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Master's thesis

Providing an Adequate Medical Care in The Case-Law of the ECtHR

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Vilnius

2023

ABSTRACT AND KEY WORDS

European Court of Human Rights plays a huge role in strengthening democratic institutes and developing human rights. The Court is dealing with all the types of violations, beginning from violation of right to live to any other sufficient right of individual. One of the most important spheres of human activity, which European Court of Human Rights navigates, is medical care and application of medical attention. Sufficient medical care not only contributes to safety and security of individual, but also organizes and provides a possibility to commonwealth of society in general by strengthening social compassion and ties.

Keywords: medical care, ECtHR, democratization, European Convention on Human Rights, ECtHR practice

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INTRODUCTION

Medical care can be observed as a key component of human development for ages (Opreana, Alin & Mihaiu, Diana, 2011). The standards and sufficiency of medical care were displaying stability and level of development for many generations. Today we see levels of medical care and protection rising, causing humans to be more perseverant and long-living (National Academies Press (US), 2001). Simultaneously, acknowledgment of healthcare as a basic human right has lead humans to seek for improvement of medical care standards. This lead to establishment of European Court of Human Rights (ECtHR) as protector and regulator of adequate medical care and observant and judge in cases connected to the quality of medical care granted.

In the context of the European Court of Human Rights provision of adequate medical care plays a huge role in safeguarding human rights prescribed in European Convention on Human Rights. This includes possible violations of human rights in context of failure to provide adequate medical treatment. In order, ECtHR plays a huge role in supplementing and narrating terms that govern the provision of medical care within the jurisdiction of the European Convention (Yaroshenko, O., Steshenko, V. ., Tarasov, O. ., Nurullaiev, I. ., & Shvartseva, M. ., 2022).

Throughout its development ECtHR consistently addressed issues related to the quality of medical care and standards of its application. This includes cases connected to alleged violence against right to an adequate medical care. Also, European Court of Human Rights faced a lot of challenges on medical care and its application, for example crises connected to epidemics and pandemics, which are an ultimate challenge for medical care system (Shah, Shalini; Diwan, Sudhir; Kohan, Lynn; Rosenblum, David; Gharibo, Christopher; Soin, Amol; Sulindro, Adrian; Nguyen, Quinn; Provenzano, David A., 2020). These challenges exceed simply having medical services available, but also include addressing issues of how easily they can be reached, the costs associated with medication and the overall standard of care. Legal systems face the challenge of addressing imbalances in healthcare provision, making sure that underprivileged and at-risk communities are not unfairly hindered by obstacles to receiving medical treatment such as racism, societal prejudice, sexism, etc. (Skuban, T.; Orzechowski, M.; Steger, F., 2022).

The implementation of proper medical care system is pretty important, as far as it contributes to the security and safety of not only one or set of individuals, but also a whole

society of people living in country or area. Challenges of adequate medical care can be mirrored, so they will be contributing to the quality of societal and political system as well by positively influencing human rights, social justice, overall welfare of communities (C. Bethencourt, V. Galasso, 2008). It is crucial that we acknowledge and transform the consequences of adequate medical care in order to create a legal system that not only responds to issues but also changes them for the better.

As a response to the challenges posed, implementation of new standards for medical care contributes for improvement of standards of living. The establishment of standards as a result of analysis of practice, including the practice of ECtHR, and continuous development aims to address contemporary problems in healthcare systems, promote accountability, provide a framework for adjudicating cases related to the right to an adequate medical care.

Looking ahead at the future of medical care in the legal landscape, we consider the impact of new technologies, implementations and evolutions in legal framework, including democratic and less or non-democratic systems, global health issues and ideas (Molly Moss, 2023). As we follow the possible future improvements of medical care, it's crucial to anticipate how the law and decisions made by European Court of Human Rights can adapt to these changes, ensuring that they remain compliant and reflective to the changing needs of individuals and society. By stipulating on these evolving dynamics, we are to aim to understand how legal frameworks can effectively address the challenges and opportunities that are to appear in future developments of medical care.

Aim of the research

This research paper aims at calculating the impact of ECtHR on medical care and its standards by discovering and analyzing the cases brought upon in the Court, investigating future trends and developments in this area, addressing the problems of vulnerable groups of minorities, rights of which are violated frequently.

Objectives of the research

For achieving this aim, the following objectives are set:

1.To analyze the standards of *adequate* medical care in contemporary phase of history within the standards provided by international and regional legislative systems.

2. To evaluate level of adequacy of medical care throughout the second half of 20th century up to date and descry the problems which were stable and consistent throughout this term.

3. To estimate the impact of European Court of human rights on the development of medical care, its standards, development and adequacy of future legislation regarding discarding of contemporary problems in a field of adequate medical care.

4. To emphasize on some of the most vulnerable groups of individuals within the standards of medical assistance and emphasize on possible ways to improve their status in terms of providing an adequate medical care.

Description of Research Methods

In order to achieve the set aims, the research methods included both primary and secondary research, mostly leaning to secondary. In terms of analysis of stance of European Court of Human Rights on each of case reviewed the secondary research method was applied. The analysis of resources uploaded by the Registry of the ECtHR secured the collection of data from individuals with developed skills in real time practice of cases connected to violation of human rights. For the analysis of cases a primary research method was applied to analyze each case of alleged violations independently in order to form an integral picture of challenges and developments in area of adequate medical assistance.

The comparative method was used to underline the differences between practice of ECtHR in the second half of 20th century and the first quarter of 21st century, understand the difference between goals and achievements in area of medical assistance for different vulnerable groups of individuals.

Legislative method underlined the main areas of application of medical care and was used to undercover vulnerable questions for individuals who are suffering enormous bias or lack of medical attention due to prejudice.

Structure of the research

This study analyses application of medical care in accordance with human law and practice of the European Court of Human Rights and consists of three chapters. The first chapter deals with the historical development of medical care, elucidation of medical care and its standards.

The second chapter is connected to the medical assistance within the practice and legislative system of the ECtHR, standards of medical care within the Court and violations of application of medical assistance in accordance to the Article 3 of the European Convention on Human Rights.

The third part concerns vulnerable groups of individual who can suffer from lack of adequate medical assistance and emphasizes on possible future developments in order to strengthen security of such individuals.

Delimitation

The study focuses on examination of level of medical application within the prerogative of the European Court of Human Rights. Due to the scope of investigation this paper can process, the main sources will include international legislature applied by ECtHR, such as a set of Conventions, guides by the Registry of the ECtHR and actual cases of the European Court of Human Rights.

For the investigation of part 1 of the paper analysis of many experts in field of medical application, professors of medical universities and scholars of medicine.

Nonetheless, due to a huge volume of material invested and in order to obtain more precise intel on each group of individuals affected by lack of adequate medical care it is advised to examine different branches of affected individuals separately.

Originality

The number of research of medical attention is sufficient on the level of different groups of individuals, which were also defined in this paper (convicted, detained, minors, LGBTQ+, etc.). Nonetheless, this material is mostly targeting medical assistance as a basic need for an individual, not taking into account more advanced needs of each group of person undergoing medical care. This is connected to the cases where detainees are granted to have minimal medical help, simultaneously suffering from lack of necessary aid for comfortable living.

Moreover, the number of investigations on overall necessities of vulnerable individuals is quite lacking in terms of general overview. It creates a problem of undervaluation of issue in general and veils the groups of people who are underrepresented in official publications.

In order to emphasize on the real width of problem, this research focuses on underlining the most problematic aspects of granting an adequate medical care, highlights groups of individuals who suffer lack of adequate medical attention and underlines the necessity to develop and spread awareness on topic of advanced medical support.

Important sources:

The main target of research is to undercover the problem of access to an adequate level of medical care for vulnerable groups of individuals. Therefore, in order to understand the level of adequacy, main international treaties and conventions in area of medication were used, for example European Convention on Human Rights, Convention on the Rights of the Child were hugely discovered and examined.

Also, due to the fact that specific of topic is pinned to the European Court of Human Rights, the usage of regional laws and documents such as "Recommendations No. R (86) 5 on making medical care universally available", "Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity" were overviewed and examined.

Also, guides on practice of ECtHR cases played a huge role in investigating the topic and served as sufficient tool for investigating vulnerable groups of people in abridge period of time.

CHAPTER I – MEDICAL CARE IN THE HUMAN RIGHTS CONTEXT

1.1 Development of medical care throughout history.

Human creatures have been interacting with each other for the time of humanity existence. With these interactions everything developed: science, law, technologies. Due to a natural fragility of human body, special type of science developed which was bounded to human body and processes happening in our body. This is what we today refer to as medicine.

The oldest written ideas and conditions of patients were described back in around 3000 BC: "We do know that from ancient Egyptian times (from around 3000 BC) there were 'doctors' and in this context, the medical practitioner Imhotep (around 2600 BC) produced a written work chronicling over 200 different medical conditions" (FutureLearn, 2022). But generally, medicine was a common wide thing due to its importance. Ancient civilizations had their norms and rules which were regulating relationship of physician towards his or her work and towards patients as well. "In the Louvre Museum in France, a stone pillar is preserved on which is inscribed the Code of Hammurabi, who was a Babylonian king of the 18th century BCE. This code includes laws relating to the practice of medicine, and the penalties for failure were severe" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

Medication was developed on the other side of the globe as well. "According to tradition, Huangdi (the "Yellow Emperor"), one of the legendary founders of Chinese civilization, wrote the canon of internal medicine called the Huangdi neijing (Yellow Emperor's Inner Classic) in the 3rd millennium BCE; there is some evidence that in its present form it dates from no earlier than the 3rd century BCE" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). In bordering Ancient India there was a breakthrough in standards of medical assistance, though some time later after corresponsive works of Chinese, Greek and Egyptian vis-à-vis. "The golden age of Indian medicine, from 800 BCE until about 1000 CE, was marked especially by the production of the medical treatises known as the Charaka-samhita and Sushruta-samhita, attributed respectively to Charaka, a physician, and Sushruta, a surgeon. Estimates place the Charaka-samhita in its present form as dating from the 1st century CE, although there were earlier versions" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). Generally, medicine of early humanity can be described as a breakthrough, though it was still highly incomparable to modern.

Ancient Greece gave a huge boost to the relevant of that time information and knowledge on the topic of medicine. One of the most prominent physicians of ancient times was Ancient Greece citizen Hippocrates. He is called 'a father of modern medicine'. He is believed to be an author of set of many high-valued books on medicine, which is referred to as "Hippocratic Corpus". He was a good physician with an ability to foresee the development of the disease. "He had an extraordinary ability to foretell the course of a malady, and he laid more stress upon the expected outcome, or prognosis, of a disease than upon its identification, or diagnosis" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). He also was analyzing and putting down notes of his observations. "Hippocrates noted the effect of food, of occupation, and especially of climate in causing disease…" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

In about 300 BCE the dawn of medical education has happened - one of the first medical schools was established (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). It was located in Alexandria, which was a capital of state of Alexander the Great. Later on, the first European medical school was established. "At about the same time that Arabian medicine flourished, the first organized medical school in Europe was established at Salerno, in southern Italy. Although the school of Salerno produced no brilliant genius and no startling discovery, it was the outstanding medical institution of its time and the parent of the great medieval schools soon to be founded at Montpellier and Paris, in France, and at Bologna and Padua, in Italy" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). Medical medicine was developing with new diagnoses implemented, new examination criteria and more developed network of symptoms. "Great hospitals were established during the Middle Ages by religious foundations, and infirmaries were attached to abbeys, monasteries, priories, and convents. Doctors and nurses in these institutions were members of religious orders and combined spiritual with physical healing" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

With the development of facilities and fresh and adoptable minds of new students, precisely new forms of medical assistance were found or developed. One of those forms is surgery. "Surgery profited from the new outlook in anatomy, and the great reformer Ambroise Paré dominated the field in the 16th century" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). Surgery is one of the most important ways of intervention in human body, which can easily save human being.

Therefore, development in this field can be seen as one of the most crucial implementations in human history. It started to be regulated and was performed by specially appointed personnel. “In Britain during this period, surgery, which was performed by barber-surgeons, was becoming regulated and organized under royal charters. Companies were thus formed that eventually became the royal colleges of surgeons in Scotland and England” (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

A new step in development of medicine and medical aid happened in 17th century, with the Enlightenment happening. “New knowledge of chemistry superseded the theory that all things are made up of earth, air, fire, and water, and the old Aristotelian ideas began to be discarded. The supreme 17th-century achievement in medicine was Harvey’s explanation of the circulation of blood” (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

Throughout the history of medicine new ways how to treat people with diseases, how to ease lives of people who were dying, how to help people avoid some of the diseases were evolving. In times of early human history, they were pretty gruesome (for example lobotomy, blood-letting, which many believed were working), relying on the help of gods. With the new developments, new knowledge and fresh ideas medication became less cruel and more human-centered. “Public health and hygiene were receiving more attention during the 18th century. Population statistics began to be kept, and suggestions arose concerning health legislation. Hospitals were established for a variety of purposes. In Paris, Philippe Pinel initiated bold reforms in the care of the mentally ill, releasing them from their chains and discarding the long-held notion that insanity was caused by demon possession” (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). Some developments happened in army and common soldier`s life. Basically, a new branch of medical assistance developed – military medical aid. “Conditions improved for sailors and soldiers as well. James Lind, a British naval surgeon from Edinburgh, recommended fresh fruits and citrus juices to prevent scurvy, a remedy discovered by the Dutch in the 16th century. When the British navy adopted Lind’s advice—decades later—this deficiency disease was eliminated. In 1752 a Scotsman, John Pringle, published his classic Observations on the Diseases of the Army, which contained numerous recommendations for the health and comfort of the troops” (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). It also impacted civil residents, who were eventually captured by the war – a Red Cross organization was established.

In 19th century some new developments were implemented. There was a rise for a new branch of medical science – physiology. Surgery was on the peak, as far as a new theory in its practice was discovered. "Perhaps the overarching medical advance of the 19th century, certainly the most spectacular, was the conclusive demonstration that certain diseases, as well as the infection of surgical wounds, were directly caused by minute living organisms. This discovery changed the whole face of pathology and effected a complete revolution in the practice of surgery" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

Life of an ordinary human became even easier, as far as new ways to ease his or her suffering on the table of surgeon were invented. It included the well-known today anesthesia. "… the introduction of general anesthesia, a procedure that not only liberated the patient from the fearful pain of surgery but also enabled the surgeon to perform more extensive operations… some used nitrous oxide gas, and others employed ether, which was less capricious… The news quickly reached Europe, and general anesthesia soon became prevalent in surgery" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

20th century was one of the best in sphere of medical assistance, as it hugely impacted the life of ordinary citizen, increasing his or her life expectancy for over 20 years. "In 1901 in the United Kingdom, for instance, the life expectancy at birth, a primary indicator of the effect of health care on mortality (but also reflecting the state of health education, housing, and nutrition), was 48 years for males and 51.6 years for females. After steady increases, by the 1980s the life expectancy had reached 71.4 years for males and 77.2 years for females" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). New era of communication brought even more possibilities for physicians to interact and share knowledge. "Through publications, conferences, and—later—computers and electronic media, they freely exchanged ideas and reported on their endeavours. No longer was it common for an individual to work in isolation. Although specialization increased, teamwork became the norm. It consequently has become more difficult to ascribe medical accomplishments to particular individuals" (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

Period of World Wars, though being one of the most bloodlust times of human history, brought upon humanity new possibilities in sphere of medical aid. In the period if First World War some new challenges were brought upon surgeons – they had to deal with operation in field conditions. That led to invention of new and forgotten ways to deal with

numerous wounds. One of the key aspects of post-war treatment of combatants was invented and got a name “rehabilitation”. Second World War had a list of unachievable before results. “Once the principles of military surgery were relearned and applied to modern battlefield medicine, instances of death, deformity, and loss of limb were reduced to levels previously unattainable… Diagnostic facilities were improved, and progress in anesthesia kept pace with the surgeon’s demands. Blood was transfused in adequate—and hitherto unthinkable—quantities, and modern blood transfusion services came into being” (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998). It even led to some unpredictable, though pleasing, results. “The two outstanding phenomena of the 1950s and 1960s—heart surgery and organ transplantation—both originated in a real and practical manner at the turn of the century” (William Archibald Robson Thomson, Douglas James Guthrie, Philip Rhodes, 1998).

Medical assistance was a constant for a human being, as far as it secured its life and proper functioning. It was widespread even in such cradles of civilization as Ancient Egypt, Ancient India, Ancient China, Ancient Greece and other states which had an appointed person responsible for treatment of people with diseases and health issues. At the start of our era a huge boost in medication history happened: first institutions which taught people medicine knowledge had opened. This lead to higher number of people who were educated to provide medical aid, and, therefore, lead to increase in quality of medical services provided to the common people. Medication brought us some new ways to help to ease suffering of people who were struggling against disease or circumstances damaging their health. Implementation of surgery was one of that ways. It was a huge boost in terms of issues connected to the body of patients. It helped to resolve issues which were previously inaccessible due to natural complexity of body-connected questions like amputation or discarding of damaging part of body. With the spread of medical knowledge hygiene became a common thing and helped to prevent a lot of horrible diseases known to mankind. Medicine boosted chemistry knowledge, which, in turn, helped to discover essential for physical intervention painkillers, such as anesthesia. All these implementation lead to huge boost in life expectancy, chances of infant to survive, which in turn lead to increase in population of humanity. Evolution of medical history lead to implementation of the set of standards, which are currently used in today`s medical facilities, including specialized (e.g. medical facilities under police stations, hospitals, which work in cooperation with police facilities, international facilities and organizations).

Furthermore, historical development of medical care and aid provoked a need in legal regulation of question, considering that medical care became widespread – which meant that everyone was able to use drugs, facilities, etc. – and hundreds of countries found themselves on the map of the world, which meant that they would possibly have different view on medical assistance. Therefore, up until 21st century international community tried to describe medical care in legal terms, therefore create institute of medical care in national and international law. It resulted in hundreds of documents, legal acts, customs which regulated items connected to medical care, especially provision of adequate medical assistance to people who are in vulnerable status.

1.2 Definition and application of medical care

When we are talking about medical care and assistance, we need to understand the definition of the term. Though, there is no clearly defined term on the side of official bodies of European Union, Office of the United Nations High Commissioner for Human Rights in Fact Sheet No. 31 "The Right to Health" provides a few examples, where we can make an overall statement what "medical care" stands for. "The right to health contains entitlements. These entitlements include: The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; The right to prevention, treatment and control of diseases; Access to essential medicines; Maternal, child and reproductive health; Equal and timely access to basic health services; The provision of health-related education and information; Participation of the population in health-related decisionmaking at the national and community levels" (UN Human Rights Office, 2008). Basically, from the description provided by World Health Organization we can observe several main things: medical care and assistance can be concentrated around provision of all the necessary measures needed to guarantee a person conditions to avoid possible dangers to his/her health; medical care must be provided under the situation where person is already having difficulties with health, to guarantee safety of one or to minimize the consequences of disease; medical care must be provided within reasonable terms; though health care is provided non-discriminatory, more attention is dedicated to people who are less defended or have higher risks of dangers connected to illness / unfavorable conditions.

Also, as far as term "medical care" can be viewed from different perspectives, we can track main subjects, objects and actions, which are bounded to this term. Legal database "Law Insider" provides us with one of the possible definitions of medical care. "Medical care means the ordinary and usual professional services rendered by a physician or other specified provider during a professional visit for treatment of an illness or injury" (Law Insider). In this definition we can see two certain constants of medical aid. First constant is "the ordinary and usual professional services rendered by a physician or other specified provider". This stresses, that in order care to be viewed as medical we need to have some professional or educated person/stuff, which will provide services to other person. The second part is "during a professional visit for treatment of an illness or injury". In this part we stress out on visit of patient of medical professional (or vice versa), in which they will be granted professional assistance from a doctor or associated individual. Also, there is a certain condition in this part of sentence - "illness or injury". It is important to underline

this condition, as far as in future we will be overviewing cases connected to medical aid in practice of ECtHR. Basically, in terms of this definition, medical care can be considered as one only if there was a reason to visit the doctor (e. g. some serious illness or trauma). Therefore, from the description provided by the "Law Insider" we can underline main subjects and object of medical care: professional doctor, person with injury or illness and provision of treatment from the side of associated person.

For defining of what medical care is aimed at we can use Recommendation No. R (86) 5 of Council of Europe adopted on 17th February 1986. In the Recommendation the Ministers set up an aim to "achieve a greater unity between its members for the purpose of facilitating their economic and social progress" (Council of Europe Committee of Ministers, 1986). They define health care and assistance as one of the main objectives to achieve the aim appointed be the Recommendation. Hence, Ministers came up with definition of what is the aim for medical care. "Health care should aim to preserve, restore or improve the health of the protected persons. It should be made available throughout the contingency, preferably without a qualifying period" (Council of Europe Committee of Ministers, 1986). In this paragraph we can see that Council saw health care as instrument to help, in case if one needs that, or secure health status of person. Also, with this Recommendation Council officially laid the foundations of accessible and contingent medical care.

With the Recommendation Ministers implemented obligatory provision of basic medical care and assistance in need. It is underlined in point 3 Part A: "A full range of health services which are easily accessible and effective should be provided" (Council of Europe Committee of Ministers, 1986). In addition, the Document points out obligatory planning of new and accessible health care infrastructures and sets up rules of how should they be constructed. "Health care infrastructures should be subject to planning, whether centralised or decentralised, in order to: i. meet the requirements of all residents with regard to preventive care, treatment and rehabilitation; ii. ensure a satisfactory geographical distribution of public and private medical and paramedical resources; iii. comply with high standards of quality; iv. achieve an optimal level of co-ordination with the social services" (Council of Europe Committee of Ministers, 1986).

