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Mental Health

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

“The preservation of mental stability is an indispensable precondition to effective enjoyment of the right to respect for private life” ([Bensaid v. the United Kingdom](#) - 06.02.2001)

Interference with private life must be in accordance with the law

[A.G. v. Switzerland](#) (09.04.1997: [application inadmissible](#)). The Court found that “the decision to place a person in guardianship constitute[d] an interference with private life that must be in accordance with the law and based on a legitimate aim”.

[Storck v. Germany](#) (16.06.2005): [violation of Article 8 and Article 5 § 1](#) (right to liberty and security) concerning the applicant’s internments that had not been ordered by a court.

The above case also concerned **forced medication**. As regards this complaint, the Court found there had been no violation of Article 8 (it had not been proved that the applicant had not validly given her consent to the medical treatment). In the case of [Schneiter v. Switzerland](#) (31.03.2005: [application inadmissible](#)), the Court found that the complaint under Article 8 was ill-founded because the forced medication had a legal basis and pursued a legitimate aim (protection of the rights and freedoms of others). The applicant, who was being treated in a psychiatric hospital for various manic-delusional disorders and multiple drug addiction, had struck a nurse on the face.

[Shopov v. Bulgaria](#) (02.09.2010, not final): Imposition of psychiatric treatment for over five years. [Violation of Article 8](#): The continuing interference with the applicant’s right to respect for private life had a legal basis, but the regular judicial supervision required by the relevant legislation had not been forthcoming.

- [X. and Y. v. the Netherlands](#), 26.03.1985: 16-year-old girl, mentally handicapped, had been sexually abused by the son-in-law of the directress of the privately-run home for mentally handicapped children where she was living. [Violation of Article 8](#): Dutch law did not allow for proceedings to be brought in the event of sexual violence against mentally handicapped minors of 16 or more.
- [Bensaid v. the United Kingdom](#), 06.02.2001: The applicant, who was treated for schizophrenia, complained that his proposed expulsion to Algeria would leave him without adequate medical treatment, threatening his physical and moral integrity.

No violation of Article 8 – for the Court, the risk for the applicant’s mental health was based on largely hypothetical factors and it had not been established that his moral integrity would be substantially affected by the situation.

- [K. and T. v. Finland](#), 12.07.2001: Placement in care of the children of the first applicant, who had been hospitalised several times for schizophrenia. Violation of Article 8 on account of the placement of one of the children, and no violation in respect of the other child, who had previously been placed in a home with the applicants’ consent; his need for special care justified an emergency care order.

Question of legal capacity

[Shtukaturvov v. Russia](#), 27.03.2008 (see also below): Applicant placed in guardianship at his mother’s request. Violation of Article 8 - the court had based its decision on a medical report that had not analysed sufficiently the degree of the applicant’s incapacity.

[Berková v. Slovakia](#), 24.03.2009: The applicant, who had a mental disorder, was placed in guardianship. Violation of Article 8, because she had been prevented for too long from requesting the restoration of her legal capacity.

[Salontaji-Drobnjak v. Serbia](#), 13.10.2009: Placement in guardianship of the applicant, who had been diagnosed with litigious paranoia. Violation of Article 8 on account of the serious limitation of the applicant’s legal capacity (he was unable to independently take part in legal actions, file for a disability pension, or decide about his own medical treatment) and because the procedure which the domestic courts had applied when deciding on it had itself been flawed.

Pending case (declared admissible in January 2011): [Aleksandr Petrovich Lashin v. Russia](#): Applicant suffering from schizophrenia declared legally incapacitated by the District Court and subsequently confined in a psychiatric hospital.

Under Article 5 §§ 1 and 4 (right to liberty and security) the applicant complains that his confinement has been unlawful and arbitrary and that he has been unable to challenge it. Under Article 8 (right to private life) he complains about his incapacitation and the inability for him to have obtained an effective review of his status. Under Article 12 (right to marry), taken in conjunction with Article 13 (right to an effective remedy), he complains that he has been barred from registering a marriage with his fiancée.

Confinement

Article 5 § 1: Right to liberty and security

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 for the prevention of the spreading of infectious diseases, of persons of unsound mind*, alcoholics or drug addicts or vagrants.

** "This term is not one that can be given a definitive interpretation: ... it is a term whose meaning is continually evolving as research in psychiatry progresses, an increasing flexibility in treatment is developing and society's attitude to mental illness changes ..."¹*

To be in compliance with the Convention, the confinement of a person of unsound mind must comply with the requirements laid down in the [Winterwerp v. the Netherlands](#) judgment (24.10.1979), namely:

