turkey

3 May 2007

The applicant, who is severely disabled, alleged that the circumstances in which he had been detained and the conditions in which he had been transferred on different occasions during his trial had amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatments) of the Convention, finding that the time the applicant had spent in detention had infringed his dignity and had certainly caused both physical and mental hardship beyond that inevitably associated with imprisonment and medical treatment. It observed in particular that, during the transfers, when events that amounted to degrading treatment had occurred, responsibility for the applicant had been placed in the hands of gendarmes who were certainly not qualified to foresee the medical risks involved in moving a disabled person. Moreover, although the highest medical authorities, including forensic experts, had strongly recommended the applicant's early release, stressing the permanent nature of his illness and the unsuitability of prison conditions for a person in his medical condition, his imprisonment had continued.

Z.H. v. Hungary (no. 28973/11)

8 November 2011

Deaf and mute, unable to use sign language or to read or write, and having a learning disability, the applicant complained in particular that his detention in prison for almost three months had amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Despite the authorities laudable but belated efforts to address the applicant's situation, his incarceration without requisite measures

being taken within a reasonable time had resulted in a situation amounting to inhuman and degrading treatment.
In this case the Court also found a **violation of Article 5 § 2** (right to liberty and security) of the Convention. Given the applicant's multiple disabilities, it was in particular not persuaded that he could be considered to have obtained the information required to enable him to challenge his detention. It further found it regrettable that the authorities had not taken any truly "reasonable steps" – a notion quite akin to that of "reasonable accommodation" in Articles 2, 13 and 14 of the United Nations Convention on the Rights of Persons with Disabilities – to address his condition, in particular by procuring him assistance by a lawyer or another suitable person.

Arutyunyan v. Russia[17]

10 January 2012
The applicant was wheelchair-bound and had numerous health problems, including a failing renal transplant, very poor eyesight, diabetes and serious obesity. His cell was on the fourth floor of a building without an elevator; the medical and administrative units were located on the ground floor. Owing to the absence of an elevator, the applicant was required to walk up and down the stairs on a regular basis to receive haemodialysis and other necessary medical treatment.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the domestic authorities had failed to treat the applicant in a safe and appropriate manner consistent with his disability, and had denied him effective access to the medical facilities, outdoor exercise and fresh air. It observed in particular that, for a period of almost fifteen months, the applicant, who was disabled and depended on a wheelchair for mobility, was 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. The effort had undoubtedly caused him unnecessary pain and exposed him to an unreasonable risk of serious damage to his health. It was therefore not surprising that he had refused to go down the stairs to exercise in the recreation yard, and had thus remained confined within the walls of the detention facility twenty-four hours a day. In fact, due to his frustration and stress, the applicant had on several occasions even refused to leave his cell to receive life-supporting haemodialysis.

D.G. v. Poland (no. 45705/07)

12 February 2013
A paraplegic confined to a wheelchair and suffering from a number of health problems, the applicant complained that the care given to him during his detention and the conditions of his detention had been incompatible with his medical needs. In particular, he alleged that the prison facilities were not adapted to the use of a wheelchair, which had resulted in problems of access to the toilet facilities, and that he had not received a sufficient supply of incontinence pads.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the material conditions of the applicant's detention in view of his special needs.

See also: **Grimailovs v. Latvia**, judgment of 25 June 2013.

Zarzycki v. Poland

6 March 2013
The applicant is disabled; both his forearms are amputated. He complained that his detention of three years and four months without adequate medical assistance for his special needs and without refunding him the cost of more advanced bio-mechanical prosthetic arms had been degrading. He alleged that, as a result, he had been forced to rely on other inmates to help him with certain daily hygiene and dressing tasks.

[17]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It noted in particular the pro-active attitude of the prison administration vis-à-vis the applicant (the basic-type mechanical prostheses had been available free of charge to him and a refund of a small part of the cost of bio-mechanic prostheses had also been available). The authorities had thus provided the applicant with the regular and adequate assistance his special needs warranted. Moreover, there was no evidence of any incident or positive intention to humiliate or debase the applicant. Therefore, even though a prisoner with amputated forearms was more vulnerable to the hardships of detention, the treatment of the applicant in the present case had not reached the threshold of severity required to constitute degrading treatment contrary to Article 3 of the Convention.

Helhal v. France

19 February 2015

Suffering from paraplegia of the lower limbs and urinary and faecal incontinence, the applicant complained that, in view of his severe disability, his continuing detention amounted to inhuman and degrading treatment.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It found in particular that, although the applicant's continuing detention did not in itself constitute inhuman or degrading treatment in the light of his disability, the inadequacy of the physical rehabilitation treatment provided to him and the fact that the prison premises were not adapted to his disability amounted to a breach of Article 3 of the Convention. The Court also noted in this case that the assistance in washing himself provided to the applicant by a fellow inmate in the absence of showers suitable for persons of reduced mobility did not suffice to fulfil the State's obligations with regard to health and safety.

Topekhin v. Russia[18]

10 May 2016

The applicant, a remand prisoner suffering from serious back injuries, paraplegia and bladder and bowel dysfunction, complained, *inter alia*, of the conditions of his detention and of his transfer to a correctional colony.

