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Subject: *Case-law concerning "mental health"*

Further to your request of 24 March 2010, please find herewith an update of the research report on case-law drawn up by Ms Christiane Brisson, jurist in the Research and Library Division.

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REQUEST FOR RESEARCH

Updating of the study of European Court of Human Rights case-law on mental health

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ARTICLE 2

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

The first sentence of Article 2 § enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.

- With a prisoner known to be mentally disturbed without the exact complaint being identified and given the attendant risks of suicide, the prison authorities reacted reasonably by placing the sufferer in hospital under surveillance during acute phases and by allowing him to be visited by doctors who consulted outside psychiatrists with knowledge of the case history. They cannot be blamed for having neglected to apply a measure which they should have taken, such as a fifteen minute watch. Article 2 was not violated: *Keenan v. United Kingdom*, No. 27229/95, §§ 89-90 and 99, ECHR 2001-III of 3 April 2010.
- Although the psychiatric disorders of a conscript were known to the military authority which should have realised that he was liable to attempt suicide, he was posted to a unit as an ordinary serviceman; the regulatory framework was deficient in the ascertainment and the monitoring by the medical corps of his mental fitness, which leads to the finding of a violation of Article 2 of the Convention: *Kılınc and others v. Turkey*, No. 40145/98, §§ 56-57, of 7 June 2005.
- In dealing with persons in custody or just arrested, the State authorities are required to protect the health of such persons, which presupposes that the necessary medical care be delivered with due diligence. Police officers fail to meet their positive obligation to preserve life where, confronted with a vulnerable and visibly injured mental patient bound hand and foot and thus posing no danger whatsoever for others, did not relax their grip and performed no medical examination although the form of restraint adopted was designated as highly life-threatening: *Saoud v. France*, No. 9375/02, §§ 98, 101-104, ECHR 2007-XI (excerpts), of 9 October 2007.
- A prison authority aware of a prisoner's psychotic disorders potentially leading to self-destructive acts must exercise close surveillance of the prisoner to guard against aggravation of his condition, and satisfy itself as to the compatibility of that condition with detention. Short of ordering placement in a psychiatric clinic, the authorities were to provide the medical care required by the severity of the prisoner's condition; failure

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to supervise compliance with the treatment may have played a part in the patient's death. In the instant case, given the mental patient's vulnerability, the authorities failed to meet their obligation to safeguard the right to life: *Renolde v. France*, No. 5608/05, §§ 98 and 119-130, 16 October 2008.

ARTICLE 3

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

A. General principles

Protection against the treatment prohibited by Article 3 is absolute: *Saadi v. Italy* [GC], No. 37201/06, § 138*, ECHR 2008-..., of 28 February 2008.

1) The minimum level of severity

- For ill-treatment to be inhuman or degrading, the resultant suffering and humiliation must exceed those unavoidably associated with a legitimate form of treatment or penalty. Determination of this minimum level is relative in essence, depending on the complete circumstances of the case and particularly on the duration and the physical and/or mental effects of the treatment and sometimes the victim's sex, age and state of health: *Keenan v. United Kingdom*, loc. cit., § 109, ECHR 2001-III, of 3 April 2001; *Matencio v. France*, No. 58749/00, § 77, of 15 January 2004.
- Article 3 may be relevant to the suffering caused by a naturally occurring disease, whether bodily or mental, if the suffering is aggravated or liable to be aggravated by treatment for which the authorities may be held responsible: *Pretty v. United Kingdom*, No. 2346/02, § 52*, ECHR 2002-III, of 29 April 2001.
- If it rests with the medical authorities to decide as to the means of therapy to be used, forcibly if need be, to safeguard prisoners' bodily and mental health, the requirements of Article 3 imply that the Court satisfy itself that the necessity of the treatment is convincingly proven. In the instant case, the particulars available to the Court do not enable it to certify that

* Court judgment or decision relating to a person's state of health, without necessarily concerning his/her state of mental health alone.

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the person concerned was subjected to forcible medication infringing Article 3: *Naumenko v. Ukraine*, No. 42023/98, § 112, of 10 February 2004.