Also, in this Recommendation Ministers are aiming at granting common people as much possibilities to access medical attention as possible, therefore they are obliging states to lover or keep cost of medical services on the reasonable level. "The following measures as regards the supply of medical care should lead to a greater effectiveness and

rationalization of health infrastructures, without diminishing the quality of the medical services: - introduction of budgetary allocation systems such as would encourage the providers of medical care to use the means at their disposal in the most effective way possible. These budgetary allocation systems could be introduced no matter how a member state finances its medical care, - provision of machinery for negotiation with the medical and paramedical professions in order to control medical fees, and establish qualitative and quantitative standards of services and prescription" (Council of Europe Committee of Ministers, 1986).

Recommendation had an impact on health care and other related issues. It sets up strict rules of provision of medical services, their availability and lead to unification of European health facilities and legal provisions.

ECtHR practice is mostly based on European legal system. Therefore, the most of practice is reviewed within European standards, health issues included. Therefore, in order to understand how does ECtHR resolve the issues connected to health care and medical treatment of individuals we can refer to the Directive 2011/24/EU of 9 March 2011 "On the application of patients' rights in cross-border healthcare". This is one of the European Parliament directives regarding health issues, though this one is firmly connected to cross-border health care. General principle of European Union, which defines the level of its freedom and prosperity, is the freedoms of the EU: freedom of goods, service and person. Therefore, health care needs to be implemented in that system in order to function properly and avoid any malfunctioning of system. Therefore, as one of the principles described in the Directive is justice and protection. "The health systems in the Union are a central component of the Union's high levels of social protection, and contribute to social cohesion and social justice as well as to sustainable development. They are also part of the wider framework of services of general interest" (European Parliament, 2011).

Obtaining the legal status of medical care meant that it would be now regulated and over the medical assistance a whole institute of standards would be created. It is only natural that such kind of treatment was established, analyzing how widespread the medical care was and will be. Also, different regimes and different unions required medical care to be unified and saturated with standards, therefore creating a status *duo parietes* for international medical aid standards – creating common system of medical assistance and anchoring basic human rights in the system. Therefore, with the development of system of legal institution of medical care regulation of medical standards was also occurring.

1.3 Standards of medical care and assistance.

Now as we can define what does term "medical care" stands for, we need to discover the main principles of this activity, which are defining how and in which way will medication and assistance be applied. There are few documents which recon out a list of principles, which govern appliance of medical care. One of them is WMA (World Medical Association) International Code of Medical Ethics. This document consists of 40 main points and divided into chapters: General principles; Duties to the patient; Duties to other physicians, health professionals, students, and other personnel; Duties to society; Duties as a member of the medical profession. General principles describe the way how does professional carries out activities connected to medical care. "The primary duty of the physician is to promote the health and well-being of individual patients… The physician must practise medicine fairly and justly and provide care based on the patient's health needs without bias or engaging in discriminatory conduct… The physician must practise with conscience, honesty, integrity, and accountability, while always exercising independent professional judgement and maintaining the highest standards of professional conduct… The physician must never participate in or facilitate acts of torture, or other cruel, inhuman, or degrading practices and punishments" (World Medical Association, 1949). Those are some basic and most important principles of how one of medical profession should conduct his or her activity. It is applied independently of place, person treated or other conditions of medical treatment.

The second part is connected to obligations of how to treat the patient. Some of them are: "In providing medical care, the physician must respect the dignity, autonomy, and rights of the patient… The physician must commit to the primacy of patient health and well-being and must offer care in the patient's best interests… When a patient has substantially limited, underdeveloped, impaired, or fluctuating decision-making capacity, the physician must involve the patient as much as possible in medical decisions… The physician should be considerate of and communicate with others, where available, who are close to the patient, in keeping with the patient's preferences and best interests and with due regard for patient confidentiality" (World Medical Association, 1949). Those are only a part of general principles of patient treatment, contempt of which can lead to violation of human rights and dignity.

The third part, "Duties to other physicians, health professionals, students, and other personnel" is dedicated to connection between professionals and their colleagues. Basically, it sets out rules of collaboration and mutual respect. "The physician must engage

with other physicians, health professionals and other personnel in a respectful and collaborative manner… The physician should respect colleagues' patient-physician relationships and not intervene unless requested by either party or needed to protect the patient from harm… The physician should report to the appropriate authorities conditions or circumstances which impede the physician or other health professionals from providing care of the highest standards or from upholding the principles of this Code…" (World Medical Association, 1949).

Part "Duties to society" describes way of interaction between physician and his or her environment. It consists of such principles: "The physician must support fair and equitable provision of health care… In fulfilling this responsibility, physicians must be prudent in discussing new discoveries, technologies, or treatments in non-professional, public settings, including social media, and should ensure that their own statements are scientifically accurate and understandable. Physicians must indicate if their own opinions are contrary to evidence-based scientific information… The physician should avoid acting in such a way as to weaken public trust in the medical profession… The physician should share medical knowledge and expertise for the benefit of patients and the advancement of health care, as well as public and global health" (World Medical Association, 1949). Basically, this part sets out rules of virtue and professional self-control of people intertwined with profession of medical assistance.

The last part of the Code is relatively short and has a name "Duties as a member of the medical profession". "The physician should follow, protect, and promote the ethical principles of this Code. The physician should help prevent national or international ethical, legal, organisational, or regulatory requirements that undermine any of the duties set forth in this Code… The physician should support fellow physicians in upholding the responsibilities set out in this Code and take measures to protect them from undue influence, abuse, exploitation, violence, or oppression" (World Medical Association, 1949). This part obliges medical professionals to act in accordance with the rules prescribed by this Code.

In addition to the WMA International Code of Medical Ethics United Nations have their own principles of ethics. Specialty of this document is its circle of subjects – it is connected to imprisoned individuals. It was adopted on 18 December 1982 by General Assembly resolution 37/194 and bears a name "Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment". The document is dedicated to a particular group of people, whose medical security can be especially fragile due to the circumstances, and consists of 6 prescribed principles. Principle 1 is the general principle, which underlines the obligation of physicians to treat imprisoned people in same way as they treat ordinary patients. "Health personnel… have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained" (OHCHR, 1982).

The second principle is one of the most crucial of the all document. Detainees are one of the most fragile group of people who can be influenced by the state in face of violence apparatus. Usually, this apparatus consists of police or any other form of governmental structure with possibility to apply force. And the main problem, especially in non-democratic countries, is the fact that this apparatus can apply force to make detainee to confess in committing a crime, although one didn`t do it. In that matter they can use medical personnel, as far as it knows how to apply force and leave no trace of cruel actions or even forge documents or statements in in favor of the state. Therefore, article 2 of Principles obliges medical personnel to not to allow cruel or inhuman treatment or punishment. "It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment" (OHCHR, 1982).

The third principle is pretty straightforward. It imposes a ban in any kind of non-health related professional relationship between patient and physician. "It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health" (OHCHR, 1982).

Principle 4 is relatively close to the principle 2. It obliges physicians not to apply their knowledge to damage person`s mental and physical health. Same as principle 2, this one is created to prevent the abuse of force by governmental bodies such as police and army.

Although, physician can restrain the detainee, but only if this is granted by norms of national laws and not prohibited by international norms. This rule is defined in Principle 5 of the document. "It is a contravention of medical ethics for health personnel, particularly

physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health" (OHCHR, 1982). Therefore, we can see that if the situation requires, physician can apply his or her knowledge to restrain detainee, bit only in case if this detainee constitutes a threat for himself or other people within his access.

And the closing rule of "Principles…" is that in no case can any physician neglect or withdraw from the rules contained in this document. "There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency" (OHCHR, 1982).

This document serves as one of the most important documents guarantying security of the detainee. In non-democratic countries this is a vital document aimed at well-being of prisoners and detained persons.

One of the main documents in field of science and medicine of the European Union is the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, commonly referred to as Oviedo Convention. Its primary task is to protect dignity and identity of every human being. But except from this it includes some principles on medical aid and assistance. One of them is described in Chapter 2 Article 5 of the Convention. "An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it" (Council of Europe, 1997). It is a particularly important rule, as it dictates the principle which is used if person refuses of medical assistance. This principle is used all over the world and is fundamental for most cultures and countries.

Convention also restricts physicians from carrying out an intervention when this intervention will be done to the persons, who are unable to give their consent. It is regulated by Article 6 of the Convention and secures group of: minors (intervention can be lawful if permission was granted by representative or state bodies responsible for the child), adults with mental disabilities (intervening can only be possible with consent of caregiver). That`s the general rule of this convention, when we are talking about the principles of medical care regarding minors and people with mental disabilities. But there is a factor which in needed to be underscored. Point 5 of Article 6 declares that: "The authorisation referred to

in paragraphs 2 and 3 above may be withdrawn at any time in the best interests of the person concerned" (Council of Europe, 1997). That means that even if physician or stuff has no permission from representative of a person of state bodies, in case of urgent necessity the rule of consent can be broken. The same is stated in Article 8 of the Convention. "When because of an emergency situation the appropriate consent cannot be obtained, any medically necessary intervention may be carried out immediately for the benefit of the health of the individual concerned" (Council of Europe, 1997).

Convention also takes into account situations under which only experimental research can be completed. It is also can be referred to as medical assistance, due to the fact that we have a patient (subject), physician (also subject) and a problem with which patient referred to the physician. Research is regulated by Article 16 of the Convention on Human Rights and Biomedicine. The main rules when undergoing research is: can only be conducted as a measure of the last resort; risks from not conducting research are too high; research is approved by controlling agency; person which will be undergoing the research is informed and willing to provide consent (can be withdrawn at any point of time). There is also a possibility to conduct research on people who are not able to consent due to mental disorders, but in this case you need not only consent of caregiver, but also it needs to be in a written form and person undergoing research must have no objections.

Though Convention on Human Rights and Biomedicine revolves more around rules for the medical intervention and applied in general to the sphere of medicine, it enables the protection for people in case of violation of their rights by, for example, state, which is the main perpetrator of law in cases taken into account under ECtHR. It consists of a set of rules vital for adequate physician-patient relations and imposes a ban on possibility of usage of medical assistance as a tool to achieve some medical results.

Different systems and different organizations in international law have their specific standards concerning medical attention. Some of them are more democratized, while others can be pretty stubborn and customs-centered. For the international law a special institution of observant body was created – European Court of Hyman Rights. It is not only an institution for analysis of medical assistance nor medical sphere in general. It is a complex and enormous structure which takes care of securing and directing the legislation in way of improvement towards the democratized future of humanity. ECtHR has a duty to analyze if decisions made by national judiciary bodies, among countries which ratified the European Convention on Human Rights, were right and if they violated human rights in

one or other way. Considering nature and duties of ECtHR, the Court is also obliged to deal with cases which are connected to providing an adequate medical care.

CHAPTER II – MEDICAL CARE UNDER THE ECTHR

2.1 Medical care and its application in history of ECtHR

Questionable cases regarding medical care were reviewed throughout the entire history of the ECtHR. Though, not every of them make a huge impact on evolution and development of standards of medical care application. One of the cases impacting those standards was a case of Austrian national with some concerning health issues. This is a case of Matznetter v. Austria, which is to be one of the first cases reviewed by European Court of Human Rights.

The case itself doesn`t revolve around the medical attention as a main point of application, still it concerns one of the most valuable items for the ECRH – health and security of detainee. Mr. Matznetter was a veteran of Second World War, moving after it to Austria. He had several injuries and problems with his health. "As a result of this amputation and his exposure to cold during captivity, he suffers from myocardial disease and complete deafness in his right ear; he draws an 80 per cent disablement pension" (European Court of Human Rights, 1969). He was detained by Austrian police for allegations of possible misdemeanor of simple bankruptcy. He was arrested in May 1963 with who other people engaged. He also requested parole twice, but this wasn't granted.

Overall, Otto Matznetter has been under the custody for over 25 months, which even in general terms of custody can be viewed as a long term. The main question is this case is not only his term of custody but also the conditions under which he was detained. First of all, we need to underline that he had some serious problems with his health: he was a veteran with problems with his hearing and heart. Second, he wasn`t granted any medical examination during the custody. "On 4 April 1966, the Investigating Judge, Mr. Gerstorfer, gave evidence before two members of the Sub-Commission. They asked him, in particular, what differences the competent authorities saw between the cases of the applicant and of Karl Udolf and Fritz Schiwitz as regards the possibility of release. The witness did not give a specific explanation on this point. Replying then to certain questions concerning Matznetter's health, he in substance said: - that he had been surprised to read in the application of 21 April 1965 that the applicant was suffering from a serious illness, as he had never spent any time in the prison hospital ward; - that before the month of April 1965, there was no reason to believe in the necessity of a medical examination… On 21 May 1965 the medical report of the Institute was issued. It was to the effect that the Applicant was suffering from a serious illness which rendered him unfit to be kept in detention. For

some unexplained reason, the report does not appear to have reached or to have received the attention of the authorities until 25 June, when the Public Prosecutor's Office informed the Court that they had no objection to the release of the Applicant and, as a result, the Regional Criminal Court of Vienna ordered the release of Matznetter on his signing a solemn undertaking in accordance with Article 191 of the Code of Criminal Procedure" (European Court of Human Rights, 1969).

In this case the Count found that such kind of detention was unnecessary under those circumstances, especially with the situation in which one of the detainees was suffering from dangerous for his conditions health issues. This particular case shows us how did the first hearings in the ECtHR started. Moreover, the Court started to address particular circumstances of detention of people under custody, which will have a huge impact on standards of this type of detention is future. Also, this case provides us with the intel on how big of an impact European Court of Human Rights had on policies of state. In this particular case ECtHR created a precedent for rise of securities and safety of detainees under different conditions of their custody. Later such cases formed a basis of the Guide on the case-law of the European Convention on Human Rights / Prisoners` rights.

One of the most concerning health issues of women regarding medical assistance can be cases connected to pregnancy and/or abortion. In many cases Court emphasizes that if pregnancy can lead to health issues of mother or even to fatal consequences, the abortion can be the way to secure woman form dying and cannot be viewed as illegal.

One of the most known cases of the ECtHR regarding right of abortion is the case A, B, and C v. Ireland (application no. 25579/05). This is the case concerning 3 female individuals which had to seek an opportunity to make an abortion in regards of their safety and health issues. "The first applicant, unmarried, unemployed and living in poverty, had four children all of whom had been placed in foster care. A former alcoholic struggling with depression, she decided to have an abortion to avoid jeopardising her chances of reuniting her family… The second applicant was not prepared to become a single parent. While initially she feared an ectopic pregnancy… The third applicant, in remission from cancer and unaware that she was pregnant, underwent a series of check-ups contraindicated during pregnancy. Once she discovered she was pregnant, she believed that there was a risk that her pregnancy would cause a relapse of the cancer and was thus concerned for her health and life" (European Court of Human Rights, 2010). As far as we can see from the facts of the case these women had grounds to fear for their security and safety, therefore seeking an abortion. All three women were living in Ireland, which at that time had a ban

on abortion. Therefore, in order to make an abortion all three went to the United Kingdom. In the judgement the Court was considering every case, submerging cases of first and second applicants.

In analyzing the case ECtHR found that "… the prohibition on the termination of the first and second applicants' pregnancies had represented an interference with their right to respect for their private lives" (European Court of Human Rights, 2010), but even though Court found that interference was justifiable in accordance with the laws of Ireland. The Court also looked at if the limitations imposed by the state were in accordance to the general law and didn`t interfere with the rights of human. "Examining whether the prohibition had been necessary in a democratic society, and in particular, whether a pressing social need had existed to justify it, the Court observed that a consensus existed among the majority of the members States of the Council of Europe allowing broader access to abortion than under Irish law: abortion was available on request in some 30 European countries" (European Court of Human Rights, 2010). At the conclusion Court found no evidence of violation of human rights neither under Article 3 nor under Article 3 and 8 of the Convention regarding two first applicants for the Court. But in the case of third applicant, which was seriously ill (suffering from cancer) ECtHR found that there were some grounds for her to seek abortion. "The Court considered that the establishment of any such risk to her life clearly concerned fundamental values and essential aspects of her right to respect for her private life" (European Court of Human Rights, 2010).

The Court found that means by which governments was trying to solve the situations, under which woman life can be endangered are insufficient (basically, the only thing government provided in this case were the consultations about the danger posed by birth under conditions of illness for the woman, not the solution to this situation). Also, Court found that the means to appeal the decision of national courts were insufficient. "Neither did the Court consider recourse by the third applicant to the courts (in particular, the constitutional courts) to be effective, as the constitutional courts were not appropriate for the primary determination of whether a woman qualified for a lawful abortion" (European Court of Human Rights, 2010).

As the conclusion, the European Court of Human Rights found that the rights of this woman, primarily right to private life was violated. Consequently, this violation lead to the situation, where state failed to keep up with its positive obligations - secure and environment where every woman would me physically and mentally secure to either give birth or make a medical intervention to make an abortion. The main part for this work is

the part where all three woman had no legal possibility to make an abortion, which lead to problem with health of one of them. In this case abortion can be considered as medical aid, as far as it is provided at securing the health of patient. By not creating the conditions to legally make an abortion in Ireland its government artificially created a barrier in supplying the population with medical assistance. That is why this case is significant for the topic. It is one of the first legally recognized cases of abortion which led to widened recognition of woman rights in this sphere.

Medical attention regarding people with mental illnesses started to be a topic roughly after World War Two, which was a great success for the triumph of human rights. New methods of medication and treatment strategy were developed, which were less cruel and were a sign of development for all the humanity. Nonetheless, some countries continued with discriminative policies against mentally ill people.

One of the oldest cases in this regard is case of Winterwerp v. The Netherlands (application no. 6301/73) of 1979. Mr. Winterwerp was a Netherlands national and all the questions about mentally fit people were resolved within the Netherlands law. The main document regulation this question was a Mentally Ill Persons Act. The Act outlined procedures for detention, leave of absence, discharge, and administration of property. He was committed to psychiatric hospital in 1968, but he was against it and demanding to review the decision of his detention. The state was acting under the condition of granting safety to individuals around Mr. Winterwerp. “The application was accompanied by a medical declaration, dated 20 June, made out by a general medical practitioner who had examined the patient for the first time that day. The declaration stated that the patient had been detained in 1966 for "attempted murder" and had been under psychiatric treatment in 1967. It also stated that the patient was "a schizophrene, suffering from imaginary and Utopian ideas, who has for a fairly long time been destroying himself as well as his family" and that he "is unaware of his morbid condition". The doctor concluded that "for the time being" the patient certainly could not "be left at large in society".

On 24 June, on the basis of this declaration, the District Court granted the application and authorized the applicant’s provisional detention, without first exercising its power to hear him or to seek expert advice” (European Court of Human Rights, 1979). The series of appeals from him and his wife lead to nothing, therefore he applied to the ECtHR. The topic of this application was his unlawful detention. “In his application of 13 December 1972 to the Commission, Mr. Winterwerp complained that he was being arbitrarily deprived of his liberty, that he had not been allowed a hearing by a court and that he had

not been informed of the decisions by which his confinement was several times prolonged" (European Court of Human Rights, 1979).

Court found that the detention in accordance with the Mentally Ill Persons Act was completely legal: "Having regard to the above-mentioned practice, the law in force does not appear to be in any way incompatible with the meaning that the expression "persons of unsound mind" is to be given in the context of the Convention. The Court therefore considers that an individual who is detained under the Netherlands Mentally Ill Persons Act in principle falls within the ambit of Article 5 para. 1 (e) (art. 5-1-e)" (European Court of Human Rights, 1979). Also, Court found no violation under Article 5 para. 1 (e) (art. 5-1-e), which states "In accordance with a procedure prescribed by law". "The Court accepts the general explanation furnished by the Government. Furthermore, as far as the specific facts are concerned, there is no question of the delay having involved an arbitrary deprivation of liberty: the interval of two weeks between the expiry of the earlier order and the making of the succeeding renewal order can in no way be regarded as unreasonable or excessive. To sum up, the applicant was detained "in accordance with a procedure prescribed by law"" (European Court of Human Rights, 1979). As of discharge, Court found that the governments were acting in accordance with law and in this case no rights have been violated.

Formally, no rights of individual were violated in this case, but it had a huge impact on standardization and normalization of norms about mentally ill people in future. As the Court stated: "However, the present judgment has already drawn attention to certain aspects of the procedure followed on these occasions and, notably, to the fact that neither in law nor in practice was Mr. Winterwerp afforded the opportunity of being heard, either in person or through a representative (see paragraph 61 above). What is more, that procedure was concerned solely with his deprivation of liberty. Consequently, it cannot be taken as having incorporated a "fair hearing", within the meaning of Article 6 para. 1 (art. 6-1), on the question of his civil capacity… By way of general argument, the Government contend that there was no breach of Article 6 para. 1 (art. 6-1) since the provisions of the Mentally Ill Persons Act safeguard the civil rights of the detained person of unsound mind who, by the very reason of his proven mental condition, needs to be protected against his own inability to manage his affairs" (European Court of Human Rights, 1979).

This case had an impact on future cases regarding mentally ill people, especially consideration of their own will. This case is connected to the medial assistance as far as there was a violation of rights of individual to choose if one wants to be hospitalized and

treated or not. The fact that Mr. Winterwerp was capable of rendering his own decisions made him limited in taking decisions and deprived him of right to be heard. Moreover, this case supplemented laws of many states in way of perceiving of mentally ill people. They received more attention and were granted a right to be heard, which was problematic due to stigmatization of such people under weight of centuries of this practice. Moreover, this case helped mentally ill people to cooperate with state to be able to receive adequate aid, mostly by increasing the level of credence between mentally ill persons and governmental structures.