The Court held that there had been a **violation of Article 3** of the Convention, finding that the conditions of the applicant's detention in the remand prisons had amounted to inhuman and degrading treatment. It noted in particular that the applicant's inevitable dependence on his fellow inmates and the need to ask for their help with intimate hygiene procedures had put him in a very uncomfortable position and adversely affected his emotional well-being, impeding his communication with the cellmates who had to perform this burdensome work involuntarily. The conditions had further been exacerbated by the failure to provide him with a hospital bed or other equipment, such as a special pressure-relieving mattress, affording a minimum of comfort. The Court also held that there had been a **violation of Article 3** on account of the conditions of the applicant's transfer, finding that the cumulative effect of the material conditions of the transfer, and the duration of the trip, had been serious enough to qualify as inhuman and degrading treatment. The Court held, however, that there had been **no violation of Article 3** of the Convention on account of the quality of the medical treatment provided to the applicant in detention.

Treatment of elderly and sick prisoners

Papon v. France

7 June 2001 (decision on the admissibility)

The applicant, who was serving a prison sentence for aiding and abetting crimes against humanity, was 90 years old when he lodged his complaint. He maintained that keeping a

[18]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

man of his age in prison was contrary to Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention, and that the conditions of detention in the prison where he was kept were not compatible with extreme old age and with his state of health.
The Court declared the application **inadmissible** (manifestly ill-founded). It did not exclude the possibility that in certain conditions the detention of an elderly person over a lengthy period might raise an issue under Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention, but pointed out that regard was to be had to the particular circumstances of each specific case. It also noted that none of the States Parties to the Convention had an upper age limit for detention. In the instant case, the Court held that in view of the applicant's general state of health and his conditions of detention, his treatment had not reached the level of severity required to bring it within the scope of Article 3 of the Convention. While he had heart problems, his overall condition had been described as "good" by an expert report.

See also: **Priebke v. Italy**, decision on the admissibility of 5 April 2001; **Sawoniuk v. the United Kingdom**, decision on the admissibility of 29 May 2001.

Farbtuhs v. Latvia

2 December 2004

The applicant, who in September 2009 was found guilty of crimes against humanity and genocide for his role in the deportation and deaths of tens of Latvian citizens during the period of Stalinist repression in 1940 and 1941, complained that, in view of his age and infirmity, and the Latvian prisons' incapacity to meet his specific needs, his prolonged imprisonment had constituted treatment contrary to Article 3 (prohibition of inhuman or degrading treatment) of the Convention. In 2002 the domestic courts finally excused the applicant from serving the remainder of his sentence after finding *inter alia* that he had contracted two further illnesses while in prison and that his condition generally had deteriorated. The applicant was released the next day.
The Court held that there had been a **violation of Article 3** (prohibition of degrading treatments) of the Convention. The applicant was 84 years old when he was sent to prison, paraplegic and disabled to the point of being unable to attend to most daily tasks unaided. Moreover, when taken into custody he was already suffering from a number of serious illnesses, the majority of which were chronic and incurable. The Court considered that when national authorities decided to imprison such a person, they had to be particularly careful to ensure that the conditions of detention were consistent with the specific needs arising out of the prisoner's infirmity. Having regard to the circumstances of the case, the Court found that, in view of his age, infirmity and condition, the applicant's continued detention had not been appropriate. The situation in which he had been put was bound to cause him permanent anxiety and a sense of inferiority and humiliation so acute as to amount to degrading treatment within the meaning of Article 3 of the Convention. By delaying his release from prison for more than a year in spite of the fact that the prison governor had made a formal application for his release supported by medical evidence, the Latvian authorities had failed to treat the applicant in a manner that was consistent with the provisions of Article 3 of the Convention.

Contrada (no. 2) v. Italy

11 February 2014

Almost 83, the applicant alleged in particular that, in view of his age and his state of health, the authorities' repeated refusal of his requests for a stay of execution of his sentence or for the sentence to be converted to house arrest had amounted to inhuman and degrading treatment.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It observed in particular that it was beyond doubt that the applicant had suffered from a number of serious and complex medical disorders, and that all the medical reports and certificates that had been submitted to the competent authorities during the proceedings had consistently and unequivocally

found that his state of health was incompatible with the prison regime to which he was subjected. The Court further noted that the applicant's request to be placed under house arrest had not been granted until 2008, that is to say, until nine months after his first request. In the light of the medical certificates that had been available to the authorities, the time that had elapsed before he was placed under house arrest and the reasons given for the decisions refusing his requests, the Court found that the applicant's continued detention had been incompatible with the prohibition of inhuman or degrading treatment under Article 3 of the Convention.

Treatment of mentally-ill prisoners

Kudla v. Poland

26 October 2000 (Grand Chamber)

The applicant, who suffered from chronic depression and twice tried to commit suicide, complained in particular that he was not given adequate psychiatric treatment in detention.

The Court found that the suicide attempts could not be linked to any discernible shortcoming on the part of the authorities and it observed that the applicant had been examined by specialist doctors and frequently received psychiatric assistance. While the Court did thus **not** find a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, it underlined that under this provision the State had to ensure that the manner of detention did not subject a prisoner to hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that his health and well-being were adequately secured by providing him with the requisite medical assistance.