- Article 3 does not lay the Contracting State under an obligation to alleviate such disparities through the provision of free and unlimited health care to all aliens without a right to stay in its territory. The same principle applies to a person with a naturally occurring bodily or mental illness likely to cause suffering and pain and to reduce life expectancy and require specialised medical treatment which may not be readily found in the applicant's country of origin or which may be available only at substantial cost: *N. v. United Kingdom* [GC], No. 26565/05, §§ 44-45, of 27 May 2008* (in the instant case, although the applicant was an AIDS sufferer, her condition was not critical and no exceptional circumstances were proven, so Article 3 had not been infringed).

2) Detention of a patient

- The Convention contains no specific provision on the situation of persons deprived of their liberty, let alone where they are ill, but the detention of a person who is ill may raise issues under Article 3: *Chartier v. Italy*, No. 9044/80, Commission report of 8 December 1982; *B. v. Germany*, No. 13047/87, Commission decision of 10 March 1988; *Matencio v. France*, loc. cit., § 76.

There may be ill-treatment when the detention is the cause of the state of ill-health.

The State is bound to supervise conditions of detention at all times so as to secure prisoners' well-being and health having regard to the normal and reasonable demands of imprisonment.

- All prisoners are entitled to conditions of detention in keeping with human dignity; the execution of the measures taken must not subject the person concerned to distress or trials whose intensity exceeds the unavoidable level of suffering inherent in detention: *Hurtado v. Switzerland* of 28 January 1994, Series A No. 280-A.

The state of health may necessitate specific measures such as hospitalisation or placement where a convicted patient is monitored and under surveillance: *Mouisel v. France*, No. 67263/01, § 45, ECHR 2002-IX, of 14 November 2002; *Rivière v. France*, No. 33834/03, § 55, of 11 July 2006.

- The conditions of detention of a death row prisoner who is a psychiatric patient caused considerable mental suffering, diminishing his human dignity and, in the circumstance of the case, violating Article 3 of the

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Convention: *Kuznetsov v. Ukraine*, No. 39042/97, §§ 109-129, of 29 April 2003.

- This stipulation does not create a general obligation to release a prisoner for health reasons, but does require the integrity of persons deprived of liberty to be protected particularly by administering the necessary medical care: *Kudła v. Poland* [GC], No. 30210/96, § 94, ECHR 2000-XI, of 26 October 2000; *Rivière v. France*, loc. cit., § 74.
- In considering whether treatment is degrading, the Court will consider in particular whether its object was to humiliate or debase the person concerned (*Price v. United Kingdom*, No. 33394/96, § 30, ECHR 2001-VII, of 10 July 2001, she being afflicted with a very severe physical disability and imprisoned without it first being ascertained whether facilities suited to her condition were available); conversely, however, the absence of any such purpose cannot conclusively rule out a finding of violation of Article 3: *Peers v. Greece*, No. 28524/95, §§ 67-68 and 74, ECHR 2001-III, of 4 June 1999.

B. Violation of Article 3 of the Convention found

- Serious defects have been observed in the medical care administered to a mentally ill person with known suicidal tendencies (absence of effective surveillance of the person, whose condition has been assessed and the treatment determined without prior consultation of psychiatric specialists); moreover, the belated imposition on him of a serious disciplinary punishment shortly before his expected date of release may have impaired his physical and moral resistance: *Keenan v. United Kingdom*, loc. cit., § 116.
- Maintaining the detention of a patient whose state of health was of particular concern and furthermore incompatible with detention, he being regularly required to have chemotherapy sessions while handcuffed, infringes Article 3: *Mouisel v. France*, loc. cit., § 48.
- The conditions of detention of a person suffering from a severe mental pathology (moreover absolving him of responsibility for the offence charged), compounded by the long period for which he had to bear them, constitute degrading treatment in breach of Article 3 (acute overcrowding of cells and ill-effects on the prisoner's well-being), even though no specific intent to humiliate or degrade can be ascertained: *Romanov v. Russia*, No. 63993/00, § 81, of 20 October 2005.
- The condition of a prisoner with serious mental problems who is a suicide risk calls for suitable measures to ensure the compatibility of that condition with the demands of humane treatment, however serious the

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offences for which he was sentenced; the prisoner's continued detention, without appropriate medical supervision, constitutes a particularly arduous ordeal subjecting him to distress, or one whose severity exceeds the inevitable level of suffering inherent in detention, thus violating Article 3: *Rivière v. France*, loc. cit., §§ 75-76.