One of the most problematic cases of medical assistance are always connected to active military actions, which always bring humans suffering and problems with mental and physical health. One of such cases is connected to Cyprus. Case of Denizci and others v. Cyprus (Applications nos. 25316-25321/94 and 27207/95) is a group application against Cyprus. Greek Cypriots, which were living on the territory controlled by Cyprus government tried to cross the border to seek support in Turkish-occupied area. Within the statements provided by Cyprus government, some of them later returned to government controlled area and gave their testimonies. "According to these statements, the applicants, upon their entry in the Turkish-occupied area, were apprehended by the occupation forces and taken to a police station, where they were severely beaten, ill-treated and injured. Under the threat of force by the "TRNC" police, they made false statements to the press as well as to the United Nations Peacekeeping Force in Cyprus (UNFICYP) to the effect that they had been arrested and ill-treated by the Cyprus police and then led to the occupied area against their will. They were further forced, under threat, to sign statements to that effect. A number of them, acting under threat, blackmail and promises, signed blank application forms to the European Commission of Human Rights" (European Court of Human Rights, 2001).

Some of the applicant suffered physical damage and didn`t receive any medical attention. "The applicant lived in the northern part of Cyprus until 1985. That year, together with another Cypriot citizen of Turkish origin, he crossed over to the territories ...under the control of the Republic of Cyprus in order to find work there and earn a living… They reported at a police station in Xylotymbou, where they were questioned about the military situation in the northern part of Cyprus. They were later taken to the CIS headquarters in Nicosia. They were detained for eighteen days, during which they were interrogated and beaten by the police… On 21 April 1994 the applicant was examined at the "Turkish-Cypriot State Hospital" in Nicosia. On the same day a medical report was drawn up which

stated that there were swellings and ecchymoses in both scapular regions. The applicant was later examined by a United Nations medical officer" (European Court of Human Rights, 2001).

The same kind of treatment happened to one more applicant. He was living in the northern part of Cyprus until 1981, but later moved to Republic of Cyprus in order to live with his mother. He crossed the border few more times and after that he was put under the surveillance under the Cypriot police. In 1994 happened a case of murder of Cypriot citizen, after that an applicant was interrogated and one day was taken into Cyprus police headquarters. "On 19 April 1994, between 7 and 8 a.m., two Cypriot policemen in civilian clothes came to the applicant's house and ordered him to come with them. The applicant was taken to the CIS headquarters in Limassol, on the third floor. The policeman called Rodis told him that he would be taken to Nicosia to be interrogated in connection with a theft. The applicant was then handcuffed to Süleyman Seyer, another Turkish Cypriot, and they were driven in a white car to the CIS headquarters in Nicosia. There, five or six policemen insulted him and beat him and other Turkish Cypriots with clubs and a truncheon" (European Court of Human Rights, 2001). After that he was forced to cross the border with Northern Cyprus, where he was examined. "On 21 April 1994 the applicant was examined at the "Turkish-Cypriot State Hospital" in Nicosia. On the same day a medical report was drawn up which mentioned the presence of six ecchymoses in the dorsal region, the diameters of which varied from 3 cm to 7 cm. The applicant was examined by a United Nations medical officer on 27 April 1994" (European Court of Human Rights, 2001).

Those are only two cases which we are certain of. Those cases show how necessary it is to control adequate attention to possible offenders and even more to state service which is capable of legally committing force. We also need to understand the importance of medical attention in situations like those. The mere fact of beatings prove that the problem is already huge, but the fact that no medical attention is applied to people who suffered is even more concerning. Police can apply force which is easily capable of killing people, therefore the institute of medical attention, which will follow its principles of medical treatment and help any party which is injured is essential and constitutes a basis for adequate and democratic society and country as a result.

The cases provided in this part show how did the examinations and research of the European Court of Human Rights has evolved during its history. ECtHR had a lot of challenges at the start of its legal activity. Throughout this activity principles of the Court

itself evolved and changed to the side of democratization and widen appreciation of human rights. As a result of this changes ECtHR impacted laws and customs of a lot of countries, influencing their way to democratization and harmonization of their law standards with worldwide accepted ones.

A huge number of cases regarding medical aid are connected to the Article 3 of European Convention on Human Rights. It is quite common for people under supervision of the civil force of a state responsible for the prevention and detection of crime and the maintenance of public order or detention in special centers to be a subject for potential crimes, especially in countries with weak democratic levels, which belong to violation of Article 3 of Convention on Human Rights – torture of inhuman/degrading punishment. This type of demeanor has a huge volume of connectivity to medical aid, as far as if the person is tortured, one in most cases is in dire need to be granted medical attention. About the degrading punishment it can include psychological violence, which has to be overviewed by medical specialist. Naturally, European Court of Human Rights, which is guided by European Convention on Human Rights, has to review and take into account cases connected to possible violation of Article regulation that question – Article 3 of the Convention.

2.2 Intercourse of medical assistance with Article 3 of European Convention on Human Rights.

European Court of Human Rights was founded in 1950, and as one of the oldest and well-respected court institutions has a long story with cases connected to health issues and provision of medical care under observance of states. The cornerstone and most impactful and used convention by ECtHR is the European Convention on Human Rights, which entered in force in 1953. The main issue of most applications launched against the state is the possible perpetration of Article 3 of the European Convention on Human Rights. Article 3 is a special article which grants you protection from torture, inhuman or degrading punishment or treatment. In almost all cases connected to Article 3 torture and inhuman punishment is implied by state: police, special forces, military.

To fully analyze intercourse of medical assistance with Article 3 of European Convention on Human Rights we need to dive deep into description of Article 3. "No one shall be subjected to torture or to inhuman or degrading treatment or punishment" (Council of Europe, 1950). Now we need to define what is torture and inhuman or degrading treatment or punishment. Equality and Human Rights Commission has a description of all of those elements. Within torture Commission considers a situation, when "… someone deliberately causes very serious and cruel suffering (physical or mental) to another person. This might be to punish someone, or to intimidate or obtain information from them" (EHRC, 2016). That means that torture is a set of elements, which are needed to be applied concurrently.

The first item of this set is a fact of "very serious and cruel suffering", which can be both physical and mental. It is a duty of Court to decide if suffering was cruel and very serious, which they define by analyzing circumstances of case. The second item is a fact of punishment. Torture will be easily considered as one if there was a kind of insubordination between parties, which led to enactment of torture. And the third item on the list is the usage of torture as an instrument to collect some intel.

It is pretty widespread in non-democratic countries and some governments can even give state structures, such as police, pass to use torture and cruel or degrading punishment to collect as much surveillance on anti-governmental parties as possible. There is no strict definition of what can be considered a torture, neither there is a list of deeds which can be used to define if fact of torturing was occurring. Moreover, as far as humanity is constantly evolving and brings up new weapon, new technologies, the list of torture examples could`ve

been interminable. Also, considering the specificity of using power and lawful violence (within the competence of state) it is better to give the court chance to analyze of the torture was applied in the specific case. Unlike torture, inhuman treatment can be defined and Commission proposes such list of deeds that can be defined as inhuman punishment. The list consists of: "serious physical assault; psychological interrogation; cruel or barbaric detention conditions or restraints; serious physical or psychological abuse in a health or care setting, and; threatening to torture someone, if the threat is real and immediate" (EHRC, 2016). Also, inhuman treatment is defined by Commission as "treatment which causes intense physical or mental suffering". We need to underline that naturally, when there is a force to be applied it is almost inevitable to not to cause the physical harm, for example police needs to disarm a person to avoid other person or the perpetrator himself from being injured (in case of mental harm it`s harder, but not impossible). Therefore, in order Article 3 to be violated, a threshold of minimal suffering is applied.

There is a logical question in this case. Both torture and inhuman treatment can be described as treatment which causes either physical or mental suffering or both, therefore how do we differ them? The answer was given by Council of Europe. In its publication on definition of some items Council stresses that "The degree of suffering is the main difference between torture and inhuman treatment, but it also has to be deliberate, for example, to extract information or to intimidate. Examples of acts found by the Court to amount to torture include rape, threats of harm to family, being kept blindfolded and mock executions. The suffering can be mental as well as physical" (Council of Europe). In this definition council of Europe underlines that in order torture to be defined as one the suffering needs to be deliberate. This creates a situation where if the suffering was caused unintentionally (let`s say negligence) it can be considered as negligence, as far as torture is seen as one of the most dangerous and punishable forms of rights violation. Council also underlines the importance of observation on what can be considered as a torture. "The threshold for torture is evolving: what was not considered torture 30 years ago may be so now, as standards rise (Selmouni v. France, which concerned a suspect subjected to physical blows). The same is true of inhuman treatment" (Council of Europe).

And the last thing to consider is what is a degrading punishment. Equality and Human Rights Commission defines degrading treatment as "treatment that is extremely humiliating and undignified. Whether treatment reaches a level that can be defined as degrading depends on a number of factors. These include the duration of the treatment, its physical or mental effects and the sex, age, vulnerability and health of the victim. This

concept is based on the principle of dignity - the innate value of all human beings" (EHRC, 2016). Commission itself underscores that the main effect with degrading punishment is to damage person`s dignity. Therefore, the main work of Court to judge if punishment was degrading itself is to define if there was a place for intentional assault on dignity of a person.

Therefore, through the information provided by the Commission and Council of Europe we can make a clear distinction between torture, inhuman or degrading punishment. Torture is mostly applied with clear intentions: the aim is to punish person, make her suffer physically or mentally; the torture is used to gather some intel (governmental force can apply it to dig up some anti-governmental plans or information on individuals, etc.); torture can be applied as a result of exceeding authority, when a person in charge has ill-intentions toward a person with which one had a conflict; torture can be result of state policy.

From the chart provided by European Court of Human Rights we can observe the situation around violation of Article 3 of Convention on Human Rights. In total, prohibition of torture and inhuman or degrading punishment have total of 347 cases and are on 2nd place by frequency of cases.

Figure 1. **Violations of European Convention on Human Rights by States in 2022.**

Violations by Article and by State

2022

	Total number of judgments	Judgments finding at least one violation	Judgments finding no violation	Friendly settlements/Striking-out judgments	Other judgments[1]	Right to life – deprivation of life	Lack of effective investigation	Prohibition of torture[2]	Inhuman or degrading treatment	Lack of effective investigation	Conditional violations[2]	Prohibition of slavery/forced labour	Right to liberty and security	Right to a fair trial[2]	Length of proceedings	Non-enforcement	No punishment without law	Right to respect for private and family life[2]	Freedom of thought, conscience and religion	Freedom of expression	Freedom of assembly and association	Right to marry	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention
	Total	Total	Total	Total	Total	2	2	3	3	3	2/3	4	5	6	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P1-4	
Albania	8	7	1							1				2	1	1		1											1
Andorra																													
Armenia	21	21				5	5		6	4			7	2	1			2	1		1		3	1	1				1
Austria	4	2	2											1	1														
Azerbaijan	23	22	1				1		1				9	5	1	1		2		1	2				3				2
Belgium	13	13					1							7	1			2		1				1					
Bosnia and Herzegovina	10	10												1	2	3		1		1					3				1
Bulgaria	27	25	2			1			1	2			2	3		1		7	1				2	2	10		2		
Croatia	32	26	6						4	2			1	8	1	1		2			1				6			1	
Cyprus	5	3	2											1	1					1									
Czech Republic	10	6	4							2			1	1											2				
Denmark	4	1	3															1											
Estonia	4	2	1		1													1						1					
Finland																													
France	25	19	6						3		2			4	1	1		3	1	2			1		2				2
Georgia	11	11					1		2	2				6		1		1			2			2	1				
Germany	4	1	3																					1					
Greece	22	21	1			1	1		2	1				4	2	5		2		2			7	2	3			1	
Hungary	35	35							8				30	1	15			2					14	1	1				1
Iceland	3	1	2											1															
Ireland	1		1																										
Italy	27	25	2			1	3		3	2			2	4	2	3		10					5		2				1
Latvia	8	5	3				1							3				2			1		1						
Liechtenstein																													

This table has been generated automatically, using the conclusions recorded in the metadata for each judgment contained in HUDOC, the Court's case-law database.

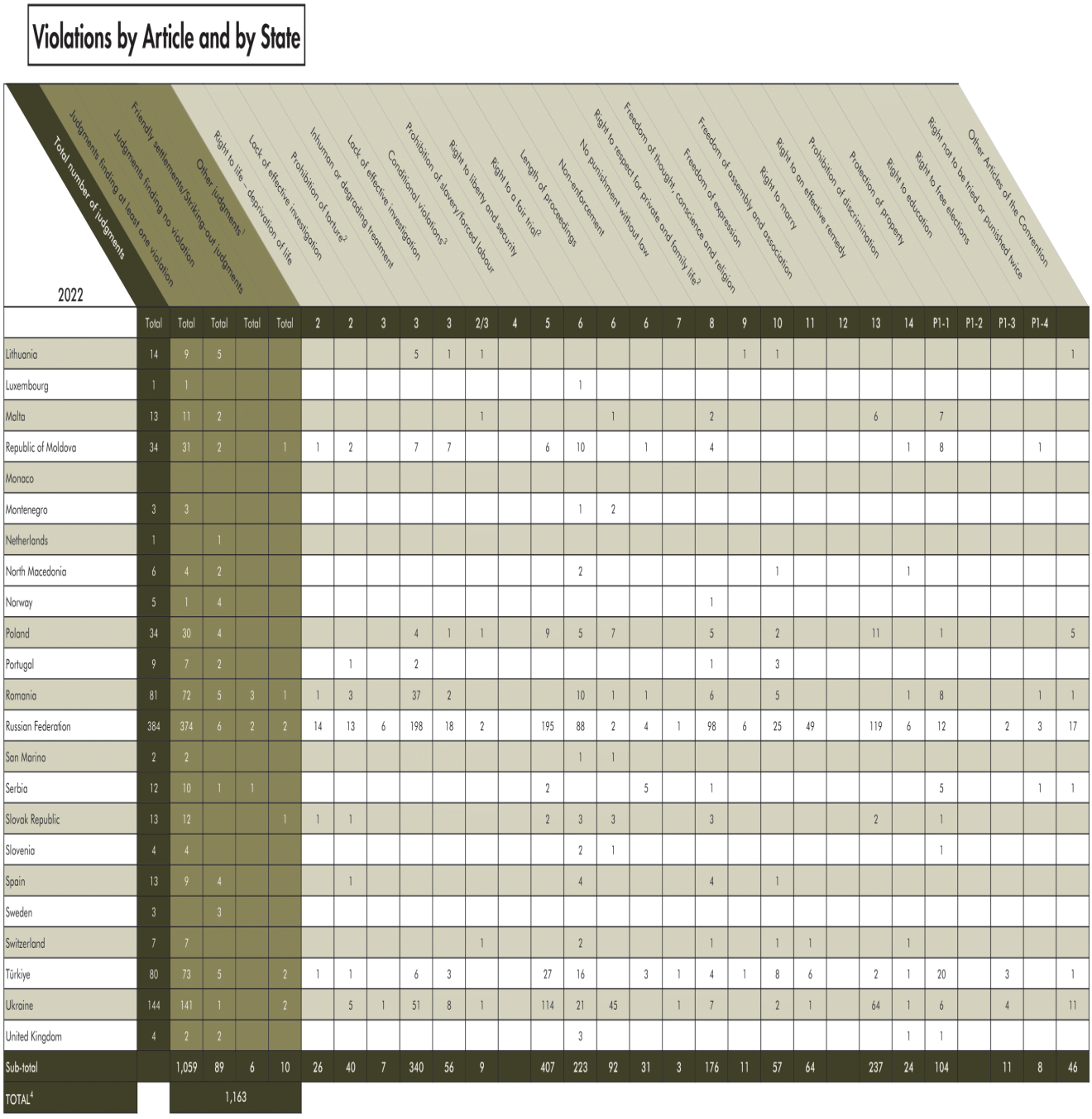
1. Other judgments: just satisfaction, revision, preliminary objections and lack of jurisdiction.
2. Figures in this column may include conditional violations.
3. Cases in which the Court held there would be a violation of Article 2 and/or 3 if the applicant was removed to a State where he/she was at risk.
4. One judgment is against more than 1 State: Republic of Moldova and Russian Federation.

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

Source: Violations by Article and by State 2022 published by ECtHR

Available at: https://www.echr.coe.int/documents/d/echr/Stats_violation_2022_ENG

Figure 2. **Violations of European Convention on Human Rights by States in 2022.**



Violations by Article and by State

2022

	Total number of judgments	Judgments finding at least one violation	Judgments finding no violation	Friendly settlements/Striking-out judgments	Other judgments[1]	Right to life – deprivation of life	Lack of effective investigation	Prohibition of torture[2]	Inhuman or degrading treatment	Lack of effective investigation	Conditional violations[2,3]	Prohibition of slavery/forced labour	Right to liberty and security	Right to a fair trial[2]	Length of proceedings	Non-enforcement	No punishment without law	Right to respect for private and family life[2]	Freedom of thought, conscience and religion	Freedom of expression	Freedom of assembly and association	Right to marry	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried or punished twice	Other Articles of the Convention
	Total	Total	Total	Total	Total	2	2	3	3	3	2/3	4	5	6	6	6	7	8	9	10	11	12	13	14	P1-1	P1-2	P1-3	P1-4	
Lithuania	14	9	5						5	1	1								1	1								1
Luxembourg	1	1												1														
Malta	13	11	2								1				1			2					6		7				
Republic of Moldova	34	31	2		1	1	2		7	7			6	10		1		4						1	8			1	
Monaco																													
Montenegro	3	3												1	2														
Netherlands	1		1																										
North Macedonia	6	4	2											2						1				1					
Norway	5	1	4															1											
Poland	34	30	4						4	1	1		9	5	7			5		2			11		1				5
Portugal	9	7	2				1		2									1		3									
Romania	81	72	5	3	1	1	3		37	2				10	1	1		6		5				1	8			1	1
Russian Federation	384	374	6	2	2	14	13	6	198	18	2		195	88	2	4	1	98	6	25	49		119	6	12		2	3	17
San Marino	2	2												1	1														
Serbia	12	10	1	1									2			5		1							5			1	1
Slovak Republic	13	12			1	1	1						2	3	3			3					2		1				
Slovenia	4	4												2	1										1				
Spain	13	9	4				1							4				4		1									
Sweden	3		3																										
Switzerland	7	7									1			2				1		1	1			1					
Türkiye	80	73	5		2	1	1		6	3			27	16		3	1	4	1	8	6		2	1	20		3		1
Ukraine	144	141	1		2		5	1	51	8	1		114	21	45		1	7		2	1		64	1	6		4		11
United Kingdom	4	2	2											3										1	1				
Sub-total		1,059	89	6	10	26	40	7	340	56	9		407	223	92	31	3	176	11	57	64		237	24	104		11	8	46
TOTAL[4]		1,163																											

This table has been generated automatically, using the conclusions recorded in the metadata for each judgment contained in HUDOC, the Court's case-law database.
1. Other judgments: just satisfaction, revision, preliminary objections and lack of jurisdiction.
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3. Cases in which the Court held there would be a violation of Article 2 and/or 3 if the applicant was removed to a State where he/she was at risk.
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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Source: Violations by Article and by State 2022 published by ECtHR

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Also, in case of torture, we need person to suffer severely. Contractively to the case of inhuman punishment, one can be delivered unintentionally. It can be illustrated with the case "KUDŁA v. POLAND (Application no. 30210/96)". In this case a Polish national suffered mental problems due to lengthy proceedings. The applicant, Marek Kudła, was charged with some criminal offences, therefore he was decided to be in custody while the trial was pending. In this period Marek attempted to commit a suicide and went on a hunger strike. Unfortunately, due to quite longsome process and circumstances of his custody, he suffered an impact on his mental well-being. Therefore, the defense of accused reached court out to investigate the mental state of Marek. "He requested the court to appoint psychiatric and other medical experts to assess the applicant's state of health, instead of relying on the assessment made by the prison authorities. He also maintained that the length of the proceedings was inordinate and stressed that the applicant had already spent two years and four months in detention" (European Court of Human Rights, 2000). After a failure to appeal the decision of national court Kudła referred to ECtHR, which found that there was a violation of Article 3. "The Court has considered treatment to be "inhuman" because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. On the other hand, the Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment" (European Court of Human Rights, 2000).

As far as we can see from this example, the court decided that a violation of rights of detained were taking place, even though there were no clear intention to do it. Nonetheless, the length of detention was unjustified, therefore Court found that a clear violation of rights under Article 3 and 5 of European Convention on human rights.

Main cases of failure to provide medical assistance of its inefficiency are connected to provision of medical aid to detained persons or persons under custody. ECtHR has its own guide on application of medical care under Article 3 of European Convention on Human Rights. That`s what the Guide says about the conditions of detention. "For detention specifically to fall under Article 3 of the Convention, the suffering and humiliation involved must go beyond the inevitable element of suffering and humiliation connected with the deprivation of liberty itself. That said, the authorities must ensure that a person is detained in conditions compatible with respect for human dignity, that the manner and method of

execution of a custodial sentence or other type of detention measure do not subject the person concerned to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, this person's health and wellbeing are adequately secured" (European Court of Human Rights, 2022).

In accordance with the Guide, a failure to provide medical assistance can and will be interpreted as violation of Article 3 of Convention on Human Rights. This is stated out in point G of Guide: "Article 3 imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical care" (European Court of Human Rights, 2022). It ultimately imposes some obligations on State to guarantee a deprived person`s rights and freedoms. Guide also underlines that mere fact of medical checkup by the doctor doesn`t mean that rights of detainee regarding medical care and assistance were secured. "… the mere fact that a detainee has been seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate" (European Court of Human Rights, 2022).

ECtHR imposes an obligation on State to create an archive of medical records of detainees, observe the medical status of persons deprived of their will and take measures in case if their health is in danger, to constantly prevent aggravation of health problems of detainees. State must secure health and guarantee medical assistance by creating and supporting special facilities for medication and observation purposes for detainees. Also, Guide underscores that the level of medicine in this structures must be appropriate: "… medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialised unit" (European Court of Human Rights, 2022).