Gennadiy Naumenko v. Ukraine

10 February2004

The applicant was sentenced to death in 1996. In June 2000 the sentence was commuted to one of life imprisonment, which he is currently serving. He alleged in particular that during his time in prison from 1996 to 2001 he had been subjected to inhuman and degrading treatment, notably that he had been wrongfully forced to take medication.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. No matter how disagreeable, therapeutic treatment could not in principle be regarded as contravening Article 3 of the Convention if it was persuasively shown to be necessary. From the evidence of the witnesses, the medical file and the applicant's own statements it was clear that the applicant was suffering from serious mental disorders and had twice made attempts on his own life. He had been put on medication to relieve his symptoms. In that connection, the Court considered it highly regrettable that the applicant's medical file contained only general statements that made it impossible to determine whether he had consented to the treatment. However, it found that the applicant had not produced sufficient detailed and credible evidence to show that, even without his consent, the authorities had acted wrongfully in making him take the medication. In the instant case, the Court did not have sufficient evidence before it to establish beyond reasonable doubt that the applicant had been forced to take medication in a way that contravened Article 3 of the Convention.

Rivière v. France

11 July 2006

The applicant complained about his continued imprisonment in spite of his psychiatric problems – he had been diagnosed with a psychiatric disorder involving suicidal tendencies and the experts were concerned by certain aspects of his behaviour, in particular a compulsion towards self-strangulation – which required treatment outside the prison.

The Court held that the applicant's continued detention without appropriate medical supervision had constituted inhuman and degrading treatment in **violation of Article 3** of the Convention. It observed in particular that prisoners with serious mental disorders and suicidal tendencies required special measures geared to their condition, regardless of the seriousness of the offence of which they had been convicted.

Novak v. Croatia

14 June 2007

The applicant complained in particular that, while he was in detention, there had been a lack of adequate medical treatment for his psychiatric condition, post-traumatic stress disorder.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, given in particular that the applicant had not provided any documentation to prove that his detention conditions had led to a deterioration of his mental health.

Dybeku v. Albania

18 December 2007

The applicant had been suffering from chronic paranoid schizophrenia, for which he was treated in various psychiatric hospitals, for a number of years when he was sentenced to life imprisonment for murder and illegal possession of explosives in 2003. He was placed in a normal prison, where he shared cells with inmates who were in good health and where he was treated as an ordinary prisoner. His father and lawyer complained to the authorities that the prison hospital administration had failed to prescribe adequate medical treatment and that his health had deteriorated as a result. Their complaints were dismissed.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention, finding in particular that the nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention might have exacerbated his feelings of distress, anguish and fear. The fact that the Albanian Government admitted that the applicant had been treated like the other inmates, notwithstanding his particular state of health, also showed a failure to comply with the Council of Europe's recommendations on dealing with prisoners with mental illnesses.

Furthermore, under **Article 46** (binding force and execution of judgments) of the Convention, the Court invited Albania to take the necessary measures, as a matter of urgency, to secure appropriate conditions of detention, and in particular adequate medical treatment, to prisoners requiring special care on account of their state of health.

Renolde v. France

16 October 2008

This case concerned the placement for forty-five days and the suicide in a disciplinary cell of the applicant's brother who was suffering from acute psychotic disorders capable of resulting in self-harm.

Despite a previous suicide attempt and the diagnosis of the applicant's brother's mental condition, there had not been a discussion of whether he should be admitted to a psychiatric institution. Further, the lack of supervision of his daily taking of medication had played a part in his death. In the circumstances of the case, the Court found that the authorities had failed to comply with their positive obligations to protect the applicant's brother's right to life, in **violation of Article 2** (right to life) of the Convention. The Court further held that there had been a **violation of Article 3** (prohibition of inhuman or degrading punishment or treatment) of the Convention, because of the severity of the disciplinary punishment imposed on the applicant's brother, which was liable to break his physical and moral resistance. He had been suffering from anguish and distress at the time. Indeed, eight days before his death his condition had so concerned his lawyer that she had immediately asked the investigating judge to order a psychiatric assessment of his fitness for detention in a punishment cell.

The penalty imposed on the applicant's brother was, therefore, not compatible with the standard of treatment required in respect of a mentally ill person and constituted inhuman and degrading treatment and punishment.

Slawomir Musiał v. Poland

20 January 2009

The applicant, who has been suffering from epilepsy since his early childhood and more recently had been diagnosed with schizophrenia and other serious mental disorders, complained in particular that the medical care and treatment with which he had been provided during his detention had been inadequate.

The Court found that the conditions in which the applicant was detained were not appropriate for ordinary prisoners, still less for a person with a history of mental disorder and in need of specialised treatment. In particular, the authorities' failure during most of the applicant's time in detention to hold him in a suitable psychiatric hospital or a detention facility with a specialised psychiatric ward had unnecessarily exposed him to a risk to his health and must have resulted in stress and anxiety. It further also ignored the Council of Europe Committee of Ministers recommendations[19] in respect of prisoners suffering from serious mental-health problems. In sum, the inadequate medical care and inappropriate conditions in which the applicant was held had clearly had a detrimental effect on his health and well-being. Owing to its nature, duration and severity, the treatment to which he was subjected had to be qualified as inhuman and degrading. In sum, the inadequate medical care and inappropriate conditions in which the applicant was held had clearly had a detrimental effect on his health and well-being. Owing to its nature, duration and severity, the treatment to which he was subjected had to be qualified as inhuman and degrading, in **violation of Article 3** of the Convention.