- A person displaying severe personality disorders involving reduction of the span of consciousness and discernment, whose disorders became apparent upon remand in custody, who has been put in solitary confinement and restrained by being chained up for at least 25 days without a psychiatrist's opinion being ordered, and without having been examined by a specialist to ascertain the compatibility of his condition with detention and the therapeutic measures required in his case, can validly claim a violation of Article 3: *Rupa v. Romania (No. 1)*, No. 58478/00, §§ 167-176, of 16 December 2008.

C. No violation of Article 3 found

- The circumstance that conditions of detention are unsatisfactory does not suffice to prove violation of Article 3. No aggravation of the applicant's state of health made him more vulnerable than the average detainee, and he was not certified to have undergone ill-treatment: *Aerts v. Belgium*, 30 July 1998, §§ 65-66, *Reports of Judgments and Decisions* 1998-V.
- Being placed in pre-trial detention does not in itself raise an issue under Article 3. While a prisoner's psychological condition can make him more vulnerable and exacerbate his feelings of distress, anguish and fear, having regard to the circumstances of the case he was not subjected to ill-treatment of a sufficient level of severity to come within the scope of Article 3 of the Convention, he having been examined by specialists and received psychiatric assistance: *Kudła v. Poland [GC]*, loc. cit., §§ 94 and 99-100.
- Maintenance of even relative isolation cannot be indefinitely imposed on a prisoner. In the instant case however, given the physical conditions of detention, the relative isolation, the authorities' willingness to hold him under the ordinary regime, his character and the danger posed, the conditions in which the applicant was being held during the period under consideration did not reach the minimum level of severity: *Ramirez Sanchez v. France [GC]*, No. 59450/00, § 150, ECHR 2006-IX, of 4 July 2006.
- The uncertainty surrounding the position of the applicants, held without knowing when they might be released, could not but cause anxiety and

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distress, the strain of which may be severe and lasting enough to affect the mental health of some of them; however, they were not without all prospect or hope of release; their position due to their detention did not reach the high degree of severity necessary in this context, particularly considering that the applicants had administrative remedies of which they did not avail themselves: *A. and others v. United Kingdom* [GC], No. 3455/05, §§ 129-136, ECHR 2009-..., of 19 February 2009.

ARTICLE 5 § 1

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

(...)

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

A person cannot be deemed of unsound mind and undergo deprivation of liberty unless the following conditions are met: the mental disorder must have been conclusively proved, must be of a kind or degree warranting compulsory confinement, and confinement may not be validly protracted unless the disorder persists: *Winterwerp v. Netherlands*, No. 6301/73, of 24 October 1979, § 39, Series A No. 33; *Johnson v. United Kingdom*, No. 22520/93, of 24 October 1997, § 60, *Reports of Judgments and Decisions* 1997-VII; *Enhorn v. Sweden*, No. 56529/00, § 42, ECHR 2005-I, of 25 January 2005.

A. Medical justification

- A person vested with parental authority cannot hold unlimited rights and, while the State must provide safeguards against abuses, the placement of a child in a child psychiatry ward could have been decided for a legitimate purpose of exercising that authority, the child not being afflicted with mental illness but in need of treatment which could be without medication. The restrictions imposed on the child (several months' stay in a closed ward, consent of the staff in order to have visits,

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permission needed to telephone, etc.) do not resemble in their nature or degree the deprivations of liberty referred to in Article 5 § 1. Consequently, the hospitalisation complained of did not constitute deprivation of liberty within the meaning of Article 5, but was a responsible exercise by a parent of her custodial rights: *Nielsen v Denmark*, No. 10929/84, of 28 November 1988, §§ 72-73., Series A No. 144.