With the specifically created "Guide on case-law of the Convention – Prisoners' rights" we can analyze the standards for application of medical care and assistance under the ECtHR. Regarding the general principles, Guide on case-law underlines a special type of state obligations. "Under Article 2, the Court has stressed that this provision enjoins the States not only to refrain from the intentional and unlawful taking of life, but also lays down

a positive obligation on the States to take appropriate steps to safeguard the lives of those within their jurisdiction" (European Court of Human Rights, 2022). In this part of the Guide ECtHR sets a ban on death penalty and officially confirms a special type of obligations – positive obligations.

The concept of positive obligations dwells in obligations of state to actively secure rights and freedoms of citizens. In case of prisoners, that means that if a person appointed by state to secure health of convicted discovers a problem that causes or can cause some future problems for convicted, he is obliged to inform convicted and, in case if one agrees to cooperate, grant convicted a medical attention in amount necessary to solve the problem. Therefore, we can see one of the primary obligations of state regarding detainees is to secure their rights in active manner – continuously checking their mental and physical states and creating sufficient conditions to live in. Regarding physical well-being of detainee, Guide on case law provides us with information on minimal requirements about insufficient medical attention. It is stated that if medical attention was applied with delay, it was unsatisfactory or there was a failure to provide person with medical attention it is still insufficient to apply for a violation of Article 3. There are some extra requirements provided by Guide to prove the fact that the violation was taking place. "A credible complaint should normally include, among other things, sufficient reference to the medical condition in question; medical treatment that was sought, provided, or refused; and some evidence – such as expert reports – which is capable of disclosing serious failings in the applicant's medical care" (European Court of Human Rights, 2022).

Guide on prisoners' rights also defines such term as "adequacy". The level of adequacy is sufficient to determine if state made everything possible to help the detainee, therefore avoid violation of Article 3 of the European Convention on Human Rights. In order to understand if level of medical attention was sufficient ECtHR uses so-called "due diligence test". This test determines if a country has taken all reasonable steps to provide proper medical care to seriously ill people in custody. "The mere fact that a detainee is seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (Hummatov v. Azerbaijan, 2007, § 116).

The authorities must also ensure that a comprehensive record is kept concerning the detainee's state of health and his or her treatment while in detention (Khudobin v. Russia, 2006, § 83), that diagnosis and care are prompt and accurate (Melnik v. Ukraine, 2006, §§ 104-106), and that where necessitated by the nature of a medical condition supervision is

regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation, rather than addressing them on a symptomatic basis (Amirov v. Russia, 2014, § 93)" (European Court of Human Rights, 2022).

Therefore, in order to prove not guilty state needs to provide an additional information on such circumstances as: consistency of medical examinations, minded medical strategy to get rid of the problem, actions taken to prevent the disease of detainee, etc. Very often state needs to enable an independent medical specialist to prove that medication was well-minded and must`ve been efficient. "The prison authorities must offer the prisoner the treatment corresponding to the disease(s) with which the prisoner was diagnosed. In the event of diverging medical opinions on the treatment necessary to ensure adequately a prisoner's health, it may be necessary for the prison authorities and the domestic courts, in order to comply with their positive obligation under Article 3, to obtain additional advice from a specialised medical expert" (European Court of Human Rights, 2022).

Special place is dedicated to protection of medical data of detainees. This is a very important and intimate issue, as far as some part of detainees have no relatives or people who will take care of them in general. Therefore, the main issue of storing the information about detainee is the fact that if violation will take place incarcerated will struggle with proving the failure of state due to his limited capabilities in prison. Also, a leak of information can cause distrust between detainee and state authorities, which will mean that detainee won`t be willing to contact prison physician to get medical assistance. Therefore, guide underlines that protection of personal data of convicted is a top priority. "Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health" (European Court of Human Rights, 2022).

Special place in Guide on rights of prisoners is dedicated to groups that can suffer immensely due to the nature of their disease or to severity of their disease. Therefore, Guide points out on some especially vulnerable groups, which can suffer inappropriate medical

attention and care: prisoners with infectious diseases, prisoners with mental disabilities, prisoners with drug addiction.

For the first case in this line we have people who are suffering from infectious disease. Guide stresses, that the conditions and principles for infected are special, but generally don`t differ from people with physical illnesses. “The principles of the Court’s case-law concerning the need to provide appropriate medical treatment to detainees with physical illnesses are accordingly applicable to infectious diseases. However, in this connection the authorities must take care to assess what tests should be carried out in order to diagnose the prisoner’s condition, enabling them to identify the therapeutic treatment to be given and to evaluate the prospects for recovery” (European Court of Human Rights, 2022). Some cases of detention are highly disgusting and constitute a clear violation of human rights and dignity. “Thus, for instance, in Kotsaftis v. Greece, 2008, §§ 51-61, concerning a prisoner who was suffering from cirrhosis of the liver caused by chronic hepatitis B, the Court found a violation of Article 3 because, contrary to the findings of the expert reports drawn up, the applicant had been kept in detention for some nine months 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 an overcrowded cell” (European Court of Human Rights, 2022).

From this case we can come to the conclusion that if there is an infection which poses a threat for a person, everything possible is to be done to guarantee safety of this person. Moreover, operations should be conducted within the reasonable term which in this case constituted one year before it was actually done. Also, state needs to insure the safety of other prisoners and not to allow the situations where a prisoner which can spread a disease around only by living with others in same cell.

Some of the most known diseases to mankind is human immunodeficiency virus. Due to its nature, humanity is still unable to cure it and, emphasizing the relatively huge spread of this disease in prisons, and the fact that HIV is one of the most dangerous infectious diseases, Guide emphasizes on importance of minded attitude towards the infected. To ensure safety if HIV infected and people contacting him or her some measures are vital to be applied. One of those is testing of HIV presence in human body. “the Court noted, as regards the applicant’s HIV infection, that a specific blood test 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 (European Court of Human Rights, 2022). Information about possible infectious diseases (HIV, tuberculosis, hepatitis) should be in an open access. It is underscored by the ECtHR. Therefore, if a detainee, who is living in the same facility as infected, could ask to take a testing on being infected. "On this matter, the Court considered it desirable that, with their consent, detainees can have access, within a reasonable time after their admission to prison, to free screening tests for hepatitis and HIV/Aids…" (European Court of Human Rights, 2022).

The question of placing infected and non-infected prisoners in different facilities was also brought upon, but Court found that it would be discriminative to enact such policy. "The Court also did not consider that the placement of HIVpositive detainees together in the same cell but in an ordinary prison wing housing non-HIV positive prisoners amounted to an inacceptable segregation contrary to Article 3 of the Convention" (European Court of Human Rights, 2022).

New times bring new challenges, therefore in 2019, at the time of Coronavirus crisis, some new views on placement of convicted with potential diseases were encouraged. Due to specific of Coronavirus spreading (air-to-air) some countries decided to place new prisoners into quarantine.

Some cases show that there was no need to implement such things, as some convicted already were in isolation before the arrival to the facility. "The applicant had already spent some seventy-five days in isolation before being moved to other living quarters where new arrivals were being kept in Covid-19 quarantine. The Court stressed that there was no indication that the applicant was in need of such quarantine – particularly after an isolation period – which moreover lasted for nearly seven weeks" (European Court of Human Rights, 2022). Court found that in the case with people who can potentially be isolated due to policy of the state, there is no need in forced quarantine period. Decision must be based on circumstances of contact history of convicted and history of his contacts with people and environment.

Particularly in this case ECtHR found that there was no need in extra isolation period for the convicted. Also, Court stressed that such circumstances can pose a threat to health of the individual. "Thus, the Court found that the measure of placing him, for several weeks, with other persons who could have posed a risk to his health in the absence of any

relevant consideration to this effect, could not be considered as a measure complying with basic sanitary requirements" (European Court of Human Rights, 2022).

This particular case is very interesting and serves as a cornerstone for possible and future cases connected to infectious diseases with incubation period. In case if the infection was spread in the facility and among the convicted, state has an obligation to secure health and physical safety of prisoners. "… the Court stressed that, in order to protect the physical well-being of prisoners, the authorities had the obligation to put certain measures in place aimed at avoiding infection, limiting the spread once it reached the prison, and providing adequate medical care in the case of contamination" (European Court of Human Rights, 2022).

Nonetheless, Guide stresses out that provision of safety of prisoners should be conducted within the possibilities of facility and governmental bodies. "The Court also held that preventive measures had to be proportionate to the risk at issue, however they should not pose an excessive burden on the authorities in view of the practical demands of imprisonment, particularly when the authorities were confronted with a novel situation such as a global pandemic to which they had to react in a timely manner" (European Court of Human Rights, 2022).

One of the most challenging types of prisoners for the state is prisoners with mental issues. Within the Article 3 of European Convention of Human Rights every person has to be protected not only physically, but also mentally. When we are talking about prisoners with mental disorders, it creates some difficulties for the state. First of all, those prisoners have a need for special facilities to keep their mental state in stable condition or to conduct actions needed to cure them from their disease. Secondly, there is a need of stuff that will be able to communicate to and help those persons properly. Thirdly, you need to create and analyze some additional legislation in order to protect detainees with mental disorders. Every of those detail creates a complex problem in safeguarding the mental state for mentally disabled people. Therefore, Guide provides some intel on how those people should be treated.

As it was told, state has an obligation to provide people with mental disabilities with special facilities. "In this context, obligations under Article 3 may go so far as to impose an obligation on the State to transfer mentally ill prisoners to special facilities in order to receive adequate treatment (Murray v. the Netherlands [GC], 2016, § 105; Raffray Taddei v. France, 2010, § 63)" (European Court of Human Rights, 2022). Also, Guide on

prisoners` rights outlines specific conditions to facility where imprisoned will be stationed. One of the conditions of stationing of mentally disabled people is to provide them facility where they will not be having any distressful feelings. “It has held that the conditions of detention must under no circumstances arouse in the person deprived of his liberty feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical and moral resistance. On this point, the Court has recognised that detainees with mental disorders are more vulnerable than ordinary detainees, and that certain requirements of prison life pose a greater risk that their health will suffer, exacerbating the risk that they suffer from a feeling of inferiority, and are necessarily a source of stress and anxiety” (European Court of Human Rights, 2022).

The second condition is to determine exactly which disease is planned to be treated. “… it is essential that proper treatment for the problem diagnosed and suitable medical supervision should be provided … An absence of a comprehensive therapeutic strategy aimed at treating a prisoner with mental health issues may amount to a “therapeutic abandonment” in breach of Article 3 (Strazimiri v. Albania, 2020, §§ 108-112)” (European Court of Human Rights, 2022). In order to determine if disease was determined correctly and treatment was adequate ECtHR initiates an analysis of circumstances of treatment.

The Court also has a list of principles how to behave with mentally disabled people which countries should take into account when dealing with such detainees. List includes: “… chronic depression (Kudła v. Poland [GC], 2000); psychiatric disorders involving suicidal tendencies (Rivière v. France, 2006; Jeanty v. Belgium, 2020, §§ 101-114); post-traumatic stress disorder (Novak v. Croatia, 2007); chronic paranoid schizophrenia (Dybeku v. Albania, 2007; see also Sławomir Musiał v. Poland, 2009); acute psychotic disorders (Renolde v. France, 2008); various neurological disorders (Kaprykowski v. Poland, 2009); Munchausen’s syndrome (a psychiatric disorder characterised by the need to simulate an illness) (Raffray Taddei v. France, 2010); and disorders suffered by mentally-ill sexual offenders (Claes v. Belgium, 2013)” (European Court of Human Rights, 2022).

In terms of detention, individual can be placed in special facility after some time. This delay can be connected to the procedural mechanism or any other circumstance, which is vital for adequate imprisonment. Therefore, if the placement of mentally disabled individual in specialized facility is conducted with delay, it cannot be seen as violation of Article 3 of Convention on Human Rights, only of the delay was notable. “In this connection, the Court has accepted that the mere fact that an individual was not placed in

an appropriate facility did not automatically render his or her detention unlawful, a certain delay in admission to a clinic or hospital being acceptable if it is related to a disparity between the available and required capacity of mental institutions.

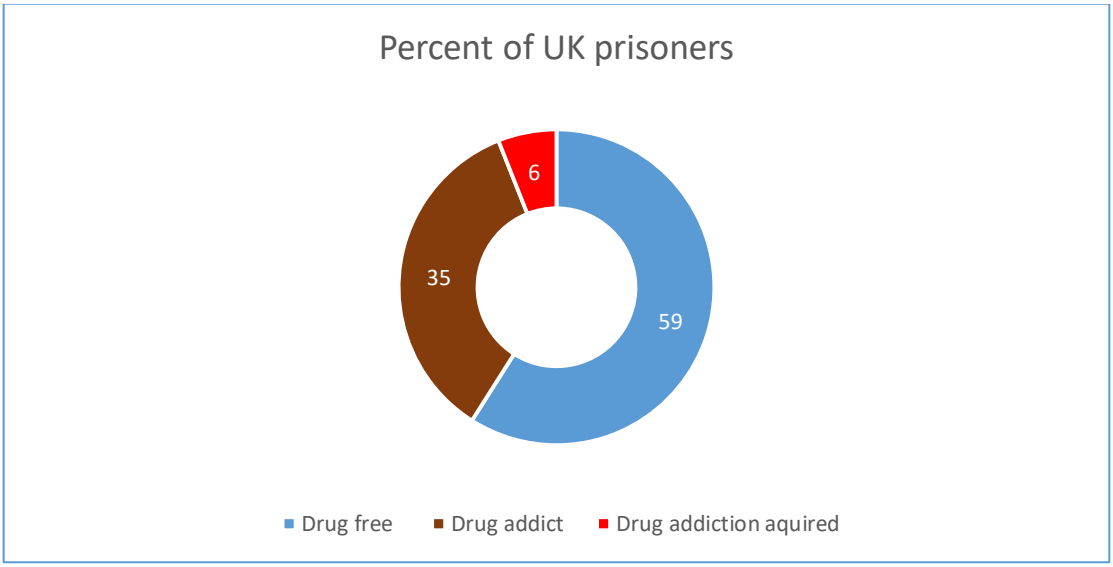
Nevertheless, a significant delay in admission to such institutions and thus in treatment of the person concerned will obviously affect the prospects of the treatment's success, and may entail a breach of Article 5" (European Court of Human Rights, 2022). Moreover, the conditions of detention can change, depending on circumstances of each individual case. "… the Court has held, in the context of "retroactive" preventive detention, that a person's conditions of detention can change in the course of his or her deprivation of liberty, even though it is based on one and the same detention order" (European Court of Human Rights, 2022). That means that if the mental state of convicted has changed in a positive way one can be transferred to general places of serving a sentence.

If the question if convicted was granted appropriate care arises, Court can initiate consultations with medical specialists, evidences provided by each side of proceedings. "In assessing whether the applicant has been provided with appropriate psychiatric care, the Court takes into account the opinions of health professionals and the decisions reached by the domestic authorities in the individual case, as well as more general findings at national and international level on the unsuitability of prison psychiatric wings for the detention of persons with mental health problems" (European Court of Human Rights, 2022). Guide underscores that for the evaluation of adequacy of medical care level of care must exceed level of basic care. "As to the scope of the treatment provided, the level of care required for this category of detainees must go beyond basic care" (European Court of Human Rights, 2022). That means that convicted must not only be provided with general consultations and testing, but some more measures to provide for stabilizing and cure of his disease.

For the evaluation if a place of accommodation of mentally disabled person was satisfactory Guide stresses out that investigation of precise details is required. "The assessment of whether a specific facility is "appropriate" must include an examination of the specific conditions of detention prevailing in it, and particularly of the treatment provided to individuals suffering from psychological disorders. Thus, it is possible that an institution which is a priori inappropriate, such as a prison structure, may nevertheless be considered satisfactory if it provides adequate care, and conversely, that a specialised psychiatric institution which, by definition, ought to be appropriate may prove incapable of providing the necessary treatment" (European Court of Human Rights, 2022).

Drug addicted are considered to be one of the most vulnerable groups of people in detention. The number of drug addicted prisoners in very high, for example we can take words of Former Minister of State of the United Kingdom for Europe and North America, Keith Vaz. In one of House of Commons meetings he underlined that UK has a problem with drug addicted prisoners (UK Parliament, 2013).

Figure 3: **Percentage of prisoners who suffer from drug addiction in the UK, 2013**.



Compiled by the author on the basis of Record of Daily Hansard – Debate in UK Parliament in 2013

Available at:
https://publications.parliament.uk/pa/cm201314/cmhansrd/cm130702/debtext/130702-0001.htm#13070275000006

Those people require special type of treatment due to the fact of their dependency on opiate, alcohol or other type of addiction. Case of McGlinchey and Others v. the United Kingdom underlines the importance of special treatment of drug addicted from the perspective of prison staff. “The Court found that the fact that she had lost a lot of weight and become dehydrated were sufficient indications to the domestic authorities that measures had to be taken to address her heroin-withdrawal symptoms” (European Court of Human Rights, 2022). In another case, Wenner v. Germany, Court found a violation of a prisoner rights. In this case a convicted was a drug addicted with more than 25 years of experience. Even though he was addict, staff of the prison decided not to enable the drug

therapy, therefore he suffered abnormal mental and physical distress. "… the Court held that there had been a violation of Article 3 on the grounds that the authorities, despite their obligation to adequately assess his state of health and the appropriate treatment, had failed to examine with the help of independent and specialist medical expert advice, which therapy was to be considered appropriate" (European Court of Human Rights, 2022).

Court underlines that there is a need to have a complete ban on drug in prison facilities, exept drug with medication purposes. This is connected to some accidents of deaths of prisoners due to overdose. Same happened in case Marro and Others v. Italy. Due to possibility of convicted to bring in drugs, which the guard couldn`t have controlled, one of the drug addicts deceased. Nevertheless, government was acquitted due to the fact that every measure to prevent drugs from being carried into prison or cell were applied. "The Court acknowledged that while the authorities, in order to protect the health and the lives of citizens, have a duty to adopt anti-drug-trafficking measures, especially where this problem (potentially) affects a secure place such as a prison, they cannot guarantee this absolutely and have broad discretion in the choice of the means to be used. In this context, they are bound by an obligation as to measures to be taken and not as to results to be achieved" (European Court of Human Rights, 2022).

Situation with smokers also causes problem in prisons. Information provided by World Health Organization shows that almost 9 out of 10 males in prison are smokers (World Health Organization, 2022). This causes problem for people who don`t smoke. Due to high density of smokers in prison, prisoners who don`t smoke can suffer health issues due to passive smoking. There is no common policy for countries-signatories of European Convention on Human Rights, therefore it can lead to situation where smokers will be placed in the same cells as non-smoking detainees. This caused and still causes a lot of application to the ECtHR concerning the possible violation of Article 2 and 3 of European Convention on Human Rights.

For example, Guide on prisoners` rights demonstrates us two scenarios. "… in a case where a prisoner non-smoker was placed in an individual cell and where smoking was allowed only in a common TV area, the Court did not consider that a health issue related to passive smoking arose (Ibid.). By contrast, in a case where a prisoner non-smoker 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, the Court found a violation of Article 3 of the Convention (Florea v. Romania, 2010, §§ 60-62)" (European Court of Human Rights, 2022). Guide also obliges states to secure health of prisoners with

health related issues which can be worsened by passive smoking. Therefore, in case Elefteriadis v. Romania European Court of Human Rights states that: "… the State was required to take measures to protect a prisoner suffering from chronic pulmonary disease 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. The authorities had therefore been obliged to take steps to safeguard the applicant's health, in particular by separating him from prisoners who smoked, as he had requested on numerous occasions. That appeared to have been not only desirable but also possible, given that there was a cell in the prison in which none of the prisoners smoked" (European Court of Human Rights, 2022). Furthermore, Guide emphasizes on importance to secure people with health issues form possible passive smoking even for the relatively short periods. "Moreover, the Court found that even the short periods in which the applicant had been held in court waiting rooms with prisoners who smoked had been inacceptable from the perspective of Article 3 of the Convention" (European Court of Human Rights, 2022).

About the health issues and importance to provide secured medical aid Guide has a separate passage on the hunger strike and attitude towards the strikers themselves. The hunger strike itself cannot be perceived as a violation of human rights, but if the state doesn`t provide strikers with medical assistance during the strike itself it can be considered as violation. "In general, where detainees voluntarily put their lives at risk, facts prompted by acts of pressure on the authorities cannot lead to a violation of the Convention, provided that those authorities have duly examined and managed the situation. This is the case, in particular, where a detainee on hunger strike clearly refuses any intervention, even though his or her state of health would threaten his or her life" (European Court of Human Rights, 2022).

If prisoner puts his life in danger by hunger strike, state can and has to act in favor of his interests. Practically, that means that state can take forceful measures and feed detainee against his or her will. ECtHR has an opinion on force-feeding, in which they emphasize that forced-feeding cannot be considered as violation of Article 3 as far as it serves as a method to keep person physically stable. "The Court first observed that "a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The same can be said about force-feeding that is aimed at saving the life of a particular detainee who consciously refuses to take food" (European Court of Human Rights, 2022).

Nonetheless, in cases connected to force-feeding court studies if feeding was adequate and did not cause psychological and physical distress for the detainee. "As regards the forced feeding of prisoners staging a hunger strike, the Court relies on the Commission's case-law according to which forced-feeding of a person does involve degrading elements which in certain circumstances may be regarded as prohibited by Article 3 of the Convention" (European Court of Human Rights, 2022). Therefore, in such cases exists principle of "therapeutic necessity" which establishes a rule that this necessity cannot be viewed as degrading or inhuman.

Even so, Court is obliged to analyze if a set of conditions was taken into account before ruling out the case. "The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist. Furthermore, the Court must ascertain that the procedural guarantees for the decision to force-feed are complied with. Moreover, the manner in which the applicant is subjected to force-feeding during the hunger-strike must not trespass the threshold of the minimum level of severity envisaged by the Court's case law under Article 3 of the Convention (Ibid., § 94; Ciorap v. Moldova, 2007, § 77)" (European Court of Human Rights, 2022).