Furthermore, under **Article 46** (binding force and execution of judgments) of the Convention, in view of the seriousness and structural nature of the problem of overcrowding and resultant inadequate living and sanitary conditions in Polish detention facilities, the Court held that necessary legislative and administrative measures were to be taken rapidly in order to secure appropriate conditions of detention, in particular for prisoners in need of special care because of their state of health. Having regard to the particular circumstances of the case and the urgent need to put an end to the violation of Article 3 of the Convention, the Court further held that Poland was to secure at the earliest possible date the applicant's transfer to a specialised institution capable of providing him with the necessary psychiatric treatment and constant medical supervision.

Kaprykowski v. Poland

3 February 2009

The applicant alleged in particular that, in view of his severe epilepsy and other neurological disorders, the medical treatment and assistance during his detention in Poznań Remand Centre had been inadequate.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading punishment or treatment) of the Convention, finding that the applicant's continued detention without adequate medical treatment and assistance had constituted inhuman and degrading treatment. It noted *inter alia* that the lack of adequate medical treatment in Poznań Remand Centre, which had effectively placed the applicant in a position of dependency and inferiority in relation to his healthy cellmates, had undermined his dignity and entailed particularly acute hardship that had caused anxiety and suffering beyond that inevitably associated with any deprivation of liberty. In this respect, the Court stressed in particular its disapproval of remand-centre staff who considered that their duty to provide security and care to more vulnerable detainees

[19]. Recommendation R(98)7 of the Committee of Ministers of the Council of Europe to the Member States concerning the ethical and organisational aspects of health care in prison, and Recommendation Rec(2006)2 of 11 January 2006 on the European Prison Rules.

could be discharged by making their cellmates responsible for providing daily assistance or, if necessary, emergency aid.

Raffray Taddei v. France

21 December 2010

Suffering from a number of medical conditions, including anorexia and Munchausen's syndrome (a psychiatric disorder characterised by the need to simulate an illness), the applicant complained about her continuing detention and about a failure to provide her with appropriate treatment for her health problems.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding in particular that the failure by the national authorities to sufficiently take into account the need for specialised care in an adapted facility, as required by the applicant's state of health, combined with her transfers, despite her particular vulnerability and with the prolonged uncertainty following her requests for deferment, had been capable of causing her distress that had exceeded the unavoidable level of suffering inherent in detention.

M.S. v. the United Kingdom (no. 24527/08)

3 May 2012

The applicant, a mentally-ill man, complained in particular about his being kept in police custody during a period of acute mental suffering while it had been clear to all that he was severely mentally ill and required hospital treatment as a matter of urgency.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention, finding in particular that, although there had been no intentional neglect on the part of the police, the applicant's prolonged detention without appropriate psychiatric treatment had diminished his human dignity.

Claes v. Belgium

10 January 2013

This case concerned the confinement of a mentally-ill sexual offender who had been found not to be criminally responsible in the psychiatric wing of an ordinary prison, without appropriate medical care, for more than fifteen years.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the national authorities had not provided the applicant with adequate care and that he had been subjected to degrading treatment as a result. The Court observed in particular that the applicant's continued detention in the psychiatric wing without the appropriate medical care and over a significant period of time, without any realistic prospect of change, had constituted particularly acute hardship causing distress which went beyond the suffering inevitably associated with detention. Whatever obstacles may have been created by the applicant's own behaviour, they did not dispense the State from its obligations in his regard by virtue of the position of inferiority and powerlessness typical of patients confined in psychiatric hospitals and even more so of those detained in a prison setting.

In this judgment the Court further stressed that the applicant's situation stemmed in reality from a structural problem: on the one hand, 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 in psychiatric hospitals or because the relevant legislation did not allow the mental health authorities to order their placement in external facilities.

See also: **Lankester v. Belgium**, judgment of 9 January 2014.

Ţicu v. Romania

1 October 2013

The applicant was serving a 20-year sentence for participating in armed robbery occasioning the victim's death. In childhood he suffered from an illness which led to considerable delays in his mental and physical development. He complained in particular about the poor conditions of detention in the various prisons where he had been serving

his sentence, and especially about overcrowding and shortcomings in the provision of medical treatment.
In the light of the facts of the case taken as a whole, and considering in particular the conditions in which the applicant had been detained, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. Finding the living conditions in the institutions where the applicant had been held and continued to be held to be a particular cause for concern, it considered that such conditions, which would be inadequate for any person deprived of his or her liberty, were especially so in the case of someone like the applicant, on account of his mental health problems and the need for appropriate medical supervision. The Court also noted that the relevant recommendations of the Committee of Ministers of the Council of Europe to member States, namely Recommendation No. R (98) 7 concerning the ethical and organisational aspects of health care in prison and Recommendation Rec(2006)2 on the European Prison Rules, advocated that prisoners suffering from serious mental health problems should be kept and cared for in a hospital facility which was adequately equipped and possessed appropriately trained staff.