- The form and the procedure settled by a State for certifying a patient's unsoundness of mind can depend on the circumstances; if there is urgency, the medical opinion may be taken after the arrest. The medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. Where unsoundness of mind is not conclusively proven, to the extent that detention was ordered without a doctor being consulted, the detention cannot be regarded as lawful: *Varbanov v. Bulgaria*, No. 31365/96, §§ 47-49 and 53, ECHR 2000-X, of 5 October 2000.
- Detention for periods of 8 days then 28 days in order to ensure the immediate fulfilment of a procedural obligation imposed on the applicant to submit to a psychiatric examination, followed by her detention eight days after the performance of the said examinations, cannot be reconciled with a purpose of this kind, thereby violating Article 5 § 1 of the Convention: *Nowicka v. Poland*, No. 30218/96, §§ 62-65, of 3 December 2002.
- Compulsory confinement cannot be considered arbitrary where the medical opinions concur as to the risks of further offences being committed by the detainee if released. No issues of arbitrariness are disclosed by the fact that the grounds on which detention in hospital may be ordered in domestic law have altered over the period during which the applicant has been detained. In the instant case, the law henceforth applicable mentions that the mental disorder's not being treatable in clinical terms does not make release compulsory where a risk to the public remains: *Hutchison Reid v. United Kingdom*, No. 50272/99, §§ 50-56, ECHR 2003-IV, of 20 February 2003.
- Compulsory confinement for an indefinite period, even for the purpose of obtaining a medical opinion, without a medical expert's opinion having been taken beforehand, or ordered until one month later upon the complaint of the person concerned, was not imposed in accordance with Article 5 § 1: *Filip v. Romania*, No. 41124/02, §§ 60-66, of 14 December 2006.
- A decision on mandatory hospitalisation taken in the light of a legal situation certified 10 months earlier, without a medical record of the applicant's mental condition being produced, does not afford conclusive

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proof that hospitalisation was necessary: *Shtukaturv v. Russia*, No. 44009/05, §§ 112-116, of 27 March 2008.

- Psychiatric confinement or its extension must be justified from the medical standpoint, and less coercive measures unavailable. Considering the great latitude which States have regarding confinement, it is acceptable in cases where there is urgency, risk or violent behaviour for this opinion to be obtained immediately after the arrest, but in all other cases prior consultation is necessary: *C.B. v. Romania*, No. 21207/03, § 48, of 20 April 2010.

B. Article 5 § 1 of the Convention violated

- Other measures less severe than deprivation of liberty must have been contemplated and deemed insufficient to safeguard the personal or public interest requiring detention. Failure to consider these measures, available under domestic law, in respect of an alcohol-dependent person, means that his confinement cannot qualify as a lawful measure under Article 5 § 1 e): *Witold Litwa v. Poland*, No. 26629/95, § 80, ECHR 2000-III, of 4 April 2000.
- A patient placed in a clinic who had tried to escape several times and had not consented to the extension of her stay was deprived of liberty. The authorities took an active part in this placement when the police used force to escort her to the clinic, without the lawfulness of the impugned forcible hospitalisation having been verified. Confinement unauthorised by any court decision is not consistent with Article 5 § 1 e): *Storck v. Germany*, No. 61603/00, §§ 106-108 and 112-113, ECHR 2005-V, of 16 June 2005.
- The conditions under which a compulsory psychiatric confinement was carried out exceeded the operational procedures appropriate to forced confinement by their unjustified brutality, although the person concerned had made no violent and gesture and the expediency of his confinement had not been certified by a doctor, contrary to Article 5 § 1: *C.B. v. Romania*, loc. cit., §§ 51 and 59.
- Although confinement may have been ordered by the court on the basis of a diagnosis given by telephone, the lack of expert appraisal or hearing of the person concerned cannot be held against the court which needed to decide urgently. The impugned confinement was of a provisional nature in order to determine whether the person concerned was suffering from a mental complaint: *Herz v. Germany*, No. 44672/98, § 53, of 12 June 2003.