- it must have been reliably established, through objective medical expertise, that the patient has a true mental disorder;
 - the mental disorder must be of a kind or degree warranting compulsory confinement;
 - the validity of continued confinement depends upon the persistence of such a disorder.
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- [Ashingdane v. the United Kingdom](#), 28.05.1985: no violation of Article 5 § 1 - even though the applicant, who was suffering from paranoid schizophrenia, had been exposed to the stricter regime of a new psychiatric institution, for nineteen months longer than his mental state required, the place and conditions of the applicant's detention did not cease to be those capable of accompanying "the lawful detention of a person of unsound mind".
 - [Johnson v. the United Kingdom](#), 24.10.1997: the applicant, who had been convicted of various offences, was placed in a high-security psychiatric institution on a judge's orders in 1984 and his release was ordered in 1989, his confinement no longer being justified. Violation of Article 5 § 1 (e) on account of the prolonging of the confinement after that date (lack of adequate safeguards, especially judicial supervision to ensure that the applicant's release was not excessively delayed).
 - [Aerts v. Belgium](#), 30.07.1998: Maintaining of the applicant in a psychiatric wing of an ordinary prison and not in a social protection centre designated by the competent Mental Health Board. Violation of Article 5 § 1 - the psychiatric wing could not be regarded as an institution appropriate for the detention of persons of unsound mind.
 - [Nielsen v. Denmark](#), 28.11.1998: No violation of Article 5 § 1 - the hospitalisation in a Child Psychiatric Ward of the applicant, who was suffering from nervous disorders and whose custody was in dispute between his parents had been "a responsible exercise by his mother of her custodial rights in the interest of the child".
 - [Varbanov v. Bulgaria](#), 05.10.2000: the applicant was taken by force to a psychiatric hospital for tests on a public prosecutor's orders during court proceedings. Violation of Article 5 § 1 - the applicant's deprivation of liberty had been decided without any legal basis and domestic law did not afford the requisite protection against arbitrariness.
 - [Hutchinson Reid v. the United Kingdom](#), 20.02.2003: no violation of Article 5 § 1 - considering the risk that the applicant, who was confined to a psychiatric institution, might commit other offences, probably of a sexual nature, the decision not to release him, which had a legal basis in domestic law, had been justified.

¹ [Winterwerp v. the Netherlands](#), § 37

- [Herz v. Germany](#), 12.06.2003.
[No violation of Article 5 § 1 \(e\)](#) - temporary confinement had the aim of establishing whether the applicant was suffering from a mental illness and had been ordered by the court based on a medical opinion.
[Violation of Article 5 § 4](#) - the fact that a measure of temporary confinement had expired could not deprive the applicant of the right to challenge its lawfulness.
- [Nowicka v. Poland](#), 03.12.2003: [violation of Article 5 § 1](#) on account of the applicant's detention for 83 days for psychiatric tests ordered during proceedings that concerned a dispute between neighbours.
- [M.R.L and M.-J.D. v. France](#), 19.05.2004: [violation of Article 5 § 1 \(e\)](#) - maintaining the applicant on the premises of a psychiatric infirmary had no medical justification but was for purely administrative reasons (the applicant had been taken to hospital following a dispute between neighbours and had been presented to a psychiatrist who, not being able to diagnose his mental state precisely, decided to have him taken to the psychiatric infirmary of the police headquarters).
- [H.L. v. the United Kingdom](#), 05.10.2004: Involuntary confinement of an autistic person who had shown signs of agitated behaviour. [Violation of Article 5 § 1](#) - as a result of the lack of procedural regulation and limits, the hospital's health care professionals, most certainly in good faith, had assumed full control of the liberty and treatment of a vulnerable incapacitated individual.
- [Enhorn v. Sweden](#), 25.01.2005: [Violation of Article 5 § 1](#) - other measures that would have been less severe than compulsory isolation to prevent the applicant from spreading HIV had not been envisaged; by extending over a period of almost seven years the order for the applicant's compulsory isolation, the authorities had not struck a fair balance between the need to ensure that the HIV virus did not spread and the applicant's right to liberty.
- [Schneiter v. Switzerland](#), 31.03.2005: [application inadmissible](#) (complaint under Article 5 § 1 ill-founded) - the applicant's placement in solitary confinement had been "in accordance with a procedure prescribed by law"; the placement had not been arbitrary because the applicant, who had already been deprived of liberty in being admitted to a psychiatric hospital for various manic-delusional disorders and multiple drug addiction, probably constituted a danger for himself and for others (he was in conflict with his father and had struck a nurse on the face).
- [Storck v. Germany](#), 16.06.2005: [violation of Article 5 § 1 and Article 8](#) because the applicant's placement in a private clinic had not been authorised by a judicial decision.
- [Gajcsi v. Hungary](#), 03.10.2006: [violation of Article 5 § 1](#) - the courts had ordered the prolongation of the applicant's compulsory psychiatric treatment without an assessment of the patient's dangerousness as required by domestic law.
- [Filip v. Romania](#), 14.12.2006: psychiatric confinement ordered by the public prosecutor after the applicant had been found guilty of contempt of court (in criminal proceedings brought against him by his ex-wife and son). [Violation of Article 5 § 1](#) because of the absence of legal basis for this confinement.
- [Gulub Atanasov v. Bulgaria](#), 06.11.2008: [violation of Article 5 § 1](#) - the transfer of the applicant, during pre-trial proceedings, from his home, where he was under house arrest, to a psychiatric hospital, where he was confined for twenty-six days

to undergo tests, had not been based on a decision validly taken by the competent authority.