Bamouhammad v. Belgium

17 November 2015

Suffering from Ganser syndrome (or "prison psychosis"), the applicant alleged that he had been subjected while in prison to inhuman and degrading treatment which had affected his mental health. He also complained about a lack of effective remedies.
The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the level of seriousness required for treatment to be regarded as degrading, within the meaning of Article 3, had been exceeded in the applicant's case. The Court noted in particular that the need for a psychological supervision of the applicant had been emphasised by all the medical reports. However, his endless transfers had prevented such supervision. According to the experts, his already fragile mental health had not ceased to worsen throughout his detention. The Court concluded that the prison authorities had not sufficiently considered the applicant's vulnerability or envisaged his situation from a humanitarian perspective. The Court also held that there had been a **violation of Article 13** (right to an effective remedy) **taken together with Article 3**, finding that the applicant had not had an effective remedy by which to submit his complaints under Article 3.

Murray v. the Netherlands

26 April 2016 (Grand Chamber)

This case concerned the complaint by a man convicted of murder in 1980, who consecutively served his life sentence on the islands of Curaçao and Aruba (part of the Kingdom of the Netherlands) – until being granted a pardon in 2014 due to his deteriorating health –, about his life sentence without any realistic prospect of release. The applicant – who in the meantime passed away[20] – notably maintained that he was not provided with a special detention regime for prisoners with psychiatric problems.
The Court held that there had been a **violation of Article 3** of the Convention, finding that the applicant's life sentence had not *de facto* been reducible. It observed in particular that although he had been assessed, prior to being sentenced to life imprisonment, as requiring treatment, he had never been provided with any treatment for his mental condition during the time he was imprisoned. The opinions of the domestic court advising against his release showed that there was a close link between the persistence of the risk of his reoffending on the one hand and the lack of treatment on the other. Consequently, at the time he lodged his application with the Court, any request by him for a pardon was in practice incapable of leading to his release. In this case the Court also underlined that States were under an obligation to provide detainees suffering from health problems – including mental health problems – with appropriate medical care.

[20]. Two of his relatives subsequently pursued his case before the Court.

W.D. v. Belgium (application no. 73548/13)

6 September 2016

This case concerned a sex offender suffering from mental disorders who was detained indefinitely in a prison psychiatric wing. The applicant complained that he had been detained in a prison environment for more than nine years without any appropriate treatment for his mental condition or any realistic prospect of reintegrating into society. He also complained that his deprivation of liberty and continued detention were unlawful. He lastly submitted that he had had no effective remedies by which to complain of the conditions of his detention.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the applicant had been subjected to degrading treatment by having been detained in a prison environment for more than nine years, without appropriate treatment for his mental condition and with no prospect of reintegrating into society; this had caused him particularly acute hardship and distress of an intensity exceeding the unavoidable level of suffering inherent in detention. The Court also held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicant's detention since 2006 in a facility ill-suited to his condition had broken the link required by Article 5 § 1 (e) between the purpose and the practical conditions of detention, noting that the reason for the applicant's detention in a prison psychiatric wing was the structural lack of alternatives. The Court further held that there had been a **violation of Article 5 § 4** (right to speedy review of the lawfulness of detention) and a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 3**, finding that the Belgian system, as in operation at the time of the events, had not provided the applicant with an effective remedy in practice in respect of his Convention complaints – in other words, a remedy capable of affording redress for the situation of which he was the victim and preventing the continuation of the alleged violations. Lastly, finding that the applicant's situation had originated in a structural deficiency specific to the Belgian psychiatric detention system, the Court, in accordance with **Article 46** (binding force and execution of judgments) of the Convention, held that Belgium was required to organise its system for the psychiatric detention of offenders in such a way that the detainees' dignity was respected.

Rooman v. Belgium

31 January 2019 (Grand Chamber)

This case concerned the question of the psychiatric treatment provided to a sex offender who had been in compulsory confinement since 2004 on account of the danger that he poses and the lawfulness of his detention. The applicant complained that he had not received the psychological and psychiatric treatment required by his mental-health condition. He also alleged that the lack of treatment was depriving him of the prospect of an improvement in his situation and that, as a result, his detention was unlawful.

The Grand Chamber held that from the beginning of 2004 until August 2017 there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, and that from August 2017 onwards there had been **no violation of Article 3**. It found in particular that the national authorities had failed to provide treatment for the applicant's health condition from the beginning of 2004 to August 2017, and that his continued detention without a realistic hope of change and without appropriate medical support for a period of about thirteen years had amounted to particularly acute hardship, causing him distress of an intensity exceeding the unavoidable level of suffering inherent in detention. In contrast, the Court held that since August 2017 the authorities had shown a real willingness to remedy the applicant's situation by undertaking tangible measures, and that the threshold of severity required to bring Article 3 into play had not been reached. The Grand Chamber also held that from the beginning of 2004 until August 2017 there had been a **violation of Article 5** (right to liberty and security) of the Convention and that from August 2017 onwards there had been **no violation of Article 5**. In that regard, the Court decided in particular

to refine its case-law principles, and to clarify the meaning of the obligation on the authorities to provide treatment to persons placed in compulsory confinement. The Court then held that the applicant's deprivation of liberty during the period from the beginning of 2004 to August 2017 had not taken place in an appropriate institution which was capable of providing him with treatment adapted to his condition, as required by Article 5 § 1. In contrast, it found that the relevant authorities had drawn the necessary conclusions from the Chamber judgment of 18 July 2017 and had put in place a comprehensive treatment package, leading it to conclude that there had been no violation of this provision in respect of the period since August 2017.