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- Confinement may be justified where the mental disorder affecting the person concerned has been thoroughly examined and the medical opinions concur as to the expediency of confinement for examination and treatment; the type and severity of the complaint then justify confinement: *H.L. v. United Kingdom*, No. 45508/99, §§ 98-101, ECHR 2004-IX, of 5 October 2004.
- Disappearance of the disorders that justified a patient's forced hospitalisation, not necessarily to be taken as confirmation of a complete cure, does not warrant the patient's immediate and unconditional discharge in order to resume a normal life in society. His behaviour outside the institution must be assessed so that the authority responsible retains some oversight of the person's progress after leaving the clinic. Compelling the patient to reside in a hostel, moreover with a very limited number of places, and deferring his discharge without it being possible to guarantee that he would be placed somewhere suitable within a reasonable time, constitutes a violation de Article 5 § 1: *Johnson v. United Kingdom*, loc. cit., §§ 63-67.
Extension of the compulsory treatment administered to the applicant must be ordered through legal channels: *Gajcsi v. Hungary*, No. 34503/03, §§ 18-21, of 3 October 2006.
- Remand in custody or house arrest may be compatible with confinement to a psychiatric hospital to establish whether or not an accused person's mental health has a bearing on his criminal liability. Unlawfulness of the applicant's removal from his home to a psychiatric hospital, not being based on a valid decision issued by the competent authority: *Gulub Atanasov v. Bulgaria*, No. 73281/01, §§ 74-78, of 6 November 2008.

C. Article 5 § 1 of the Convention not violated

- In matters where the Convention refers directly back to national law, disregard of the domestic law entails breach of the Convention, with the consequence that the Court can and should exercise a certain power of review: *Winterwerp v. Netherlands*, loc. cit., § 46 (in the instant case, unsoundness of mind was established by medical certificates).
- Although the patient's state of health would have allowed his confinement in a clinic with a less stringent regime than the one to which he was admitted, he was kept for 19 months longer than his mental condition

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required in a stricter class of psychiatric hospital; however, that circumstance is not apt to alter the character of his confinement as a mental patient; his right to freedom and security underwent no greater limitations than those prescribed in Article 5 § 1 e): *Ashingdane v. United Kingdom*, No. 8225/78, of 28 May 1985, §§ 47-49, Series A No. 93.

ARTICLE 5 § 3

“Everyone arrested or detained (...) shall be brought promptly before a judge (...) and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(...).”

- The duration of the proceedings during which the patient was hospitalised for the performance of a psychiatric appraisal does not appear justified considering the complexity of the case or the applicant’s conduct, and thus infringes Article 5 § 3: *Romanov v. Russia*, loc. cit., §§ 97-101.
- The time spent in a health centre cannot be taken as an exception to the right to be brought promptly before a court after arrest. The judicial authorities must organise the custodial system in such a way that a sick applicant is not held too long before being brought before a court: *Soysal v. Turkey*, No. 50091/99, §§ 71-76, of 3 May 2007.

ARTICLE 5 § 4

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

- There should be the right to have the lawfulness of a decision reviewed during initial custody as well as when any new issues are likely to arise: *Varbanov v. Bulgaria*, No. 31365/96, § 58, ECHR 2000-X, of 5 October 2000.

In conducting this review, the competent courts must rule promptly. That was not so in the case of *Hutchison Reid v. United Kingdom*, loc. cit., § 81, in the absence of exceptional grounds which would justify the delay noted in the applicant’s request to be discharged.