- [Shopov v. Bulgaria](#), 02.09.2010 (not final): imposition of psychiatric treatment for more than five years. [Violation of Article 5 § 1](#) - the public prosecutor and the police had overstepped the limits of a court's judgment, which had ordered treatment in an outpatient clinic and not in a psychiatric hospital.

In these cases the Court also found violations of Articles:

-5 § 3 (right for a person deprived of liberty to be brought promptly before a judge, to be tried within a reasonable time or released pending trial):

[Winterwerp v. the Netherlands](#), 24.10.1979

-5 § 4 (right for a person deprived of liberty to have the lawfulness of his detention decided by a court):

[Varbanov v. Bulgaria](#), 05.10.2000

[Hutchinson Reid v. the United Kingdom](#), 20.02.2003

[Megyeri v. Germany](#), 12.05.1992: Failure to assign counsel as requested by applicant – confined in a psychiatric hospital – in the context of the annual review of his case by the courts.

[Shtukaturv v. Russia](#), 27.03.2008

[Gulub Atanasov v. Bulgaria](#), 06.11.2008

[H.L. v. the United Kingdom](#), 05.10.2004

-5 § 5 (right to compensation for a person deprived of liberty in conditions contrary to Article 5):

[Gulub Atanasov v. Bulgaria](#), 06.11.2008

-6 § 1 (right to a fair hearing within a reasonable time):

[H.F. v. Slovakia](#), 08.11.2005 (proceedings for deprivation of legal capacity)

[Shtukaturv v. Russia](#), 27.03.2008

[Salontaji-Drobnjak v. Serbia](#), 13.10.2009

[Nenov v. Bulgaria](#), 16.07.2009: Violation of Article 6 § 1 as the applicant, who was suffering from a mental illness, which is why his ex-wife had applied to have his right of contact with their children modified, had not been assigned counsel to defend his case effectively.

In the case of [C.B. v. Romania](#), 20.04.2010, the Court found **two violations of Article 5** (§§ 1 (e) and 4).

[Violation of Article 5 § 1 \(e\)](#), because the applicant's confinement in the context of proceedings brought against him by a policeman for bringing malicious accusations had been unlawful (confinement based on the investigators' doubts as to the applicant's mental health and on a medical certificate by a general practitioner who had never seen him; no alternative measure examined; use of force during arrest).

[Violation of Article 5 § 4](#) - the confinement measure had not been the subject of any review by the courts.

In the case of [Shtukaturv v. Russia](#), 27.03.2008, the Court found a **violation of Article 6 § 1, Article 8 and Article 5 §§ 1 and 4**.

[Violation of Article 5 § 1](#) - the decision to hospitalise the applicant had been based purely on the applicant's legal status, as defined ten months earlier; the Court therefore considered that it had not been "reliably shown" that the applicant's mental condition had necessitated his confinement.

[Violation of Article 5 § 4](#) - the applicant could not pursue any legal remedy to challenge his continued detention as he had been deprived of his legal capacity.

[Violation of Article 6 § 1](#) - the proceedings to deprive the applicant of his legal capacity at his mother's request had been vitiated by procedural irregularities (in particular a ten-minute hearing).

[Violation of Article 8](#) (see above).

[Violation of Article 34](#) (right of individual application) - Russia had not complied with the interim measure indicated by the Court (to the effect that the applicant and his lawyer should be provided with the necessary time and facilities to meet and prepare the case before the Court).

Pending case: [Stanev v. Bulgaria](#). By court orders, and at the request of certain members of his family, the applicant was placed under trusteeship, and subsequently placed in social care homes for individuals with psychiatric problems. He complains in particular of an unlawful and arbitrary deprivation of liberty on account of his placement in a care home against his will, as well as of the trusteeship system.

The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A Chamber [hearing](#) was held in this case on 10.11.2009, and a [Grand Chamber hearing](#) was held on 09.02.2011.

Mental health in the army

In these cases, the Court found violations of Article 2 (right to life) on the grounds, in particular, that the regulatory framework had been defective as regards the monitoring of conscripts.

[Kılınc and Others v. Turkey](#), 07.06.2005: a conscript, suffering from atypical depression, committed suicide while he was doing his compulsory military service.

[Violation of Article 2](#) - the regulatory context had been defective as regards the procedure to be followed by service doctors for establishing and monitoring Mr Kılınc's mental fitness for service before and after his call-up.

[Abdullah Yılmaz v. Turkey](#), 17.06.2008: a conscript committed suicide while he was doing his compulsory military service, after being reprimanded and beaten by a sergeant.

[Violation of Article 2](#) (inability of the sergeant to assume the responsibilities of an army professional whose job was to protect the physical and mental integrity of conscripts placed under his orders; in the Court's view, the regulatory framework had proved deficient regarding the sergeant's professional ability to officer the unit, and regarding his duties and responsibilities when faced with delicate situations such as the one that had arisen in this case).

[Servet Gündüz and Others v. Turkey](#), 11.01.2011: a conscript committed suicide in 2002 when he was doing his compulsory military service in Hakkari, a province on the south-eastern border of Turkey. The young man killed himself by walking onto a minefield after an argument with his superior.

[Violation of Article 2](#)

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