Strazimiri v. Albania

21 January 2020

This case concerned the detention of a man, who had been exempted from criminal responsibility on account of mental illness, in a prison rather than a medical institution. The applicant complained in particular that the conditions of his detention, including the provision of medical care, had been inadequate. He also submitted that he had been placed in a prison even though the courts had ordered his confinement in a medical institution, that he had not been given the possibility to have the lawfulness of his detention decided speedily by a court, and that domestic law had not provided him with an enforceable right to compensation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention because of inadequate living conditions in the prison hospital where the applicant was detained and insufficient psychiatric care. It further held that there had been **violations of Article 5 §§ 1, 4 and 5** (right to liberty and security/ right to have the lawfulness of detention decided speedily by a court/enforceable right to compensation), in particular because of his continued deprivation of liberty in a prison rather than a medical institution and because his appeal against his detention had been pending before the Supreme Court since 2016. Lastly, under **Article 46** (binding force and execution of judgments) of the Convention, the Court noted in particular that there had been a longstanding failure by the Albanian authorities to set up a special medical institution for the mentally ill who were deprived of their liberty on the strength of court-ordered compulsory treatment. Finding that that was in breach of its domestic statutory obligations and pointed to a structural problem, the Court also held that the authorities should not only ensure that the applicant received psychotherapy, not just drugs, but also create an appropriate institution for those in his situation.

Venken and Others v. Belgium

6 April 2021

This case concerned applications related to the compulsory confinement of five Belgian nationals in the psychiatric wings of ordinary prisons, and followed on from the pilot judgment *W.D. v. Belgium* (see above). The applicants alleged that they had not received therapeutic care that was appropriate to their mental-health condition and complained of the lack of an effective remedy in order to bring about a change in their situation.

The Court held that there had been a **violation of Articles 3** (prohibition of inhuman or degrading treatment) **and 5 § 1** (right to liberty and security) of the Convention on in respect of three applicants. It noted, in particular, that when their applications were lodged, the five applicants had been detained in the psychiatric wings of ordinary prisons, where they did not receive appropriate therapy. They were now all accommodated in an institution that was in principle appropriate for their mental health conditions. Their detention in conditions breaching Articles 3 and 5 § 1 of the Convention had ended. In this connection, the Court found that the compensation awarded by the domestic courts to the three applicants in question did not cover the entire period during which they had been held in prison psychiatric wings, without a realistic hope of change and without appropriate medical support. In the Court's view, this significant period had subjected them to particularly acute hardship, causing distress of an intensity exceeding

the unavoidable level of suffering inherent in detention. The Court also held that there had been a **violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention) of the Convention in respect of three applicants, and a **violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 3** in respect of two of these same applicants. It held, however, that there had been **no violation of Article 5 § 4** (right to a speedy decision on the lawfulness of detention), **and of Article 13** (right to an effective remedy) taken together with Article 3, in respect of two applicants who complained about proceedings which were conducted following the entry into force of the 2014 Compulsory Confinement Act.

Sy v. Italy

24 January 2022

This case concerned the fact that the applicant, who suffered from a personality disorder and bipolar disorder, had remained in detention in an ordinary prison despite domestic court decisions stating that his mental health was incompatible with such detention and ordering his transfer to a Residential Centre for the enforcement of preventive measures (REMS), and later to a prison psychiatric service. The applicant submitted in particular that his continued detention in an ordinary prison had prevented him from benefiting from therapeutic provision.

The Court held, inter alia, that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in respect of the applicant. It noted, in particular, that the applicant's mental condition had been incompatible with detention in prison and that, despite the clear and unequivocal indications by the domestic courts, he had remained in an ordinary prison for almost two years. It further transpired from the case file that the applicant had not benefited from any overall medical provision for his illness aimed at remedying his health problems or preventing their aggravation, all in a general context of poor conditions of detention. The Court also held that there had been a **violation of Article 34** (right of individual application) of the Convention in the present case. In this regard, it noted, in particular, that, as it had emphasised on several occasions in the past, Governments should organise their prison systems in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties. The Court considered therefore that it was incumbent on the Italian Government, in the absence of an REMS place, to find an appropriate alternative solution, as it had in fact explicitly stated in an interim measure issued under Rule 39 (interim measures) of the Rules of Court.