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- The person concerned must have access to a court and the opportunity to be heard personally or through some form of representation. Mental illness may cause this right to be restricted or modified as regards the manner of its exercise, but cannot justify impairing its very essence. Special safeguards may be required to protect people whose mental disabilities render them not fully capable of acting on their own behalf: *Winterwerp v. Netherlands*, loc. cit., § 60.
A patient who has not been associated in person or through a representative in the procedure leading to confinement may validly contend that the procedure infringed Article 5 § 4 (*Winterwerp v. Netherlands*, loc. cit., § 61).
- A person confined in a psychiatric institution for committing acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, should - unless there are special circumstances - receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his detention: *Megyeri v. Germany*, No. 13770/88, of 12 May 1992, § 23, Series A No. 237-A
- An individual, even mentally ill, deprived of liberty is entitled to have the lawfulness of his detention reviewed by a court. A judicial authority coming under Article 5 § 4 need not always afford the same guarantees as those prescribed by Article 6 § 1 and be integrated with the country's ordinary courts. The body at issue must be independent from the executive and from the parties, and afford guarantees appropriate to the deprivation of liberty that there will be a procedure which embodies competence to rule on the lawfulness of the detention and to order release if unlawful. Yet this provision does not secure, as such, a right to appeal any decision ordering or extending detention: *Hutchison Reid v. United Kingdom*, loc. cit., §§ 64-78. This did not apply in the latter case, in the absence of exceptional grounds that would justify the delay noted in the person's request to be discharged.
- The inability of a patient with a record of mental disorders to challenge his hospitalisation in court is contrary to Article 5 § 4 of the Convention: *Shtukurov v. Russia*, loc. cit..
- Even if the person concerned had appealed against his house arrest during his confinement in the psychiatric hospital, the courts examining such an appeal would have had no power to review the lawfulness of an order by the investigator and, consequently, of the applicant's confinement in the clinic. Thus Article 5 § 4 was violated: *Atanasov v. Bulgaria*, loc. cit., §§ 81-82.

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ARTICLE 5 § 5

“Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.”

- The extension of detention in a criminal justice institution of an underage offender in need of care pending placement in a supportive therapy unit infringes Article 5 § 1 of the Convention; consequently, the absence of an enforceable right to compensation is contrary to Article 5 § 5: *D.G. v. Ireland*, No. 39474/98, §§ 86-89, ECHR 2002-III, of 16 May 2002.

ARTICLE 6 § 1

“In the determination of his civil rights and obligations (...), everyone is entitled to a fair and public hearing (...) by [a] (...) tribunal (...).”

- A period of over a year to carry out a psychiatric appraisal is an unreasonable time which infringes Article 6 § 1: *Matter v. Slovakia*, No. 31534/96, §§ 59-60, of 5 July 1999.
- A procedure to remove legal capacity must be surrounded by appropriate procedural guarantees in order to safeguard the rights and cater for the interests of the person concerned. If need be, a further psychiatric appraisal should be ordered: *H.F. v. Slovakia*, No. 54797/00, § 44, of 8 November 2005.
- States which have ratified the European Convention on Human Rights are bound to endure the appearance in court of an accused who is in custody; if the procedure involves an assessment of his/her character and mental condition, procedural fairness demands that he/she should be present at the hearing and be able to participate in it together with counsel. In the instant case, two psychiatric appraisals differed as to the requisite measures; the subject's participation in the hearing is thus of special importance: *Romanov v. Russia*, loc. cit., §§ 106-113.
- In cases of mandatory confinement, a person of unsound mind must be heard either in person or through a representative; the applicant, who retained some self-reliance though deprived of legal capacity, was not able to participate in the proceedings concerning his legal capacity. Having regard to the consequences of those proceedings for his personal independence and freedom, the right to fair proceedings was infringed: *Shtukurov v. Russia*, loc. cit., §§ 69-76.

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- In the absence of legal aid granted to an applicant suffering from mental illness, he experienced significant difficulties which prevented his acting effectively in the proceedings in order to safeguard his interests, and vitiated the fairness of the proceedings as a whole: *Nenov v. Bulgaria*, No. 33738/02, §§ 52-54, of 16 July 2009.
- A person deprived of legal capacity, who was excluded from the final hearing which was to rule on his legal capacity and could not challenge the experts' reports or meet with his lawyer, is entitled to complain of a violation of Article 6 § 1. The same applies when, despite several applications for restoration of full legal capacity, no psychiatric examination is made for several years: *Salontaji-Drobnjak v. Serbia*, No. 36500/05, §§ 124-128 and 132-135, of 13 October 2009.

ARTICLE 8

"Everyone has the right to respect for his private and family life (...)."