Sometimes state can sue force-feeding to discourage strikers from continuing the protest. That is the point where state can breach the European Convention on Human Rights by applying extra force to literally force open the convicted mouth to feed him or her. It will be constituted as violation of Article 3 of Convention and would be addressed as torture. "Lastly, the Court was struck by the manner of the force-feeding, including the unchallenged, mandatory handcuffing of the applicant regardless of any resistance and the severe pain caused by metal instruments to force him to open his mouth and pull out his tongue. The Court therefore found that the manner in which the applicant had been repeatedly force-fed had unnecessarily exposed him to great physical pain and humiliation, and, accordingly, could only be considered as torture contrary to Article 3 of the Convention" (United Nations Office on Drugs and Crime, 2019).

The Guide on prisoners` rights provides a plenty of vital information not only for researchers in the sphere of human rights, but also constitutes a good blueprint for national systems and state bodies responsible for prison system. It includes standards acceptable by the European Court of Human Rights, which is the very main Court for most democratic countries of the world. It has a special part dedicated to one of the most vulnerable group of persons who can seek medical assistance – detainees. It clearly describes general principles of medical care applied to prisoners, sets out rules for subgroups in hierarchy of

prison structure and has some recommendations of how should state interact with imprisoned persons on order to secure their rights and freedoms. One of the most important features of the Guide is detailed description of cases investigated by the ECtHR which are relevant for the topic described in the Guide. It describes how should the state build its prison system in order to give as much adequate health protection and security as possible, simultaneously taking into account different circumstances and overall stability of prison system on each country.

Article 3 of European Convention on Human Rights naturally includes all the cases of inadequate medical care, which were submitted to the Court. But the cases themselves can also be divided by their nature, therefore intensity and severity of punishment is dependable on this factor. Mostly, we can observe the cases under which a human being suffered inadequate medical attention or its lack itself due to the activity of state or failure of state to take actions. A concept of such division exists in international law and can be observed as positive and negative obligations of state regarding rights of person (in this case medical care).

2.3 Positive and negative obligations of state concerning medical care

Topic of positive and negative obligations is highly discussed, mostly due to the fact that the state is one of the most important safeguards of human life and health, especially in field of state related issues (prisoners, detainees, etc.). Therefore, ECtHR and most international documents in field of safeguarding person health and freedoms declare an absolute obligation of state to act in favor of people under its jurisdiction. But the thing is that those obligations are divided into two parts: positive and negative.

With the defining of importance of state to act in the interests of people living inside its territory, we also need to define the exact meaning of what are the positive obligations and negative ones. Let`s start with negative obligations, as far as it is easier to identify them and outline their list. Toolkit of the Council of European Union has a definition of negative rights. It defines them as those that "… place a duty on State authorities to refrain from acting in a way that unjustifiably interferes with Convention rights. Most of the Convention rights are framed in this way" (Council of Europe).

From this definition we can clearly see that the main objective of state concerning negative obligations is to refrain from taking some actions. In this case the actions that interfere with obligations under the European Convention on Human Rights. Due to the fact that positive and negative obligations aren`t exclusive for a special branch of international law we can also refer to other sources to define the term, such sources as The United Nations Office on Drugs and Crime, in its definition negative obligation of state "… refers to a duty not to act; that is, to refrain from action that would hinder human rights" (United Nations Office on Drugs and Crime, 2019). They also provide us with the example of how can we define if obligation of state is positive or negative. "For instance, by not returning smuggled migrants to countries where they face risks of persecution, the State will be abiding by the corresponding negative obligation. Importantly, the fulfilment of a negative obligation might very well require positive action. This may include adoption of laws, regulations and standard operating procedures that prohibit push back policies of migrant smuggling vessels found close to the State's maritime border" (United Nations Office on Drugs and Crime, 2019).

In this particular case we see how a state can avoid taking actions which can be considered as endangering for human health and security. Technically, state can violate its own law by abiding the international norms, nevertheless most of states today have a

principle of rule of international law over national. But not only that, this example shows how close the positive and negative obligations truly are.

On top of that, analyzing the work "Positive Obligations under the European Convention on Human Rights" by Matthias Klatt we can observe the presence of Four Proportionality Rules (Klatt, M., 2014). In this scientific research Mr. Klatt discusses that whether the negative obligation was violated can be identified within the spectrum of specific conditions. "The most important condition is the proportionality test. This test consists of four rules, namely legitimate ends, suitability, necessity, and proportionality in its narrow sense" (Klatt, M., 2014). That means that in order to analyze if the violation was taking place first of all we need to determine what was possible to be done physically and legally. "The legal possibilities are essentially defined by competing principles. Balancing, then, consists in nothing else than optimization relative to competing principles" (Klatt, M., 2014). In his argumentations Klatt uses formula named by legal philosopher and jurist Robert Alexy, known as The Weight Formula. "The Weight Formula is an attempt to picture the structure of balancing with the help of a mathematical model. It is a complete description of the structure of balancing of two competing principles Pi and Pj. Robert Alexy has first introduced this formula in his postscript to A Theory of Constitutional Rights" (Klatt, M., 2014).

$$W_{i,j} = \frac{I_i \cdot W_i \cdot R_i^e \cdot R_i^n}{I_j \cdot W_j \cdot R_j^e \cdot R_j^n}$$

Formula 1: Weight Formula

In order to explain the formula, we can refer to the work "On Robert Alexy's Weight Formulafor Weighing and Balancing" by Lars Lindahl. In this work we can see that formula is described as: "To elucidate the structure of weighing and balancing, Alexy introduces mathematical weight formulas. In the weight formula called "complete", the comparative weight of the argument supporting application of one principle P1 is set in relation to the weight of the argument supporting application of another principle P2. This relation is expressed by using the mathematical operations of division and multiplication of numbers. The relation between the weight of the argument for P1 and the weight of the argument for P2 is expressed as the quotient of two numbers. Multiplication between numbers is used in the numerator and the denominator of the quotient" (Lindahl, L., 2016).

Basically, theory suggests that we need to analyze how does the potent and possible violations can impact two different by the scale of formula rights and which one can be determined as more vital law than the other. To make the explanation easier, we can compare the violation within the European Convention on Human Rights of 1950 of different rights. Theoretically, there are no hierarchy of rights prescribed in the Convention and we cannot make a list in order which will determine the place of each right. Practically, we cannot even compare the situation where one human being is deprived of property and other is deprived of his or her life. In order to understand how can we determine what kind of violation against which right can be seen as more aggressive/punishable we are able to use the Weight Formula.

But even though, Weight formula is far from ideal, therefore to understand how to deal with practices of breach of persons` right in terms of positive and negative obligations Klatt underlines that some changes are to be done. "From the jurisdiction of the German Federal Constitutional Court, Alexy has developed a three-grade or triadic scale, consisting of the stages light (l), moderate (m) and serious (s).[27] The use of this scale is possible for intensities of interference with Pi as well as with Pj. Pj often represents the principle a state calls upon to justify a measure interfering with a human right Pi. It is important to note that the triadic scale is applicable to both pairs of variables, Ii and Ij as well as Wi and Wj.[28] The triadic scale can be facilitated by the use of number, following the geometrical sequence of 2^0, 2^1, 2^2, that is, 1, 2, and 4. The geometrical sequence has the advantage of taking account of the fact that the power of principles increases overproportionately with an increasing intensity of interference.[29]" (Klatt, M., 2014).

Understanding the complexity and meaning of negative obligations, plus defining the formula which can help us to understand how to evaluate the weight of each law we can continue to the positive obligations of the state. In case of positive obligations, we can define them as obligations which "… place a duty on State authorities to take active steps in order to safeguard Convention rights. In most cases these are not stated explicitly in the text but have been implied into it by the Court" (Council of Europe).

The United Nations Office on Drugs and Crime defines positive obligations more as a set of rules or actions to be taken. For example, the Office describes positive obligations in such way: "Positive obligations require national authorities to act; that is, to take necessary measures to safeguard a right or, more precisely, to adopt reasonable and suitable measures to protect the rights of the individual" (United Nations Office on Drugs and Crime, 2019). In turn, Human Right Handbook No. 7, provided by Jean-François Akandji-

Kombe, has its own definition of positive obligations, which must be one of the most satisfactory and simple. “In the Belgian linguistic case,[6] the applicants, taking this as the basis for their complaints, argued that such obligations should be recognised as “obligations to do something”. The Court declined to endorse this judicial view and preferred to find that the provision relied on – Article 2 of Protocol No. 1 – required by its very nature regulation by the state” (Jean-François Akandji-Kombe, 2007). Therefore, the easiest method to describe positive obligations is to pursue them as an obligation to do act, while in case of negative obligations is to restrain from doing something.

Even though, we need to clearly understand that the list of both positive and negative obligations is unlimited, with possibility to develop on in connection with implementations of new laws and principles, therefore each case of breach of positive and negative obligations must be reviewed personally and deeply. “As a consequence of the general principle of attribution, which means that the Court is not competent to protect rights which do not have their basis in the Convention,[11] the European judges have endeavoured to link every positive obligation to a clause of the Convention. Case-law has evolved in this respect” (Jean-François Akandji-Kombe, 2007).

Positive obligations are presumably more important and hard to execute than negative ones. As an example we can see the observations made in Handbook. “… in the Assanidzé judgment, the Court found that Article 1 implied and required the implementation of a state system such as to guarantee the Convention system over all its territory and with regard to every individual; and in the Ilaşcu judgment it considered that in cases where part of its territory, by reason of a separatist regime, escaped its control and authority, the state nevertheless continued to bear in respect of the population in that territory the positive obligations placed on it by Article 1: it was required to take the measures necessary, on the one hand to restore its control over that territory and, on the other, to protect the persons living there” (Jean-François Akandji-Kombe, 2007).

From this point of view, we can clearly see the situation as quite ambiguous. From one perspective, the control over the portion of country land was lost, therefore national bodies cannot secure the wellbeing of its nationals on the lost territory. From the other point, state has to take active measures to defend the country from the separatists in order to restore safe environment for population and, in the same time, it has to protect persons who are under occupation and which cannot be even physically accessed.

One of the most confusing things in the theory of negative and positive obligations is that they even can overlap. “For example, where the state is blamed for the breakdown in a family relationship as the result of an adoption which was possible only because, on the one hand, domestic law afforded the biological father insufficient protection and, on the other hand, the state was itself a party to the adoption procedure through the competent bodies.[34] Another example is where it is alleged that the state has prevented an owner from enjoying his possessions, both actively through obstructive manoeuvres and practices to circumvent the law, and passively through lack of due diligence” (Jean-François Akandji-Kombe, 2007).

Case of overlapping can also be observed in other situations, especially if we aren`t sure what type of obligations was failed to be provided. “The applicants, who lived close to London Heathrow international airport, complained of unacceptable noise levels which they considered constituted a violation of their right to private life as secured by Article 8, and argued that the state was responsible for this. The Court chose in this case not to decide the question whether the applicants were complaining of a violation of a negative obligation or of a positive obligation… For there to be a violation of a positive obligation, the state does not necessarily have to be entirely passive. It may have intervened, but not have taken all the necessary measures[39] and this will be deemed a “partial failure to act”[40] which renders the state liable in terms of its positive obligations” (Jean-François Akandji-Kombe, 2007).

In this case we can observe how does the Court analyze the situation from its perspective. The main point which is underlined by ECtHR is that the Court tries to deal with the situation, not define what kind of violation was taking place. Therefore, in case presented earlier we can see that the Court put the main stress on resolving the situation and in the middle of the work they found out what type of state` obligations was violated.

Positive obligation can be seen as highly confusing burden for the state, as it has to act against its own interests sometimes. Mostly, it is connected to the cases where state representatives failed to act, therefore creating a situation where you as a state have an obligation to start investigation against your own apparatus. “The state becomes responsible for violations committed between individuals because there has been a failure in the legal order, amounting sometimes to an absence of legal intervention pure and simple, sometimes to inadequate intervention, and sometimes to a lack of measures designed to change a legal situation contrary to the Convention… The state also has the obligation to protect in the context of its own relations with persons under its jurisdiction. In other words,

it is bound by a kind of "duty of schizophrenia" – the duty to take measures necessary to prevent or punish infringements committed by its own agents, representatives or emanations" (Jean-François Akandji-Kombe, 2007). This sometimes creates a vicious circle, where in case if you as a state choose to refrain from taking active measures to prevent the crime, but in international doctrine you would`ve violated the law if you did it, you can also violate the law by taking active measures after, if your domestic law acts against the interests of international law.

In order to clarify the obligation of state in this sphere, the European Court of Human Rights made a statement which defines that: "the Convention does not merely oblige the higher authorities of the Contracting States themselves to respect the rights and freedoms it embodies; it also has the consequence that, in order to secure the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels. The higher authorities of the State are under a duty to require their subordinates to comply with the Convention and cannot shelter behind their inability to ensure that it is respected" (Jean-François Akandji-Kombe, 2007). We can tractate it as norms under national law – *ignorantia juris non excusat* – which means that even though you as a higher official "didn`t know" about the situation you have the obligation to observe and control your subordinates.

ECtHR divides positive obligations into two separate groups: procedural and substantive. Generally, the types talk for themselves, if you want to define their role, but there is some additional clarification provided by the European Court. "Substantial obligations are therefore those which requires the basic measures needed for full enjoyment of the rights guaranteed, for example laying down proper rules governing intervention by the police, prohibiting ill-treatment or forced labour, equipping prisons, giving legal recognition to the status of transsexuals, incorporating the Convention rules into adoption procedures or more broadly into family law, etc.[50] As for procedural obligations, they are those that call for the organisation of domestic procedures toensure better protection of persons, those that ultimately require the provision of sufficient remedies for violations of rights. This provides the background against which the right of individuals (alleging violation of their rights) to an effective investigation and, in the wider context, the duty of the state to enact criminal legislation which is both dissuasive and effective, must be seen; and also, in the particular context of Article 8, the requirement that parents participate in proceedings which may affect their family life (adoption proceedings, placement of

children, decisions about custody or visiting rights, etc.).[51]" (Jean-François Akandji-Kombe, 2007).

One of the most challenging problems in a sphere of positive obligations is their compliance. First of all, European Union has a common agenda in most spheres of its life, partially including domestic and fully international law. But the main problem is that even though it is stated that the EU has a common policy, on practice this policy fails to be lookalike. "First of all, the underlying spirit of verification is not entirely the same, by reason of the very nature of the obligations in question – the fact that they lead the Court to prescribe measures to be taken by the state, and not just to examine the lawfulness of abstention" (Jean-François Akandji-Kombe, 2007). Therefore, this creates a situation where every country will have generally common, but not in details policy, which in turn creates problems with the assessment of situation for the ECtHR.

One can say that if you want to deal with this problem everything you need to do is impose the same set of rules by one entity that will be granted authority to act in that manner (let`s say European Court of Human Rights). This approach can and will create even deeper confusion: a) it is a lot of work to be done by one entity and even for analysis of all the needed literature a huge chunk of time will be wasted; b) even though EU has a form of common policy it cannot force its members to act against their will or impose laws which will be applied further.

Those are some on the list but not all reasons why there is a problem within the EU on positive obligations, which simultaneously puts ECtHR under pressure. "Being obliged to intervene in the "preserve" of domestic authorities where positive obligations are concerned, it will therefore proceed with a degree of circumspection that is rarely found in the framework of a review of negative obligations, and will seek in particular not to "impose an impossible or disproportionate burden on the authorities".[58] As a result, states enjoy a margin of appreciation here which, although varying from one case to another, is necessarily wider" (Jean-François Akandji-Kombe, 2007).

In dealing with cases ECtHR has a right to investigate if positive obligations were not ruined by the presence of such factor as "public interests. Investigation consists of several phases. The very first phase is an assessment if interest of state in the case. "For example, in the case of Gaskin v. the United Kingdom, where it considered that the reason given by the state for its inaction, namely the confidentiality of the documents on file to which the applicant sought access "contributed to the effective operation of the child-care

system and, to that extent, served a legitimate aim, by protecting not only the rights of contributors ("informers") but also of the children in need of care".[61]" (Jean-François Akandji-Kombe, 2007). In the second stage Court analyzes is the measures taken were adequate and their general possibility to resolve the problem. "It is the outcome of the Court's combined examination of various factors: the importance of the public interest at stake and the state's margin of appreciation, the rule of law and the practice of the states parties with regard to the question at issue – for example, legal recognition of transsexualism[63] or punishment for rape[64] –the importance of the right at issue, the requirement to protect the rights of third parties, etc" (Jean-François Akandji-Kombe, 2007).

Positive and negative obligations are one of the most vital bases for international law. Not only they describe the way of cooperation between national and international institutes of rule of law they also oblige state to act in interests of individual, independently of national norms and standards, set up a set of internationally recognizable rules and criteria to access if the legal and physical, emotional aid was delivered effectively and in adequate manner. Even though those obligations are quite useful and pleasant way to abide the rule of law, they have some flaws in how do they work. For negative obligation it can be a conflict between interests of state to secure national order and to abide inner standards, which can be a result of hundred-years customs and traditions, and international norms, which work in favor of individual. In case with positive obligations, the main problem is comprised with "schizophrenia syndrome", which means the conflict between actions taken by governmental bodies granted the right to use force and bodies who monitor the usage of those – on the one side legal in national but illegal in international law – rights.

Therefore, at the end we are granted to receive a situation where country will have to punish its own apparatus for actions which would be useful for the state itself. To understand the severity of violation of positive and negative obligations researchers and Court can use different methods, including formulas to determine the level of severity. In case of positive obligations, Court has its own rules which it updates regularly. Due to comparatively different levels of clarification of negative and positive obligations Court emphasizes more on Positive obligations, which mean the duty to act in order to secure rights of individual. Positive obligations are more complex and can require different strategies to approach and research, nevertheless, both negative and positive obligations work in complex to secure most of rights and possibilities of individual.

Positive and negative obligations create a system of contemporary obligations of state regarding human rights. But this system isn`t changeless, more looking as a constant with stable happening deviations from the course. Those deviations mean that the system is in a constant change and evolution, a natural process for the human being. It is important to have the system evolve, as far as humanity always tries to discover new views and stances on different problems. If the system stays constant it will lead to problems with mindset of people working within it, therefore some challenges which will lead to possibility of system cease to exist itself. Therefore, we are in dire need to analyze not only the system which is in our sights, but also try to peek into future developments and challenges.

CHAPTER III – ECTHR AND MEDICAL CARE: TRENDING AND FUTURE

3.1 Experimental, forcible treatment or drug

History of medical treatment and medical protection includes years of evolution of human rights, cases adjacent to this topic and a lot of experiments with new methods of medical care. Some of them are constantly evolving, but most of them are and will be appearing in future. One of those topics is medical treatment and drugs. European Court of Human Rights has a special edition, among other connected to experimental treatment.

Experimental treatment can be used only if there is nothing left from the side of medical treatment and, basically, the only chance for patient to survive can be an experimental method of curing or some drugs under development. Also, there is a list of demands from the side of company which provides experimental treatment or drug. It is regulated within the norms of Integrated Addendum to ICH E6(R1): Guideline for Good Clinical Practice. The first step for treatment to be implemented has to be approvals from officials. This includes 3-step approval: Approval by the Steering Committee for public consultations, Approval by the Steering Committee and recommendation for adoption to the three ICH regulatory bodies and Approval by the Steering Committee editorial corrections (ICH, 2016). That is the initials for research to be implemented.

Next come requirements of this research project. They include: “The IRB/IEC should consist of a reasonable number of members, who collectively have the qualifications and experience to review and evaluate the science, medical aspects, and ethics of the proposed trial… The IRB/IEC should perform its functions according to written operating procedures, should maintain written records of its activities and minutes of its meetings, and should comply with GCP and with the applicable regulatory requirement(s)… Only members who participate in the IRB/IEC review and discussion should vote/provide their opinion and/or advise… The investigator may provide information on any aspect of the trial, but should not participate in the deliberations of the IRB/IEC or in the vote/opinion of the IRB/IEC” (ICH, 2016) and other.

Due to specificity of such experimentation EU needs to control it as much as possible to guarantee and ensure protection of persons which will be the main subjects of such experiments, therefore the initial stage of implementation of research team is quite complicated. Research institute should have its own records, position of investigator, which will be the main recruiter for the team. One of the main responsibilities of research institute is to provide medical care for the subjects of trial. “During and following a subject's

participation in a trial, the investigator/institution should ensure that adequate medical care is provided to a subject for any adverse events, including clinically significant laboratory values, related to the trial" (ICH, 2016). Among the main terms specifications also conclude randomization procedures, information and details about sponsors, etc.

Experimental treatment can be crucial, therefore some families apply to it. Of course, it creates some misunderstandings with legislature, especially due to the fact that such research programs aren't unified and applied equally. As an example we can take some cases shared by ECHR Factsheets. In case Durisotto v. Italy (application no. 62804/13) we can observe a situation of this type of conflict between legislation and principles.

This case is about a family of Italian nationals, children of which was suffering from a degenerative cerebral illness. In order to cure his daughter, Mr. Durisotto (the applicant) requested the state to provide him with a possibility to apply a method called "Stamina" method to his daughter. At first his request was approved, but sometime later he got a rejection from a state to conduct such scheme of treatment. "On 3 May 2013 Brescia Hospital asked that Mr Durisotto's request be dismissed, and submitted that the legal conditions had not been satisfied. In particular, Ms M.D. had not begun the treatment prior to the date on which Legislative Decree no. 24/2013 entered into force, namely 27 March 2013, as required by that decree, which governed patient access to the method in question. By a decision of 11 July 2013, the court rescinded its previous decision and dismissed the applicant's request" (European Court of Human Rights, 2014). After the method of treatment was rejected by a state Mr. Durisotto decided to apply for ECHR. He saw a violation of Articles 2, 8 and 14 taking place in this situation. After the Court reviewed the case it came to the conclusion that the possible violation of Article 8 was unfounded: "It followed that the interference in the right to respect for Ms M.D.'s private life, represented by the refusal to grant the request for medical therapy, could be considered as necessary in a democratic society.