Treatment of prisoners with drug addiction

McGlinchey and Others v. the United Kingdom

29 April 2003

This case concerned the adequacy of medical care provided by prison authorities to a heroin addict suffering withdrawal symptoms. Sentenced to four months' imprisonment for theft in December 1998, the latter, while in prison, manifested heroin-withdrawal symptoms, had frequent vomiting fits and significantly lost weight. She was treated by a doctor and, as her condition worsened after one week in prison, admitted to hospital, where she died in January 1999. The applicants, her children and mother, complained in particular that she had suffered inhuman and degrading treatment in prison prior to her death.

The Court concluded from the evidence before it, in particular the medical records, that the applicants' allegations that the prison authorities had failed to provide their relative with medication for her heroin-withdrawal symptoms and locked her in her cell as a punishment were unsubstantiated. However, with regard to the complaints that not enough had been done, or done quickly enough, to treat the applicants' relative for her heroin-withdrawal symptoms, the Court found that, while it appeared that her condition had been regularly monitored from 7 to 12 December 1998, she had been vomiting repeatedly during that period and losing a lot of weight. Despite some signs of

improvement in her condition in the following days, the Court concluded from the evidence before it that by 14 December 1998 the applicants' relative had lost a lot of weight and become dehydrated. In addition to causing her distress and suffering, this had posed very serious risks to her health. The Court found that the prison authorities had failed to comply with their duty to provide her with the requisite medical care, in **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention.

Marro and Others v. Italy

8 April 2014 (decision on the admissibility)

The applicants were the relatives of a detained drug addict who died in prison as a result of an overdose. Relying on Article 2 (right to life) of the Convention, they blamed the Italian authorities for failing to prevent their relative from obtaining the substances which led to his death.

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the fact that the applicants' relative, although detained in prison, had been able to obtain and make use of drugs could not, in itself, make the Italian State liable for the death in question. The Court began by reiterating that the States had an obligation to ensure that the health and well-being of prisoners were adequately secured. The applicants' case concerned, more specifically, the obligation to afford general protection to a vulnerable group of people, namely drug addicts. The Court also stressed, however, that it could not consider that the mere fact that a prisoner had been able to obtain drugs constituted a breach by the State of that obligation. In the present case, it noted, in particular, that the applicants had not alleged that the authorities were aware of information which could have led them to believe that their relative was in a particularly dangerous position compared to any other prisoner suffering from drug addiction. Moreover, no failing could be identified on the part of the prison staff. Indeed, they had taken numerous measures (searches, inspection of parcels, etc.) to prevent drugs being brought into prisons.

Wenner v. Germany

1 September 2016

This case concerned the complaint by a long-term heroin addict that he had been denied drug substitution therapy in prison.

While in this case the Court did not have to decide whether the applicant had indeed needed drug substitution therapy, its task was to determine whether the German authorities had adequately assessed his state of health and the appropriate treatment. In the applicant's case, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, coming to the conclusion that the authorities, despite their obligation to that effect, had failed to examine with the help of independent and specialist medical expert advice, against the background of a change in the applicant's medical treatment, which therapy was to be considered appropriate.

Patsaki and Others v. Greece

7 February 2019

This case concerned the death of a drug addict in prison. The applicants, eight members of the deceased's family (his wife, daughter, mother, father and four brothers), complained that the Greek State had not complied with its positive obligation to protect their relative's life in prison.

The Court considered that the part of the application submitted by the deceased's father and two of his brothers was **inadmissible** as they had not made an official complaint (they had merely brought an action for damages against the State under a section of the Introductory Law to the Civil Code; the Court considered that that action had been bound to fail and had therefore been ineffective). As regards the merits of the complaint raised by the other five applicants, the Court held that there had been a **violation** of the procedural limb **of Article 2** (right to life) of the Convention. In this respect, it ruled in

particular that the length of the judicial investigation (four years and eight months) had breached the requirements of diligence and promptness for an effective investigation. It also held that the authorities had neither closely examined the deceased's case nor conducted an effective investigation into the circumstances of the death. Lastly, the Court held that there had been **no violation of Article 2** of the Convention under its substantive limb, finding that the circumstances of the death did not clearly point to any State responsibility.

Diet while in detention

Moisejevs v. Latvia

15 June 2006

Detained pending trial, the applicant maintained in particular that he had been subjected to inhuman and degrading treatment, by having been denied food on the days he was transported from the prison to the regional court to attend the hearings of his criminal case.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the insufficient diet provided to the applicant during his detention, finding that the suffering experienced by the applicant had amounted to degrading treatment. The Latvian Government had not denied the applicant's allegation that on the days of the hearings he had not been given a normal lunch and had been limited to a slice of bread, an onion and a piece of grilled fish or a meatball. The Court considered that such a meal was clearly insufficient to meet the body's functional needs, especially in view of the fact that the applicant's participation in the hearings by definition caused him increased psychological tension. It noted in particular that, following a complaint by the applicant, he and the other defendants had started to receive more food when staying on the premises of the regional court in question; the authorities had thus realised that the meals being distributed were insufficient. The Court further noted that the Latvian Government had not rebutted the applicant's assertion that on a number of occasions when returning to the prison in the evening he had received only a bread roll instead of a full dinner. That being so, the Court concluded that, at least before late 2000, the applicant had regularly suffered from hunger on the days of the hearings.