- The decision to place a person in guardianship constitutes interference with his private life which must be prescribed by law and justified by a legitimate aim: *A.G. v. Switzerland* (dec.), No. 28605/05, of 9 April 1997.
- Mental health is an essential part of private life associated with moral integrity, and preservation of mental stability is a precondition for effective enjoyment of the right to respect of privacy: *Bensaid v. United Kingdom*, No. 44599/98, § 47, ECHR 2001-I, of 6 February 2001 (in the instant case, it was not proven that the expulsion of the applicant, suffering from a mental condition, would affect his moral integrity in such a way as to infringe Article 8).
- The mother's severe mental illness and the mental disorders displayed by the father prompted the authorities to remove two children from their custody because of the risks incurred. Where a newborn infant was concerned, only overriding reasons can justify removing a baby from its mother's care, but in the instant case the family situation was known and so no urgency owing to the unexpectedness of the situation could be substantiated; in these circumstances and given the lack of proof that

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other solutions were contemplated, and the failure to associate the parents with the decision, the child's urgent placement is contrary to Article 8. Conversely, the measure of placement for a limited period taken in respect of another child who had already been placed in a home because of the disturbances which he displayed and the care which he needed, does not have the same impact on family life and here Article 8 is not infringed: *K. and T. v. Finland* [GC], No. 25702/94, §§ 164-170, ECHR 2001-VII, of 12 July 2001.

- Restriction of family visits for a detainee to compel her to undergo a psychiatric examination not seeking and not proportionate to any legitimate aim infringes Article 8 of the Convention: *Nowicka v. Poland*, No. 30218/96, §§ 73-77, of 3 December 2002.
- Forced medication may constitute interference violating Article 8 of the Convention: *Schneiter v. Switzerland* (dec.), No. 63062/00, of 31 March 2005 (in this case, the documents in the file did not establish that the duration of the treatment exceeded what was necessary to preserve the life and physical integrity of the person concerned and of others; the complaint alleging violation of Article 8 is consequently ill-founded so as to make the application inadmissible).
- A court is not to record confidential psychiatric particulars when these have no bearing on the outcome of the dispute. A violation of Article 8 must be discerned in the fact of asking for such data: *Panteleyenko v. Ukraine*, No. 11901/02, §§ 47-53, of 29 June 2006.
- A mentally disturbed patient officially declared disabled and deprived of legal capacity at his mother's request (the national legislation only recognised capacity or complete incapacity, without contemplating any intermediate stage) thus undergoes significant interference in his private life making him totally and indefinitely dependent on his guardian in most areas of his life. The interference with the person's privacy is disproportionate to the aim of safeguarding the interests and health of others: *Shtukurov v. Russia*, loc. cit., §§ 90-96.
- The right to privacy is violated where the national authorities refrain from establishing an effective judicial apparatus for dealing with the claims of persons under compulsory psychiatric supervision and deprived of legal capacity: *Salontaji-Drobnjak v. Serbia*, loc. cit., §§ 140-145.
- Refusal to allow any reconsideration for 3 years of a request to recover full legal capacity by the person concerned, a mental patient previously deprived of it, infringes Article 8: *Berková v. Slovakia*, No. 67149/01, §§ 172-176, of 24 March 2009.

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ARTICLE 13

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

- After recalling that the purpose of Article 13 was to provide a means for persons before the courts to avail themselves of the rights secured by the Convention, and that the requirements of this provision reinforced those of Article 6 § 1, the Court held that the absence in domestic law of a remedy enabling the applicant (a mentally ill prisoner) to obtain recognition of his right to have his case heard within a reasonable time in accordance with Article 6 § 1 infringed Article 13: *Kudła v. Poland* [GC], loc. cit., §§ 153/160.
- *T.P. and K.M. v. United Kingdom* [GC], No. 28945/95, § 110, ECHR 2001-V (excerpts), of 10 May 2001, for applicants suffering from mental disorders following emotional abuse or *Z and others v. United Kingdom* [GC], No. 29392/95, § 108, ECHR 2001-V, of 10 May 2001, for applicants denied an appropriate means to secure a hearing for their allegations that the local authority had not protected them from inhuman treatment; in these two cases, the Court censured the lack of an effective remedy for complaining of a breach of Article 13 of the Convention.
- Disclosure of confidential psychiatric data placed in the court file, not resulting in the award of damages for the wrong suffered through unlawful interference with the right to privacy, infringes Article 13 of the Convention: *Panteleyenko v. Ukraine*, loc. cit., §§ 82-84.