The complaint under Article 8 concerning the prohibition on Ms M.D.'s access to the compassionate treatment requested by her father had therefore to be rejected as manifestly unfounded" (European Court of Human Rights, 2014), violation of Article 14 was ill-founded: "The prohibition on access to the "Stamina" method, imposed by the court in application of Legislative Decree no. 24/2013, pursued the legitimate aim of protecting health and was proportionate to that aim. The court's decision had been properly reasoned and was not arbitrary. In addition, the therapeutic value of the "Stamina" method had, to

date, not yet been proven scientifically. The fact that certain courts had authorised access to this treatment for persons in a similar state of health to Ms M.D. was not sufficient to amount to a breach of Article 14 taken in conjunction with Article 8 of the Convention. This part of the application had to be rejected as manifestly ill-founded" (European Court of Human Rights, 2014).

One more case concerning experimental treatment, in this particular case drug, can be found in Factsheet. This is a case of Hristozov and Others v. Bulgaria, which includes 10 Bulgarian nationals and possible violation of Articles 2,3 and 8 of European Convention on Human Rights. Most of the applicant were cancer-ill people. They tried many ways of treatment to cure the disease, but none of them worked. Eventually, they found out about "… an experimental anti-cancer product developed by a Canadian company which, according to that company's information, had not been authorised in any country, but had been allowed for "compassionate use" in a number of countries, which meant that those countries could make the product available to patients with a life-threatening disease which could not be treated satisfactorily by an authorized medicine" (European Court of Human Rights, 2012). They referred to this company and they informed the Bulgarian Ministry of Health that they are willing to provide those patients with the product. Nonetheless, the application of such treatment was denied by Ministry of Health. The reason for this decision was their unofficial usage. "The applicants applied to the authorities for permission to use the product, but were each informed by the Executive Medicines Agency, between June and August 2011, that since the experimental product was not yet authorised or undergoing clinical trials in any country it could not be authorised for use in Bulgaria under the applicable provisions. The Bulgarian Ministry of Health, on appeal by some of the applicants, confirmed the agency's position. The Bulgarian Ombudsman, to whom three applicants applied, also essentially confirmed that position." (European Court of Human Rights, 2012).

The Court found no violation under Article 2 of the Convention due to the fact that state can regulate such kind of treatment in order to secure life of patients of hospitals. Also, ECHR found that Article 2 doesn`t regulate cases connected to access to unauthorized medicine. Also, Court underlined, that: "under European Union law this matter remained within the competence of the member States and that European States dealt differently with the conditions and manner of providing access to unauthorised medicinal products. There had therefore been no violation of Article 2" (European Court of Human Rights, 2012).

Regarding the possible violation of Article 3 Court found that the situation in this case wasn`t equal to such when people with illness aren`t provided required medical treatment due to the failure of state. In this case the level of severity of suffering was insufficient. "It was true that the Bulgarian authorities' decision, in as much as it had prevented the applicants from resorting to a product which they believed might have improved their chances of healing and survival, had caused them mental suffering, especially in view of the fact that the product was available on an exceptional basis in other countries. However, the Court did not consider that the authorities' refusal had reached a sufficient level of severity to be characterised as inhuman treatment. Article 3 did not oblige States to alleviate the disparities between the levels of health care available in various countries.

Lastly, the Court did not consider that the refusal could be regarded as humiliating or debasing the applicants. There had accordingly been no violation of Article 3" (European Court of Human Rights, 2012). In case with possible violation of Article 8, Court underlined that "… the complaint concerning the regulatory limitation on the applicants' capacity to choose the way in which they should be medically treated with a view to possibly prolonging their lives clearly fell to be examined under Article 8" (European Court of Human Rights, 2012).

Due to the fact that experimental treatment can pose a threat to security and health of person undergoing treatment the Court found out that there can be a possible conflict between interests of individual and society. "… to ensure that the prohibition of the production, importation, trade in, or use of products which had not been granted authorisation would not be diluted and circumvented; and to ensure that the development of new medicine would not be compromised by, for instance, diminished patient participation in clinical trials. All of those interests related to rights guaranteed under Articles 2, 3 and 8 of the Convention" (European Court of Human Rights, 2012).

Even though at the moment of proceeding there were cases when experimental treatment was approved by some European states, there was no official statement of such support, only some precedents. ECtHR found that this question is to be regulated to not to harm people who are ill to the point where it threatens their lives. Therefore, Court ultimately found that in this particular case a question if Article 8 of the European Convention on Human Rights was violated can be rejected, as far as State has a possibility to regulate inner rules of experimental medication and treatment and Bulgarian

representatives have chosen a balanced solution between threat to individual and possible benefits.

As far as we can observe from the two cases provided earlier, experimental medication and experimental drug medication is still on stage of development and has a chance to be implemented in huge volumes in future. Even though experimental medical treatment can be overviewed as a case of last resort, due to its natural uncertainty it can cause more harm to the patient than benefits. Therefore, a careful implementation and observance of this field of medical care is needed. Moreover, not EU nor other world has a common policy regarding experimental treatment. That means that we can expect to not to have a build-up of institute of experimental treatment in nearest future, which gives ECtHR a chance to regulate this question long before it become a common policy and common type of cases for the Court.

With the development of human rights, the development of exclusive groups of individuals` rights became a real practice. It is mostly connected to individuals who were suffering some limitations in rights in past and done in order for them to regain those rights and to secure them in case of their comparative fragility. One of main groups to be represented in such cases are minors and minorities, therefore we should analyze and make a research of state of their rights and what do we expect to happen in future.

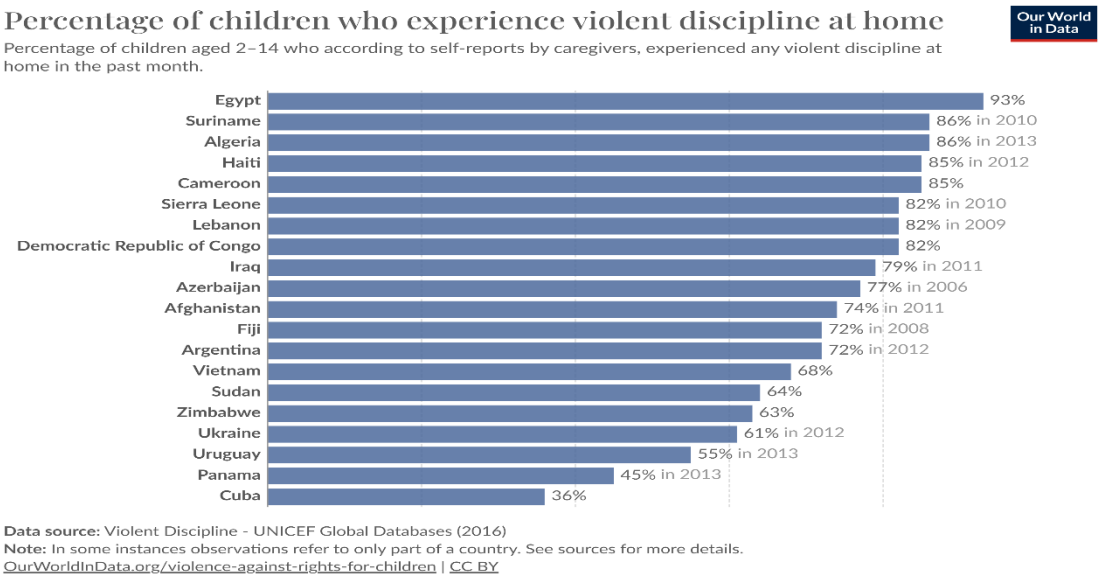
But people who can be testers of medical drugs or people whose life in dependable on medical drugs are not only the group of persons who are to be protected due to their vulnerability. The same is applied to people who are unprotected within terms of their possibility to protect themselves due to psychological and physical status, for example kids. This group of society is quite vulnerable for almost all their existence as minors, therefore norms of international law, including cases of European Court of Human Rights focus on their protection and safety.

3.2 Medical assistance regarding minors

When we are talking about minors we are obliged to use the most important acts to secure child rights - Convention on the Rights of the Child, adopted in 1989. Talking about medical care and attention regarding minors we need to refer to the Article 24 of this document. “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health” (General Assembly, 1989). This means that states-signatories recognize an absolute right of child to be supervised and to have health her or his health secured. We need to underline some specific features of point two and three of Article 24 of Convention on Rights of the Child. They include: “(d) To ensure appropriate pre-natal and post-natal health care for mothers… To develop preventive health care, guidance for parents and family planning education and services… States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children” (General Assembly, 1989).

Even despite all the international norms and domestic instruments to protect children, we can observe a situation where child can be abused or be an object of violence. This is demonstrated by the chart of violence against children and children’s rights (Ortiz-Ospina, E., 2023).

Figure 4: **Percentage of children who experience violent discipline at home.**



Source: Violence against children and children’s rights by Esteban Ortiz-Ospina and Max Roser, Available at: https://ourworldindata.org/violence-against-rights-for-children

As far as this chart shows, we can observe a grim situation with child`s security, as far as from violent discipline a child can suffer lack of medical assistance in terms of psychological assistance, and, in dire situations, even physical.

Now let`s discuss this features in terms of health care. First of all, there are rights and securities granted in Convention not only to child, but to mothers as well. That means that rights of mother are secured not only in term of pregnancy, but also take into account period after the pregnancy and birth itself. This is a key aspect for mother who experienced giving birth as far as it is quite energy consuming and requires some time for rehabilitation. But it also creates favorable conditions for child itself, as far as fast recovery of mother grants child with faster development and security. Secondly, within norms of Convention on Child Rights parents have a chance to plan their existence more effectively, securing safety of child in first place (European Court of Human Rights, 1985). And third one, due to the fact that traditional medicine can be a factor of so-called "survivorship bias" or even result of religious manners which won`t bring any positive changes to the child, it is important to secure minors from ineffective and sometimes destructing traditional practices in order to refer to more secure and helpful modern medicine. Therefore, within the Convention on Rights of Child we can find an information about abolishment of traditional methods of medicine practice. Also, if we look up for a Convention on Rights of Child we can observe that under Article 25 a child is granted with periodic review of his treatment in case if the child is placed within the order of governmental structures in specific facilities. This also includes medical treatment.

Those are the main standards implemented by Convention. Now we can review the practice of the ECtHR in this area. Some problems, like health securities and guarantees to children come in pair with another. It can be deprivation of liberty or inhuman punishment and even torture. In case of B v. Russia, a huge violation of child rights took place.

An applicant was born in 2007 and used to live in Kazan. Applicant was living with his mother until she suddenly passed away when the applicant was 11. By decision of father the applicant was put into an orphanage and stayed there until she was granted a new guardian. "From October 2018 the applicant lived with the family of Ms F.Kh. who was appointed her guardian. The applicant was subsequently placed with the family of Ms S.Ye. who was appointed her new guardian on 21 June 2021. On 10 February 2019, at the request of her guardian, the applicant was interviewed by psychologists (Ms S.Ye. and Ms A.Yu.) from the Centre of Assistance to Children without Parental Care (a State budget-funded institution providing assistance to children without parental care and their non-parent

carers, “the CA”). The applicant told the psychologists that she had been sexually abused by several male individuals” (European Court of Human Rights, 2023).

The governmental side of this story was working with insufficiency and repeatedly made some huge mistakes. As an example, when a victim was interviewed by an investigator for the first time, the process was recorded. Naturally, it was some big challenge for the minor, because even talking about such things can cause serious mental problems. After the tape was taken it “malfunctioned” on the same day, therefore all the intel was lost. “The applicant subsequently had to repeat the story of her abuse by four individuals three more times in each of the three other sets of criminal proceedings (on 17 February, and 4 and 20 September 2019) and to participate in further interviews which were focused on her alleged abuse by one of the perpetrators in the relevant case. She was interviewed twelve times overall (three times in each case) by different investigators (three male and one female). All of the interviews were carried out in ordinary offices of the investigating unit” (European Court of Human Rights, 2023).

It is incomprehensible how much psychological suffering was received by applicant only due to the fact that there were some technical problems at the same day of recording. Not only that, but some serious violation of safety and physical stability were imposed on the applicant. “On 16 and 18 February 2019 two identification parades (for the identification of E.T. and A.M., respectively) took place on the investigating unit’s premises, equipped with a one-way mirror so that the applicant would see the individuals presented for identification including the alleged perpetrators in person, while not being seen by them. During one such parade, apparently because of the investigator’s mistake, A.M. walked into the room where the applicant was, frightening her. The other two suspects were identified by photographs in September 2019” (European Court of Human Rights, 2023).

On the phase of confrontation victim even had to answer some traumatizing questions asked by her potential abusers. “Confrontations were conducted on 8 April 2019 with A.M. (assisted by one lawyer), and on 26 April 2019 with E.T. As well as giving detailed accounts of her sexual abuse in the presence of the alleged perpetrators, the applicant had to answer questions. The alleged perpetrators denied committing the acts alleged by the applicant and she had to state whether she insisted on her statements, which she did. During the confrontation with A.M., a break (for fourteen minutes) was announced at the request of the applicant’s guardian and the psychologists, after the applicant’s face had flushed red and she had started crying. After recounting the story of her sexual abuse

during the second confrontation, the applicant and the psychologist asked for a break which lasted ten minutes. Having answered numerous questions which were asked by two (male) lawyers assisting E.T., the applicant had the same reaction (flushing red and bursting into tears), which prompted a request for another break by her guardian and the psychologist, who then requested halting the confrontation because the applicant was exhausted and not feeling well" (European Court of Human Rights, 2023).

Through the proceeding some more interesting situations were disclosed. First of all, the guardian of the applicant wasn`t notified that the tapes which were taken the first time the victim was interviewed were lost. Secondly, local court granted the applicant right to not to take part in proceedings, as it can endanger her psychological health even more. Despite this, the request to join the four sets of criminal proceedings into one, in order to reduce the number of investigative actions requiring her participation, was rejected because "the proceedings concerned separate crimes".

For the trial proceeding to begin the case was transferred to Privolzhskiy District Court of Kazan. There the applicant was continued to suffer mentally, due to the fact that she was answering the same questions once and once again. "At the hearing on 20 May 2020, the prosecutor submitted the results of the applicant's examination by psychologists on 12 May 2020 (see paragraph 39 below) and reiterated the request for her statements to be read out, arguing that the applicant's examination at the trial might lead to her traumatization… The court stated that it considered it necessary to examine the applicant taking into account "the material examined at the hearing… On 10 June 2020 the applicant was subjected to detailed examination by the prosecutor, the defendant's lawyer and the presiding judge about her sexual abuse by A.M., in the absence of the accused and in the presence of her guardian, her lawyer, an educator and a psychologist. At the psychologist's suggestion, she answered two questions in writing. There was a ten-minute break. The records of the applicant's statements at the preliminary investigation were read out in her presence (at the request of the defendant's lawyer in view of alleged inconsistencies with her testimony at the trial) and her examination continued, including after a request made by the psychologist, supported by the applicant's guardian, for an adjournment or a break because the applicant was being further traumatised. The judge postponed the hearing when the examination reached the limit of two hours" (European Court of Human Rights, 2023). Questions the applicant answered in writing were rejected by the court as far as they were "repeated or irrelevant".

One more thing to underline that there were six investigators in this case and all of them were asking the repeating questions over and over again. "After her repeated interviews and confrontations, from 12 to 19 July 2019 the applicant had undergone inpatient treatment for asthenic-neurotic syndrome, following which further medical treatment and a "protective regime" had been recommended. The application referred to other conclusions and recommendations made by psychologists (see paragraph 39 below). It was deplored that the applicant's reliving the traumatic events through her direct contact with the accused and his lawyer had caused her additional mental suffering" (European Court of Human Rights, 2023). As the trial ended three of the perpetrators were accused and imprisoned, and trial of one was still pending at the moment of application to the ECtHR.

As of forensic examinations, On 19 February 2019 investigator initiated an examination. The applicant was questioned about the assault once again and it was discovered that there were "no injuries and that her hymen was intact". There were also other investigations ordered by investigator, all of them were conducted by Bekhterev psychiatric hospital of the Ministry of Health of the Republic of Tatarstan and found that the emotional distress suffered by applicant wasn`t caused by the potential sexual assault on her. Nonetheless, a medical examination between 17 December 2019 and 17 January 2020 shown that suffering was caused by "her family situation (her mother's death, abandonment by her father and placement in the orphanage) and the current situation relating to the investigation and criminal proceedings", including "unlawful acts committed against her by several individuals".

Within the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which was ratified by Russia in 2013, there were at least some violation of this document. "In cases of alleged sexual abuse of children those obligations require the effective implementation of children's rights to have their best interests as a primary consideration and to have their particular vulnerability and corresponding needs adequately addressed, in order to protect them against secondary victimisation (see N.Ç. v. Turkey, cited above, §§ 95 and 101; and X and Others v. Bulgaria [GC], no. 22457/16, § 192, 2 February 2021). The right to human dignity and psychological integrity requires particular attention where a child is the victim of violence… In the present case, the applicant, a girl aged 12 at the beginning of the investigation in February 2019 (who had lost her mother and experienced placement in an orphanage), had to participate – over the period of one year and seven months – in repeated interviews about her sexual

abuse, to repeat her statements at the places where the abuse had allegedly been committed, to identify and confront the perpetrators in person, and to be questioned again at the trial against one of them" (European Court of Human Rights, 2023).

The loss of first interview was one of the most crucial violations in this case. "Only the first interview was video-recorded, and the recording was lost on the same day (see paragraph 14 above). As the Court has noted previously, in order to keep the number of interviews to a minimum and thus avoid further trauma, the Lanzarote Convention (Article 35) provides for the use of video-recording and recommends that such recordings should be accepted as evidence (see X and Others v. Bulgaria, cited above, § 214)" (European Court of Human Rights, 2023).

Also, the same was the rejection to put all four investigations on one trial. "The Court notes next that not only was the applicant interviewed repeatedly, but she was interviewed by four different investigators, three of whom were male which, according to the applicant, made the experience even more stressful for her (see paragraphs 31, 40 and 51 above). Article 35 of the Lanzarote Convention provides that all interviews with the child should as far as possible be conducted by the same person (see X and Others v. Bulgaria, cited above, § 216). Such a provision is missing in Russian domestic law. There is nothing in the material before the Court to indicate that it was impossible in practice for the same investigator to interview the applicant and for a female investigator to be assigned to that role to alleviate the applicant's concerns (compare R.B. v. Estonia, cited above, § 91)… In addition to the numerous interviews, the applicant had to repeat her statements at the places in which her alleged abuse had taken place, which further exacerbated her trauma. It has not been shown by the authorities that this was necessary, and, indeed, such "verification" of the applicant's statements was done – in respect of the offences allegedly committed by two of the four alleged perpetrators – with the help of photographs… The Court notes that during the above-mentioned investigative activities, the applicant displayed signs of psychological trauma, typical for child victims of sexual abuse, reliving shame, emotional stress, nervous overstrain and fear" (European Court of Human Rights, 2023).

The actions taken by investigators can also be an evidence of possible violations. "Especially striking are the applicant's continued interviews by the investigators and her examination at the trial before the Privolzhskiy District Court of Kazan on 10 June 2020 – after the commission of forensic experts had diagnosed the applicant, in their report of 17 January 2020, with mental disorder in the form of prolonged depressive reaction, developed

as a result of her sexual abuse, tragic family situation and her participation in the investigation and criminal proceedings. Her condition required treatment. Her further participation in the investigation and court proceedings was not recommended" (European Court of Human Rights, 2023). Based on the evidences, ECtHR unanimously found that the violation of Article 3 was taking place.

This case shows how much can an individual be traumatized if the state doesn`t act within the field of international law and provides poor and devastating investigation. Furthermore, this case shows how impactful can be a case of violation of human rights for the minor, which lived through devastating experiences. The fact that the applicant had to take several interviews where she had to retell the details of story over and over again underlines the necessity to protect physical and, which is comparatively more important, mental health of individual which is only forming as a human being.

Minors are usually more fragile in terms of mental and physical endurance, therefore more rules exist for their arrest and detention. Nonetheless, horrible situations happen even in very developed countries, such as France. The case of Popov v. France concerns family of four - applicants Mr. Vladimir Popov and Mrs. Yekaterina Popov née Yakovenko, nationals of Kazakhstan, born in 1983 and 1982 respectively, and their two minor children, who were born in France on 7 April 2004 and 17 March 2007. The couple married on 18th of June 2002. Family originates from Kazakhstan and used to live there until year 2002. In the middle of Summer of 2002 the father of applicant was beaten and hospitalized. Naturally, he filed a complaint, but later he was threatened by locals to withdraw it. His house was set on fire and therefore family decided to flee the country and seek refuge. In the same year, second applicant was beaten by the police when she was returning home. Moreover, police tried to silence her and threatened her, but she managed to escape. Incident happened once again, this time resulting in miscarriage, when second applicant went shopping and returned with scars and blood stains. Therefore, she decided to leave the country on 15th of December 2002 on a two-week visa. The applicant, who stayed in the country, was once again beaten up by the police. "He spent several months in hiding but the authorities found him, confiscated his papers, and threatened to kill him if he did not withdraw his complaint. He too decided to leave the country and joined his wife in France on 19 June 2003" (European Court of Human Rights, 2012).

Both of the applicants applied for asylum in France but were rejected. They tried to appeal for the asylum again in 2006, after having learnt of the murder of the second applicant's father, after his return to Kazakhstan, still the application was rejected. They

also applied for recognition as stateless persons, but were denied the opportunity to be granted status of refugees, due to the fact that controlling organ of immigration of France saw no evidences of them being stateless, due to the fact that they still had Kazakhstan passports in their possession.