Ebedin Abi v. Turkey

13 March 2018

The applicant, who suffered from type 2 diabetes (abnormally high blood glucose levels) and from coronary artery disease, complained about his diet while he was in detention and, in particular, of not being provided with meals compatible with the diet that doctors had prescribed for him, and of a deterioration in his health as a result.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, finding that the Turkish authorities had not taken the necessary measures to protect the applicant's health and well-being and had failed to ensure that his conditions of detention were adequate and respected his human dignity. With regard to the alleged deterioration in the applicant's health as a result of his inability to follow the diet prescribed by doctors, the Court observed that the applicant had made use of all the available remedies in order to raise before the national authorities his complaints concerning the incompatibility of the meals served with his diet and the deterioration in his health allegedly linked to his food intake. The national authorities had failed to respond adequately to his repeated requests. Moreover, in view of the fact that persons in detention were unable to obtain medical treatment whenever they saw fit and in a hospital of their own choosing, the Court considered that the domestic authorities should have arranged for a specialist to study the standard menu offered by the prison and for the applicant to undergo a medical examination at the same time specifically geared to his complaints. In reality, the authorities had not sought to establish whether the food being provided to the applicant was suitable or whether

the failure to adhere to the diet prescribed for him had had an adverse impact on his health.

Passive smoking in detention

Florea v. Romania

14 September 2010

In 2002 the applicant, who suffered from chronic hepatitis and arterial hypertension, was imprisoned. For approximately nine months he shared a cell with between 110 and 120 other prisoners, with only 35 beds. According to the applicant, 90% of his cellmates were smokers. The applicant complained in particular of overcrowding and poor hygiene conditions, including having been detained together with smokers in his prison cell and in the prison hospital.

The Court observed in particular that the applicant had spent in detention approximately three years living in very cramped conditions, with an area of personal space falling below the European standard. As to the fact that he had to share a cell and a hospital ward with prisoners who smoked, no consensus existed among the member States of the Council of Europe with regard to protection against passive smoking in prisons. The fact remained that the applicant, unlike the applicants in some other cases the Court had previously dealt with[21], had never had an individual cell and had had to tolerate his fellow prisoners' smoking even in the prison infirmary and the prison hospital, against his doctor's advice. However, a law in force since June 2002 prohibited smoking in hospitals and the domestic courts had frequently ruled that smokers and non-smokers should be detained separately. It followed that the conditions of detention to which the applicant had been subjected had exceeded the threshold of severity required by **Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in **violation** of this provision.

Elefteriadis v. Romania

25 January 2011

The applicant, who suffers from chronic pulmonary disease, is currently serving a sentence of life imprisonment. Between February and November 2005 he was placed in a cell with two prisoners who smoked. In the waiting rooms of the courts where he was summoned to appear on several occasions between 2005 and 2007, he was also held together with prisoners who smoked. The applicant further claimed to have been subjected to second-hand tobacco smoke when being transported between the prison and the courts.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, observing in particular that a State is required to take measures to protect a prisoner from the harmful effects of passive smoking where, as in the applicant's case, medical examinations and the advice of doctors indicated that this was necessary for health reasons. In the instant case, it appeared possible to separate the applicant from prisoners who smoked, given that there was a cell in the prison containing only non-smokers. Furthermore, following the period during which the applicant had been detained in a cell with smokers, the medical certificates issued by several doctors recorded a deterioration in his respiratory condition and the emergence of a further illness, namely chronic obstructive bronchitis. As to the fact that he had been held in court waiting rooms with prisoners who smoked – even assuming that it had been for short periods – this had been against the recommendations of doctors, who had advised the applicant to avoid smoking or exposure to tobacco smoke. The fact that the applicant had eventually been placed in a cell with a non-smoker appeared to have been due to the existence of sufficient capacity in the prison in which he was detained at that particular time rather than to any objective criteria in the domestic legislation ensuring that smokers and non-smokers were detained separately.

[21]. See in particular: **Aparicio Benito v. Spain**, decision on the admissibility of 13 November 2006.

Thus, there was nothing to indicate that the applicant would continue to be held in such favourable conditions if the prison where he was currently detained were to be overcrowded in the future.

Monitoring by prison authorities of a prisoner's medical correspondence

Szuluk v. the United Kingdom

2 June 2009

The applicant suffered a brain haemorrhage while on bail. He had two operations before being discharged to prison to serve his sentence. Thereafter, he was required to attend hospital every six months for a specialist check-up. He discovered that his correspondence with the neuro-radiology specialist supervising his hospital treatment had been monitored by a prison medical officer. His complaint to the domestic courts was dismissed. Relying on Article 8 (right to respect for private and family life, and correspondence) of the Convention, the applicant complained that the prison authorities had intercepted and monitored his medical correspondence.

The Court held that there had been a **violation of Article 8** (right to respect for correspondence) of the Convention. Noting that it was clear and not contested that there had been an "interference by a public authority" with the exercise of the applicant's right to respect for his correspondence, that was governed by law and was aimed at the prevention of crime and the protection of the rights and freedoms of others, it found however that, in the circumstances of the case, the monitoring of the applicant's medical correspondence had not struck a fair balance with his right to respect for his correspondence.

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