After that state bodies of France started to force them to leave the country. "On 21 June 2005 the Ardennes prefecture notified the applicants of its refusal to issue them with residence permits and directed them to leave the country within one month. On 22 November 2005 Mr Popov was arrested during a vehicle check when he was found to be in the country illegally. On the next day he was issued with a removal order and placed in administrative detention in Charleville-Mézières. On 25 November 2005 the liberties and detention judge of the Charleville-Mézières tribunal de grande instance ordered the extension of his detention for fifteen days. On 9 December 2005 the detention was extended for a further fifteen days in order to "enable the enforcement of the removal measure" He was later issued by the court to leave the country, nonetheless, the decision wasn`t enforced and he was released from the detention centre.

The second wave of forcible deportation happened in October 2006. "On 11 October 2006 it was decided to place the applicants in administrative detention but the prefect of the Ardennes ordered them to reside at a specific address, pursuant to Article L. 513-4 of the Entry and Residence of Aliens and Right of Asylum Code (CESEDA). Two attempts to remove the applicants failed as a result of the mobilisation of a support group. The family was thus released. On 29 January 2007 the Ardennes prefecture rejected a new request for the issuance of a residence permit to the applicants. On the same day, a further decision was delivered imposing on them an obligation to leave the country. On 31 May 2007 the Châlons-en-Champagne Administrative Court dismissed their appeal against that decision. On 25 June 2008 they again applied for residence permits. As the prefecture failed to respond, the applicants challenged the implicit rejection decision before the Nantes Administrative Court. However, having subsequently obtained refugee status, the applicants withdrew their complaint" (European Court of Human Rights, 2012). We need to keep in mind that by that time the applicants already had two children.

On August of 2007 the family was apprehended in house of applicant`s mother and taken into custody. Later they were transferred to local airport and were told to leave to Kazakhstan. Luckily for them the flight was cancelled, therefore the adults and minors were transferred to detention center via police van. Conditions of detention were horrifying, including loud noises and no facilities for sleep. "That centre, even though it is mentioned

on the list of centres that cater for families, does not have any real leisure or learning area. Whilst one wing is reserved for families and single women, the atmosphere there is distressing and stressful, with a lack of privacy and a high level of tension. Announcements via loud-speakers reverberate throughout the centre and exacerbate the feeling of stress. The Oissel centre, at the time of the applicants' detention, was not equipped with the basic facilities for the detention of young children (it had metal beds with pointed corners, no cots, just a few toys in the corner of a room, etc.). The only outdoor area is a courtyard, concreted over and with wire netting over the top, and the bedroom windows are covered with a tight grill obscuring the view to the outside ... The eldest child refused to eat in the centre and showed signs of anxiety and stress. The parents had to negotiate with the police to recover their personal belongings, including the milk they had brought for the infant. They were only able to receive one short visit during their detention, as it was not easy to gain access to the centre" (European Court of Human Rights, 2012). On 29 of August they were ordered the extension of the detention measure for fifteen days.

Applicants were once again transferred to the airport and were on a schedule to live the country on 11 September 2007. The plane was once again delayed, therefore the family applied to the court about the conditions of detention. "On 12 September 2007 the liberties and detention judge found that there was no evidence to show that the applicants had deliberately impeded their removal, because the documents concerning the circumstances of the attempt expressly stated that "no refusal to board the plane was recorded on 11 September 2007", and he ordered their release, with the obligation to leave France being maintained. The prefect appealed against that decision but without seeking suspensive effect. The applicants were thus released from the detention centre" (European Court of Human Rights, 2012).

The main problem with this case is that there was a huge risk for life and safety of minors, which were detained alongside their parents. Guide of ICRC "Children and detention" points out on active measures to be taken by state in case of detention of minor. "During detention visits, the ICRC pays particular attention to the treatment and living conditions of children. We strive to ensure that detaining authorities protect children with measures that take account of their specific needs. These include: • protecting children from all forms of illtreatment, including sexual violence; • providing legal advice and practical support; • separating children from adult detainees (except when the child is detained with a family member); • moving children to appropriate, non-custodial accommodation; • maintaining direct, regular and frequent contact between children and their families; •

providing children with adequate food, washing facilities and access to health care; • making sure children can take outdoor exercise every day for as long as possible; • enabling children to take part in education, sport and recreational activities" (International Committee of the Red Cross, 2014). Aside all of that, Convention on the Rights of the Child underlines special requirements for the detention of minors. "(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time" (General Assembly, 1989).

ECHR tried to analyze the case from many perspectives. According to the Council of Europe "…children should not be kept in an enclosed facility, offering little in the way of activities and few, if any, outings, and where conditions were precarious and their safety could not be guaranteed… The Commissioner further observed that the placement of children in a detention centre was incompatible with the New York Convention and French law, which precluded the use of removal orders against minors. He found, however, that a legal vacuum made it possible to place children in detention centres and remove them, on the grounds of concern not to separate them from their families. In his view, the French authorities appeared to completely underestimate the legal and humanitarian problems posed by the presence of children in such centres (§ 255). He added, lastly, that in any event, no children should be detained on the grounds that their parents did not have the necessary papers to remain in France, especially "in places marked by overcrowding, dilapidation, promiscuity (sic) and very strong tensions" (European Court of Human Rights, 2012).

From the other perspective, legislation of other countries of EU also was taken into account. "… minors were detained in the vast majority of EU States (France, Germany, Belgium, the United Kingdom, the Czech Republic, Slovakia, Portugal, Luxembourg, Spain, Latvia, Estonia, Ireland, Greece, Malta and Cyprus). The report presents an exhaustive study of the conditions of reception of vulnerable persons in EU member States. Austria appears to be the only State that never has recourse to detention for minors and Sweden limits it to seventy-two hours. Countries such as Belgium, France and the United Kingdom, however, have recourse to detention almost systematically for accompanied children. The report further shows that in spite of the existence of separate sections reserved for families with children and improved conditions (game rooms, toys, etc.), the fact remains that the lack of privacy, stressful living conditions, food, daily routine, negation of intimacy and the human and material environment are not adapted to children. The

detention centre staff interviewed all felt that children should not be imprisoned in detention centres for the short or long term, because of the negative impact this traumatic experience could have on the children's psychological balance, on their relations with their parents and on the image the children had of their parents whilst in detention" (European Court of Human Rights, 2012).

The guide "Accompanied migrant minors in detention" by ECHR also overviewed this case. In the evaluation part of overview, it is said that "It observed in particular that, while families were separated from other detainees at the Rouen-Oissel centre, the only beds available were iron-frame beds for adults, which were dangerous for children. Nor were there any play areas or activities for children, and the automatic doors to the rooms were dangerous for them. The Court further noted that the Council of Europe Commissioner for Human Rights and the European Committee for the Prevention of Torture and Inhuman or degrading Treatment or Punishment (CPT) had also pointed out that the stress, insecurity, and hostile atmosphere in these centres was bad for young children, in contradiction with international child protection principles according to which the authorities must do everything in their power to avoid detaining children for lengthy periods" (European Court of Human Rights, 2023).

But even considering every aspect of case, European Court of Human Rights found no violation of human rights regarding parents, violation of Article 3 to be precise. At the same time Court unanimously stressed, that there were violations regarding children and their safety. "For these reasons, the Court… Holds, unanimously, that there has been a violation of Article 3 of the Convention in respect of the children, on account of their administrative detention; Holds, unanimously, that there has been a violation of Article 5 §§ 1 and 4 of the Convention in respect of the children, on account of their administrative detention; Holds, unanimously, that there has been a violation of Article 8 of the Convention in respect of all the applicants, on account of their administrative detention" (European Court of Human Rights, 2012).

Within this norms France openly committed violation of Convention on the Rights of the Child. Moreover, it failed to comply with its negative obligations to avoid any physical or emotional damages to minor. It is connected to the fact of low moral state of older children, which refused to eat, and smaller child, in order to feed which parents had to ask for the food they brought with them.

Continuing the topic of health and medical assistance, let's talk about psychological health of minor and relations with its parents. Generally, parents are the most important figures for child. They support it physically and mentally, help the child to understand the world. But sometimes those bounds can be harmful and cause serious mental health problems. Case of E.P. v. Italy (Application no. 31127/96) demonstrates the importance of state intervention in terms of medical assistance in parent-child relation, especially when things go south. The applicant in this case is a woman which referred by the court as Mrs E.P., an Italian citizen of Greek origin. The applicant has a daughter, which was born in 1981. On 3rd of October two of them arrived to Rome by airplane. By the arrival mother referred to medical service of airport because her daughter wasn`t feeling well. "The duty doctor found that the little girl was vomiting and had a temperature of 38º and, accordingly, had her admitted to hospital" (European Court of Human Rights, 1999).

On 15th of October stuff of hospital where the child was on rehabilitation applied to the Rome Youth Court to remove mother from the care of child and intervention of her life until the state of child` health was observed and diagnosed. Within the words of doctor in charge, the mother was acting inadequate: "the applicant had a clinical obsession with her daughter's health. It had also been very difficult to assess the little girl's psychological state because the applicant had constantly interfered with her treatment and medical examinations. The doctor stated lastly that the applicant had attempted to remove her daughter from the hospital in breach (he said) of recommendations already made by the court" (European Court of Human Rights, 1999).

On 22nd of October the Child Support Institute for the province of Rome presented the court with the intel that mother had hospitalized her daughter for several times. The disturbing detail is that she had done it with some extra obsession, hospitalizing her in Athens, Sofia and London previously. The applicant believed that her daughter was seriously ill. Also, the institute reported that when her daughter was in the hospital of Athens, Athens Youth Court had been asked to issue an injunction forbidding the applicant to remove her daughter from the hospital and to open proceedings to have the little girl adopted. Nonetheless, the mother smuggled daughter and ran away with her.

Rome Youth Court published a final overview of this case, where they stated: "(a) that M.-A. should be kept away from her mother; (b) that M.-A. should be discharged from hospital as soon as possible; (c) that she should be placed with a family in which the parents had an emotionally stable relationship; and (d) that she should be settled in a school and take part in social activities" (European Court of Human Rights, 1999). In turn, the hospital

where the child was hospitalized to at the moment formed an option with the statement: "M.-A. had developed a pathological bond with her mother, a bond which met the needs of the mother rather than the child's developmental requirements. The little girl had reacted to the separation from her mother with anxiety and depression but had shown herself capable of overcoming this by relying on other images of women. She had demonstrated great interest in other children of her age and an excellent capacity for socialization" (European Court of Human Rights, 1999).

After that she was temporarily placed at the brother`s family of applicant. On 16th of February 1989 the Milan Youth Court reported that the brother`s family had a serious of problems, therefore it decided to place daughter of applicant in the care of social services on the basis that she should be placed with another family as soon as possible.

"In an order of 16 March 1989, the court suspended the applicant's parental responsibility and ordered that there should for the time being be no contact between the little girl and her mother or the other members of her family. In view of the urgency of the matter, the court did not hear submissions from State Counsel or the applicant. It based its decision primarily on a report on M.-A.'s psychological health prepared by Milan University. According to that report, M.-A. was suffering from anxiety and depression together with an almost neurotic tendency to satisfy her immediate needs. Her perception of the image of her parents was problematic: that of her mother was difficult to identify and that of her father, whom she had never met, aroused fear and remained abstract. The report's conclusion was that the little girl was suffering from serious emotional and relationship problems due to the pathological behaviour of her mother, who had for a long time been her sole source of stimulation. Noting the potential represented by the child's will to develop emotionally in a positive way, the report recommended that she should be placed with an emotionally stable family, be given suitable psychological help and be integrated into a stimulating socio-scholastic environment" (European Court of Human Rights, 1999).

The mother of children tried to take her back, therefore submitted two applications: first on 9th of May 1989, where she pointed out that the only place her daughter lived is Greece and doesn`t understand Italian and referred to Article 20 of the preliminary provisions of the Italian Civil Code, as it had stood at the time, the relationship between parent and child was governed by the law of the mother's country if the father's identity was not known; later she submitted the second application on report of December 1988, where she pointed out that the medical history of the report was provided by sister-in-law,

which hasn`t seen her until arrival in Italy, therefore it`s illegitimate, she also reported that she had voluntarily admitted to Melegnano hospital.

The first hearing of the case was conducted on 29th of November 1989. The second one was postponed to 22 March 1990. During the second hearing phase doctor which made a diagnosis on mother was examined. He pointed out that "he had obtained his information on the applicant's recent past directly from her but that the general information about her life had been supplied by her sister-in-law… applicant's sister-in-law had at first thought it desirable for the applicant to stay in hospital and only later, when the doctor had asked her to think of an alternative, had suggested that the applicant should return to Greece… diagnosis of chronic psychosis had been based on the information provided by the sister-in-law and acknowledged that he had never asked the applicant if she had had other children or any abortions." (European Court of Human Rights, 1999).

The final hearing took place on 31 October 1990 where the court found that the bench had been improperly composed. That application was allowed and the order in question annulled. In that matter the court issued a new declaration within which the girl was available for adoption. In turn, applicant lodged an application with statement that the diagnosis on December 1988 was incorrect and agreed to be supervised by social services. She also filed a number of medical diagnosis among which: "a certificate of 3 September 1986 from the medical faculty of Athens University certifying the existence of an unspecified medical problem; (b) another certificate from the same faculty dated 12 December 1986 stating that the little girl's immune system was deficient and recommending that she should not be vaccinated, should avoid any contact with other children who might be carrying viruses and should not be sent to school; (c) a certificate of 30 December 1986 from a doctor in private practice recommending regular medical and pharmaceutical treatment and a change of climate; (d) a certificate of 2 September 1988 from another specialist in private practice diagnosing infections of the digestive and respiratory organs and prescribing the use of oxygen at home during attacks" (European Court of Human Rights, 1999).

Through March 1991 to January 1992 a number of witnesses have their evidences. Applicant complained that the final hearing was adjourned to April 1993 and by that time she wasn't able to contact her daughter to re-establish relationship with her, but the complaint was rejected.

The court underlined that this case is one of the hardest cases court had ever to solve. The court appealed that mother smuggled child from hospital in Greece, emphasised that the report which it had commissioned on M.-A. had established that she had never had any serious medical problem until 1988, placed particular emphasis on the fact that the report of 15 October 1988 from the Rome hospital referred to aspects of the relationship between the applicant and her daughter which were extremely similar to those noted just a few days earlier, on 30 September, by the doctor from the Athens hospital, aspects which had led the latter to notify State Counsel's Office at the Athens Youth Court. Also, court underlined that the girl "… who had arrived in Italy pale, sad, with numerous decayed teeth and difficulty in walking – despite constant treatment from her mother for health problems which were really not serious – was now a happy, healthy little girl" (European Court of Human Rights, 1999).

Applicant appealed that every time she referred to hospitals she had a good reason to do it. "The Milan Court of Appeal (Youth Division) dismissed the applicant's appeal in a judgment of 2 June 1994, deposited with the court registry on 29 July 1994. The court of appeal placed emphasis on, inter alia, the importance of the fact that a doctor from the Athens hospital had sought to inform State Counsel's Office at the local court of the seriousness of the little girl's situation, and on the significant circumstance that an identical step had been taken by the doctor at the Rome hospital. The court also found that the expert reports which the applicant had commissioned could not diminish the weight of those prepared for the court, given the general nature of the contents of the former and their lack of specific observations. Nor had the testimony favourable to the applicant been such as to lead to a different conclusion from that set out in the thorough expert reports ordered by the court, since that testimony had concerned only limited contact with the applicant and her daughter and therefore did not go beyond appearances.

The court of appeal held, lastly, that it was unnecessary and undesirable to hear evidence from M.-A. again as she had already been questioned at length by the court-appointed expert and that examination had shown that the little girl had already made her choice from a psychological point of view" (European Court of Human Rights, 1999).

Applicant to the ECHR filed a complaint regarding possible violation of Articles 6 and 8 of European Convention on Human Rights.

Regarding the violation of Article 6, applicant pointed out that the overall period of trial was too lengthy and violated her rights. In this case the Court found out that "The

period to be taken into consideration commenced on 26 October 1988, the date on which the Rome Youth Court intervened for the first time by ordering M.-A. to be temporarily placed with the applicant's brother's family, and ended on 24 October 1995 when the Court of Cassation's judgment of 7 June 1995 was deposited with the court registry. It therefore lasted seven years. The Court recalls that it held in four judgments of 28 July 1999 (see, for example, the judgment in the case of Bottazi v. Italy, to be published in Reports of Judgments and Decisions 1999, § 22) that there was in Italy an accumulation of breaches of the "reasonable time" requirement constituting a practice contrary to the Convention. It also recalls that, since the proceedings in this case concerned the custody of a child, particular celerity was required (see, mutatis mutandis, the Johansen v. Norway judgment of 7 August 1996, Reports 1996-III, p. 1010, § 88). Having examined the facts of the case in the light of the arguments put forward by the parties and having regard to its case-law in this field, the Court considers that the length of the proceedings failed to meet the "reasonable time" requirement and constitutes a further example of the practice referred to above. Accordingly, there has been a violation of Article 6 § 1" (European Court of Human Rights, 1999).

Regarding the violation of Article 8, applicant underlined the part 1 of Article "Everyone has the right to respect for his private and family life, his home and his correspondence". In its decision, Court found that "The Court recalls that a fair balance must be struck between the interests of the child and those of the parent… The Court notes that a number of experts concluded that the applicant was suffering from a psychological disorder which manifested itself primarily in a vicarious hypochondriac obsession centred on her daughter and by "over-protective" tendencies where the child was concerned. It was, moreover, established that the applicant, sensing a threat of her daughter being taken away from her, twice removed her from two different hospitals against medical instructions – first in Athens and then in Rome – in an apparent attempt to flee. Furthermore, the Italian authorities found that the applicant had never shown herself willing to call her own behaviour into question or to acknowledge her … The Court recalls, however, that taking a child into care should normally be regarded as a temporary measure, to be discontinued as soon as circumstances permitted, and any measure of implementation should be consistent with the ultimate aim of reuniting the natural parent with his or her child … from the moment at which the authorities began to intervene, the ban on contact between the applicant and her daughter has been a total one and no encounter between them has ever been arranged, despite the mother's repeated requests for permission to meet her daughter,

if only “on neutral ground and in the presence of social workers.” (European Court of Human Rights, 1999). Taking everything into account, the Court found that there has accordingly been a violation of Article 8 of the Convention.

As far as we can see from practice, the Court can decide on its own if the applicant had a point in the situation or not. In this case, Court found that there definitely were violations of rights of applicant. It solved the case in that way even despite the concerns of state, which were based on excessive obsession of mother of the child.

In this case Court found that mothers` rights of the minor were violated, but that is the particular case. Under other conditions the impact of overly obsessive parent can cause major psychological trauma for the kid, therefore country can protect him or her via medical assistance with restraining order for the parent, which happened in the case of E.P. v. Italy.

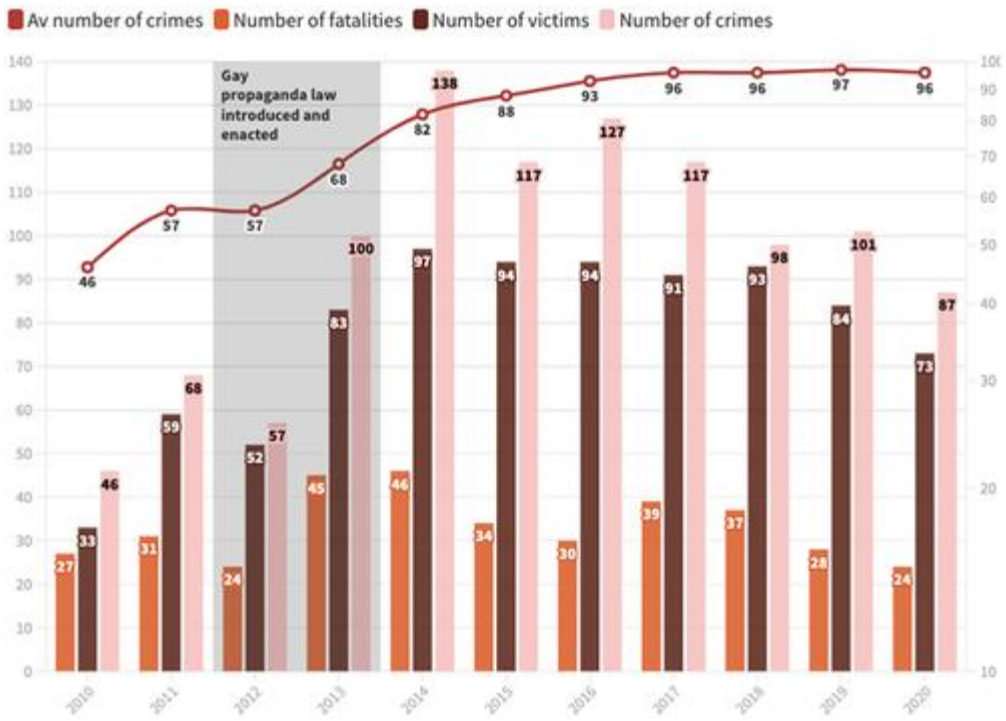
Just like in case of minors, different groups of people are in need of psychological assistance and guarantees of physical safety. Minorities such as LGBTQ+ people were witchhunted for almost all of their existence, until the second half of 20th century, when rights of such persons were recognized by huge number of countries. Therefore, we can easily say that an institute of people who belonged to LGBTQ+ community was nowhere to be found until 20th century. It caused a lot of drama, including prejudice, ill-treatment of those people even nowadays. Therefore, international law introduced a way to secure such minority in a way of implementing new laws, granting them worldwide recognition. Due to the fact that the question of recognition and normalization of LGBTQ+ was a hard situation to deal with, especially due to the fact that government of a number of countries still continued to discriminate LGBT community ECtHR took a deep dive into this problem, creating a set of decisions regarding this question.

3.3. Medical assistance regarding minorities (LGBTQ+).

There are some categories of people, who are extremely vulnerable in both physical and emotional plan and therefore require special treatment. Those are considered to be LGBTQ+ people, Migrants, Roma, people who can suffer from their ethnicity or sexual orientation. In this case a country is obliged to implement some extra protection over those people.

LGBTQ+ people were the subject of huge amount of persecutions and are one of the most targeted categories of people still. As an example we can see the situation with Russian Federation. The laws introduced in this country were aimed at discriminatory policy of this state regarding LGBT persons and worsened throughout decade of 2010-2020. The chart below describes how vulnerable are those people today in modern Russia (Katsuba S., 2023).

Figure 5: **Number of hate crimes against LGBTQ in Russia (2010–2020).**



Source: The Decade of Violence: A Comprehensive Analysis of Hate Crimes Against LGBTQ in Russia in the Era of the "Gay Propaganda Law" (2010–2020) by Sergey Katsuba

Available at: https://www.tandfonline.com/doi/full/10.1080/15564886.2023.2167142

Therefore, in European Union exist a lot of norms to protect them. One of such norms is a Recommendation CM/Rec(2010)5 (full name is "Recommendation CM/Rec(2010)5 of the Committee of Ministers to member states on measures to combat discrimination on grounds of sexual orientation or gender identity"). This recommendation is targeted at means to relieve LGBTQ+ from discrimination on basis of their sexual preferences. Recommendation CM/Rec(2010)5 underlines a list of fundamental human rights, such as "… the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex… Recognising that non-discriminatory treatment by state actors, as well as, where appropriate, positive state measures for protection against discriminatory treatment, including by non-state actors, are fundamental components of the international system protecting human rights and fundamental freedoms… Considering the case law of the European Court of Human Rights ("hereinafter referred to as "the Court") and of other international jurisdictions, which consider sexual orientation a prohibited ground for discrimination and have contributed to the advancement of the protection of the rights of transgender persons… Having regard to the message from the Committee of Ministers to steering committees and other committees involved in intergovernmental co-operation at the Council of Europe on equal rights and dignity of all human beings, including lesbian, gay, bisexual and transgender persons, adopted on 2 July 2008, and its relevant recommendations" (Council of Europe, 2010). This recommendation is centered around basic human rights, such as right to life, security and protection from violence, freedom of association, freedom of expression and peaceful assembly, right to respect for private and family life, health, housing, education and others. This is one of the most important measures, which protect LGBTQ+ rights.

Concerning the health of a LGBTQ+ person, ECHR has its own policy, which it recommends to member countries. It can be easily projected through case of Y.Y. v. Turkey (Application no. 14793/08). This case revolves around a transgender person. At the time the application was lodged was recognized in civil law as female, but within his own preferences, this person was identifying himself as a male.

Applicant referred to the case due to the fact that he wasn`t granted an authorization to undergo gender reassignment surgery, even despite the fact that even since he was a child, regarded himself as male rather than female and for that reason had been receiving psychological counselling since childhood. At the time of his application for the gender

reassignment surgery he already was in relations with woman for four years, there were cases when due to his psychological state he attempted to commit a suicide, etc. In early years of life applicant was behaving as a boy rather than a girl: "The applicant's mother stated that as a child her daughter had played mainly with boys and as an adolescent had told her mother that she felt more like a boy and wanted to be one… The applicant's older brother also said that his sister had played with boys when she was a child, had started to behave like a boy during adolescence and had had girlfriends, and that she had been determined to undergo gender reassignment by means of surgery. She had made several suicide attempts and was still in therapy. As far as the applicant's brother was aware, the doctors had decided to go ahead with the operation" (European Court of Human Rights, 2015).

In accordance with many comities and reports a claimant was diagnosed to have rather female prototype than male, nevertheless, claimant rejected those statements and on 18th of July 2006 appealed on points of law against that judgment. "In his pleadings the applicant's lawyer stressed that his client had considered himself since childhood as male rather than female and that this belief was not a mere whim. The applicant had undergone a lengthy course of psychotherapy following which the doctors had concluded that he was transgender and that, from a psychological perspective, it was advisable for him to live as a man" (European Court of Human Rights, 2015). Also, domestic court demanded a person which wants to switch the gender to male not to be able to procreate. As an answer to this, a lawyer of applicant underlined that this was a mere biological fact and the Civil Code of Turkey, which provided this article, should be deleted from the Code itself.

The application to the Appeal court was sent but gave no results. Therefore, on 18th of June 2007 the applicant's lawyer lodged an application for rectification of that decision. "In his pleadings he submitted that none of the grounds of appeal advanced by the applicant had been taken into account, and that no comment had been made on the official documents and reports included in the file. The lawyer also contested the use of the report of 11 May 2006 prepared by the gynaecology and obstetrics department of Çukurova University's medical faculty as the basis for rejecting the applicant's claims. He argued in that regard that the report in question did not have the status of an expert report and had been drawn up following a purely superficial examination of his client's genital organs that was insufficient to establish his ability to procreate. Even assuming that the various medical reports had sufficed to establish that his client was capable of procreating, the only gender

with which his client could identify from a physical and psychological perspective was male" (European Court of Human Rights, 2015).

In its decision court found that the initial question of this case concerned the defiance of claimant identity, "one of the most basic essentials of self-determination", therefore underlying that the outcome of the case can play a huge role in questions raised by the case in future. The Court stated: "The possibility for transgender persons to undergo gender reassignment treatment exists in many European countries, as does legal recognition of their new gender identity. It further notes that the regulations or practice applicable in a number of countries that recognise gender reassignment make legal recognition of the new preferred gender contingent, either implicitly or explicitly, on gender reassignment surgery and/or on the inability to procreate ... in accordance with the principle of subsidiarity, it was primarily for the Contracting States to decide on the measures necessary to secure Convention rights to everyone within their jurisdiction and that, in resolving within their domestic legal systems the practical problems created by the legal recognition of post-operative gender status, the Contracting States had to be granted a wide margin of appreciation… However, the Court has previously held that it attaches less importance to the lack of evidence of a common European approach to the resolution of the legal and practical problems posed than to the existence of clear and uncontested evidence of a continuing international trend in favour not only of increased social acceptance of transgender persons but of legal recognition of the new gender identity of post-operative transgender persons… It further reiterates that the right of transgender persons to personal development and to physical and moral security in the full sense enjoyed by others in society cannot be regarded as a matter of controversy requiring the lapse of time to cast clearer light on the issues involved" (European Court of Human Rights, 2015).

Furthermore, Court underlined that the requirement to being able to procreate isn`t suitable: "In the Court's view, this requirement appears wholly unnecessary in the context of the arguments advanced by the Government to justify the regulation of gender reassignment surgery (see paragraphs 74 and 75 above). Accordingly, even assuming that the reason for the rejection of the applicant's initial request to undergo gender reassignment surgery was relevant, the Court considers that it cannot be regarded as sufficient. The interference with the applicant's right to respect for his private life arising from that rejection cannot therefore be considered "necessary" in a democratic society" (European Court of Human Rights, 2015). Considering every aspect of the case, the Court found out

that there was a clear violation of human rights of the applicant, violation of Article 8 of the Convention on human rights, to be precise.

The question of rights of transgender is quite a topic to discuss, as far as it is relatively new aspect of human rights, which is only develops and raises a lot of concerns. In terms of medical assistance, transgender people are in huge need to receive required medical aid in order to fully swap to the physical preferences they are feeling suitable for themselves. This creates a situation, where a conflict occurs in non-democratic or partially democratic countries, which can sometimes undertake the aspect of right of transgender people in benefit of public morale and customs. In order to ease the tensions international law has to take actions to curve the policy of those states to create a healthy environment for people in need.

With analysis of groups of people in need and latest inventions in sphere of human rights, we can talk about possible further improvements of international law. Today we can observe creation of new generations of rights, so-called 4th generation of law. Most of them are connected to the progress of humanity in 21st century and technical development of society. Among those rights we can observe emergence of such types of rights as the Right to equally access computing and digital, the Right to digital self-determination, the Right to digital security and some others. Among them we can find emergence of such type of right as a right to end one's life voluntarily, which is mostly referred to as euthanasia.

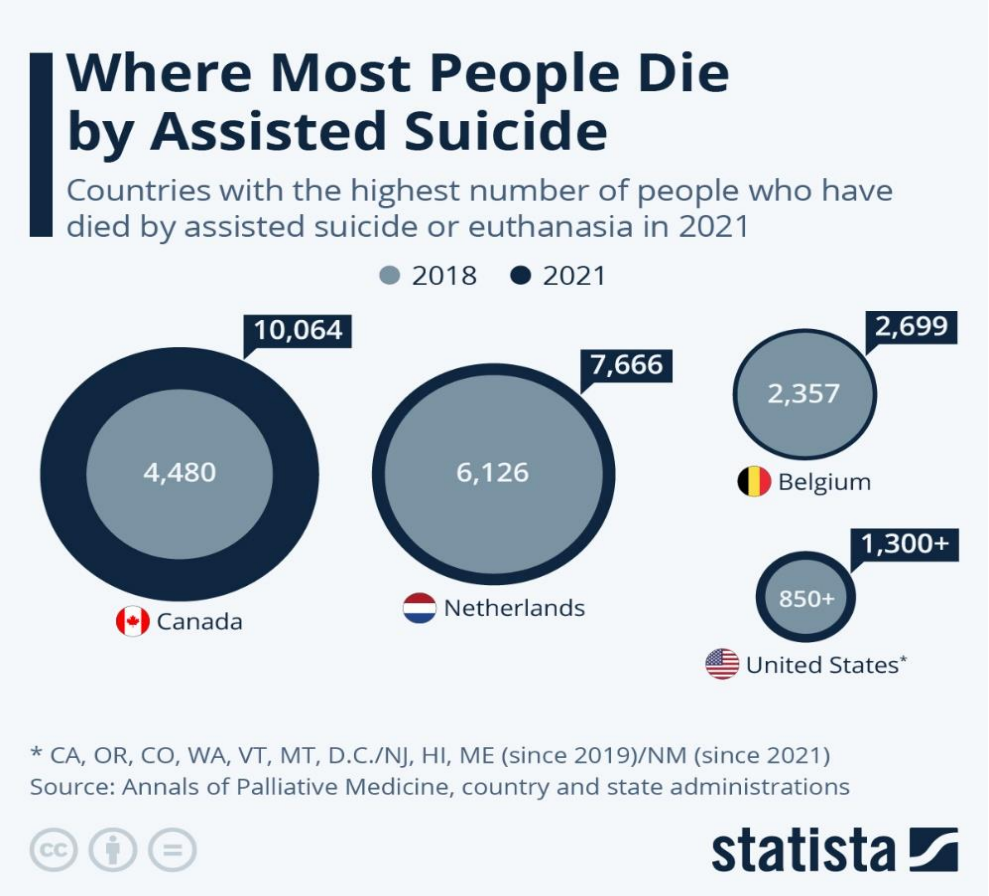
3.4. Euthanasia.

Euthanasia was always an object of discussions and debates. From one perspective, euthanasia can be viewed as peaceful way to end one`s suffering, especially if person struggles come in pair with overwhelming levels of pain and suffering or person has no chances to continue his or her life without necessary life support instruments. From the other perspective, euthanasia is easily regarded as a threat to human life and possible violation of Article 2 of the European Convention on Human Rights.

Question of euthanasia is quite new and underdiscovered. It is regulated mostly within national legal instruments and is unregulated in international law. However, some questions are covered within the rulings of the European Court of Human Rights. From the work of Miriam Cohen and Jasper Hortensius we can observe how can euthanasia be determined: "… euthanasia, in its most elementary form, is the intentional and active termination of a person's life at that person's explicit request. What makes euthanasia legal is that the law allows it provided that the procedure is performed by a medical doctor" [40!]. Moreover, process of euthanasia includes two main aspects: will of person willing to end his/her life and qualifications of relevant specialist. "A patient must qualify for euthanasia based upon their particular medical and mental status. A doctor must ensure they fulfil a legal duty of care owed to the patient which seeks to ensure proper medical care is provided" (Cohen, M., 2018).

Within the norms of statistic, euthanasia becomes more and more popular with each year. Most of the cases are registered in Canada, which legally recognized euthanasia as a right of person (Buchholz K., 2022).

Figure 6: **Where most people die by assisted suicide.**



Source: Where Most People Die by Assisted Suicide, by Katharina Buchholz

Available at: https://www.statista.com/chart/28130/assisted-suicide-numbers/

The interesting question in this case is a practice of ECHR. In its practice Court underlines that there are no evidences or considerations that the right to end one`s life really exists at all. Therefore, applicants to the Court underline some collisions with previous statements of the Court: "Applicants asked the Court to interpret the right to life to include a right to determine one's own time of death, and the right to be free from inhuman or degrading treatment.[34] Applicants argued that such rights included a right to end the suffering from illness through a MAD, or alternatively, that a blanket prohibition on MAD conflicted with and individuals right to a private life.[35] Accordingly, Applicants argued that, through prohibition, governments were interfering in essentially private matters, which should be divorced from the state, and did not implicate the public interest" (Cohen, M., 2018).

Now, let`s continue with the practice of ECtHR in those type of cases. The Applications nos. 2478/15 and 1787/15 concern two individuals with a will to end their lives in non-natural way. The first applicant is a relative to the deceased, Mr. Tony Nicklinson, who died in 2012. He had suffered a serious stroke, which left his body completely paralyzed, which meant some serious suffering: "He was almost completely paralysed, was unable to speak and was unable to carry out any physical functions on his own except limited movement of the eyes and head ("locked-in syndrome"). Following his stroke, he initially communicated by blinking at a board of letters and, subsequently, with the use of an eye-blink computer. He was only able to eat soft, mashed food and was virtually housebound. He was in regular physical and mental pain and discomfort" (European Court of Human Rights, 2014).

Considering all the things he was living through, he decided to end his life, therefore, he asked for a pain relief. But due to his disabilities he was unable to end his suffering himself, therefore he sought for third party to end his life. But under the national law of Great Britain, this could`ve been viewed as assistance in suicide: "… the assistance offered by the third party would amount to an offence under section 2(1) of the Suicide Act 1961 ("the 1961 Act"), namely encouraging and assisting a person to commit suicide" (European Court of Human Rights, 2014).

The second applicant, his name wasn`t mentioned in the case facts, suffered a car accident, which left his paralyzed. "He is completely immobile with the exception of his right hand which he can move to a limited extent. His condition is irreversible. He requires constant care and spends every day in a wheelchair. He experiences a significant amount of pain, as a consequence of which he has to take morphine. He feels that he is trapped in his body and that he cannot enjoy or endure a life that is so monotonous, painful and lacking in autonomy" (European Court of Human Rights, 2014). Consequently, he asked for a third party to make a lethal injection which will end his suffering.

This case resulted in a set of questions to the legislative system of the UK, especially in terms of euthanasia. For example: "First, there was no self-evident reason why the right to life should give way to values of autonomy and dignity. Second, it was wrong to say that there was a right to commit suicide; rather there was an immunity for those who succeeded. Third, this was a matter for Parliament. Fourth, any defence would have to apply not merely to euthanasia but also to assisted suicide, but since the criminalisation of assisted suicide was laid out in statute it was not clear how the courts could develop a defence under the common law… a very wide margin of judgment had to be conceded to Parliament in a

controversial area raising difficult moral and ethical issues such as assisted suicide, and the current law could not conceivably be said to stray beyond it… he was of the view that the court would have to be satisfied that there was a physically and administratively feasible and robust system whereby individuals could be assisted to kill themselves and that the reasonable concerns of the Secretary of State, in particular as to the protection of the weak and vulnerable, were sufficiently met so as to render the absolute ban on assisted suicide disproportionate. He considered that there were "too many uncertainties to justify our making a declaration of incompatibility" … He said that it might be incumbent on a court to weigh social risks to the wider public and the moral convictions of a body of members of the public together with values of human autonomy and of human dignity in life and death advocated by other members, and in doing so it would attach great significance to the judgment of the democratically elected legislature… He considered the question whether relaxing or qualifying the current absolute prohibition on assisted suicide would involve unacceptable risks to vulnerable people to be a classic example of the kind of issue which should be decided by Parliament, for three reasons. First, the issue involved a choice between two fundamental but mutually inconsistent moral values (namely, sanctity of life and personal autonomy), upon which there was no consensus in society. Second, Parliament had made the relevant choice in passing the 1961 Act and in amending it in 2009 without altering the principle. Third, the Parliamentary process was a better way of resolving issues involving controversial and complex questions of fact arising out of moral and social dilemmas" (European Court of Human Rights, 2014).

The European Court of Human Rights found, that the main question of first applicant was connected to the procedural protections of Article 8. "The problem arises from the application of the margin of appreciation available to member States in cases concerning challenges to primary legislation under Article 8. The Contracting States are generally free to determine which of the three branches of government should be responsible for taking policy and legislative decisions which fall within their margin of appreciation and it is not for this Court to involve itself in their internal constitutional arrangements… In any event, the Court is satisfied that the majority of the Supreme Court judges did deal with the substance of the first applicant's claim." (European Court of Human Rights, 2014).

As for the second applicant, Court found that the Supreme Court of the United Kingdom had done everything in accordance with the law, therefore no violation had taken place. "the Court concludes that the second applicant did not provide the Supreme Court

with the opportunity which is in principle intended to be afforded to a Contracting State by Article 35 § 1 of the Convention, namely the opportunity of addressing, and thereby preventing or putting right, the particular Convention violation alleged against it. In this regard the Court emphatically rejects any suggestion that the Supreme Court's conclusions concerning the ban on assisted suicide should be read so as to include references to voluntary euthanasia and the judicial procedure now called for by the second applicant" (European Court of Human Rights, 2014).

As a conclusion, ECtHR found both the applications inadmissible, but nonetheless, it opened some intel on how does European Court of Human rights tractates the euthanasia as a choice of a person and a will to be assisted with assisted death within the will of person in general within the national legislation of the UK.

4. Conclusions

1. Field of medical care and medical assistance was eventually developing and started to became stable within the terms of 20th century. Human rights were to the utmost recognized and legally secured by most countries of the world. However, the implementation of medical standards which provoked sufficient level of medical care did not bring upon progress which is associated with recognition of more or less secured individuals, which is highly crucial for safety of such individuals. That caused a problem where prejudice, racism, sexism were not to the fullest eradicated from the sphere of medical assistance and up to this day it is quite common to found a lack of care for people who are suffering societal or psychological bias.

Medical care impacts society in a huge volume. If humanity will be able to eradicate bias and prejudice in society, it will definitely lead to democratization and implementation of more humanized system of not only medical care, but also the entire structure of human behavior. In due to extirpate such troublesome issues as prejudice, multiple biases, international organizations and activists should foreground the most vulnerable groups of individuals and underscore the most problematic countries.

2. European Court of Human Rights has a long story of dealing with cases connected to application of medical care which can be observed as insufficient according to standards and practice of the Court. ECtHR as an organization which deals with violation of human rights undergone a massive development and evolution in its reasoning and judgements. The same is applied to medical care.

ECtHR not only made some efficient steps to take care of implementation of standards of medical assistance via creating decisions and rulings, but also invented an abundant library of guides and papers which can and should be applied in order to create individuals who suffered alleged violation of laws favorable conditions for their rehabilitation, restoration of their initial rights and compensations for any action taken against their interests.

Nowadays, European Court of Human Rights continues the trend implemented by itself and not only benefits individuals who suffered violation of their rights, but also creates precedents for future cases, granting redemption to groups of people who suffered temporary lossage of their rights. In particular, by underlining right of sex transfer in case of necessity of person to feel comfortable and to stabilize their mental condition, Court found out that countries are obliged to give an individual that right if there are all the

prescriptions necessary. It creates a development in sphere of sex transfer, as far as Court already supported this action in case of necessity or prescriptions.

3. Situation around recognition of emerging rights is still unstable, as far as even though some of relatively new and discussible rights are starting to get recognized, they either don`t get full support from such institutions as European Court of Human Rights, or getting denied by countries and their policies. Namely, the right to assisted death, which becomes more popular, is viewed at a court with plenty of skepticism, mainly due to such factor as morals and value of human life.

However, in future we can expect higher recognition of such way to end life. And, of course, the Court needs to adapt to it and make active evaluations and thoughtful plan on how to control such pattern of actions to secure human rights and lives of individuals right now, either we can expect trials and tribulations for the ECtHR.

4. European Court of Human Rights should continue on to secure rights of most vulnerable individuals in sphere of medical attention. Even though the situation is getting better, we cannot undervalue the ongoing situation with quality of medical care, especially application of an *adequate* medical care.

In some countries we still can observe how customs and other factors impact societal behavior in negative way, and this causes crisis for the Court and situation around democracies in system of countries bound by the European Convention on Human Rights. That is unacceptable situation for the system of democratic development of the European continent. Therefore, Court should be more forthright when it comes to violation of human rights.

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SUMMARY

Providing an adequate medical care in the case-law of the ECtHR

The study reveals level of standard for medical attention in practice of the European Court of Human Rights. It aims at underlining different aspects of medical assistance, level of medical security of different groups of individuals who are endangered due to prejudice, biases and other forms of discrimination.

The first chapter provides projection of historical periods of medical assistance throughout the history of humanity, analysis and definition of term of medical care. It also examines standards of medical assistance in order to understand the differences between standards of application of medical attention within the ECtHR and other health supporting institutions. The second part is dedicated to the analysis of application of medical assistance by the European Court of Human Rights, intercourse of European Convention on Human Rights with practice of medical application in case-practice of ECtHR, investigation of most vulnerable rights of individual connected to medical care within the Articles of European Convention, and analysis of obligations of state regarding physical and psychological safety and security of individual. The last chapter analyzes the case-law of ECtHR in practice and discovers most affected groups of individuals in terms of medical attention. In order to strengthen the security of such individuals, international community needs to find the solution for a set of bias and prejudice, due to the fact that such actions will help to strengthen security of communities overall and will lead to democratization of countries and nations, will help to low the risks for medical security of any person.