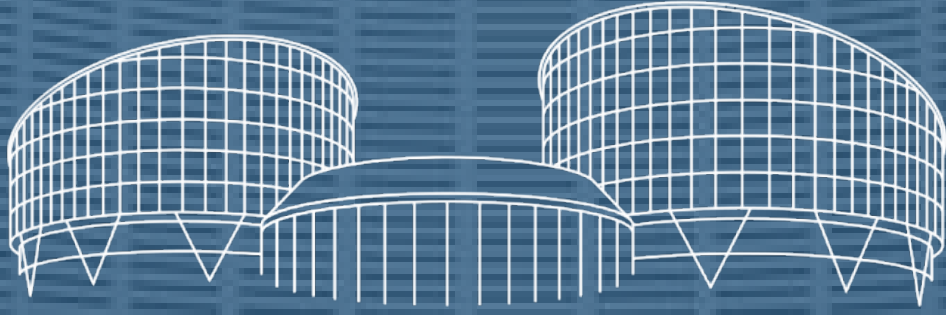


HASMUN'19 STUDY GUIDE



EUROPEAN COURT OF HUMAN RIGHTS

The Case of Velour and Others

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Letter From The Secretary-General

Dear Delegates and Advisors,

It is a great pleasure and honor to officially invite all of you to HASMUN 2019 which will be held between **26th and 28th of April 2019** at Kadir Has University Haliç Campus in Istanbul which is located in the Golden Horn area.

I am personally thrilled to take part in the making of this conference and I am sure that the academic and organisation teams share my passion about this installment of HASMUN in which we have chosen to focus on topics that bring humanity together. And we have also included committees which will simulate historical events that can be considered existential threats which brought the international committee or some nations together. The general idea that we would like to introduce is that humanity can achieve great things in little time if we are united, or can eliminate threats that threaten our very existence.

I strongly believe that the first half of this century would be remembered in the human history where we enter into a new era through technological advance. Unfortunately we haven't quite grasped the importance of this generation, as we progress we leave a print on this world and for the first time modern world is facing an existential threat, for the first time every human being on the planet is facing the threat of a considerable change in their and their ancestors living or worse, our very existence is on the line. I believe it will be events like these marked down in history which bring humanity together if we unite with no ambition of national gains and handle these crises. Our highlighted special committee of World War Z will be based on the book with the same name written by Max Brook which tells the story of how world is affected by a Zombie outbreak and the Humanitarian Advancement and Security community or HASCOM will take place in the year of 2050 where the delegates will rebuild the world from its ashes and have the chance of changing how it works.

The other committees will be focusing on current problems that are born out of neglect for an extensive amount of time either due to lack of public interest or because of economical reasons and solving these issues will have long-lasting positive effects or if they are left unsolved they may have bigger consequences in the near future.

With that I welcome and look forward to seeing all of our participants and guests on the 26th of April, at HASMUN 2019, hoping that you will have an exquisite time, debates and most importantly have fun while changing the world, only you can do it.

Best Regards

Ata Mavi
Secretary-General of HASMUN'19

Letter from the Under-Secretary-General

Distinguished Members of the European Court of Human Rights;

It's my utmost pleasure to welcome you all to HASMUN'19. I, Ali Erdogan, am the Under-Secretary-General responsible for the ECtHR and am a research assistant at Istanbul Kültür University Faculty of Law. After attending numerous court simulations and conferences, I sincerely believe that HASMUN'19 European Court of Human Rights will be an unforgettable court experience for you.

European Court of Human Rights is one of the most important judicial establishments in terms of monitoring the implementation of human rights, for it not only makes the European Convention on Human Rights more up to date and dynamic by its case law but also reinforces the efficient exertion of its provisions, by its sanctions upon States Parties. The essential purpose of ECtHR as stated in the ECHR's preamble, is "to reaffirm the profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend." With this function borne in mind throughout the proceedings as we all aim for the same purpose, from different perspectives. Working on this non-fictional case will enhance all the participants' ability to of interpreting the legal rules of European Convention on Human Rights as well as making the act of interpretation similar to the one that is done in the ECtHR itself.

To conclude, I would like to pay respects to our distinguished Secretary General Ata Mavi who worked with such effort and passion to create this amazing conference. I am truly thankful to him for choosing me to be a part of this great experience.

"Fight for the things that you care about. But do it in a way that will lead others to join you." once said Ruth Bader Ginsburg, a flourishing Supreme Court Justice. Now, I call you dear participants to fight for the justice that we care about. Do it in a just way that will lead the others to join you and show that law is still the only remedy for all the disputes in the world. I hope we will all spend an amazing three days and grab the opportunity to define justice together.

If you have any questions, please do not hesitate to contact

Yours Faithfully,

Ali Erdoğan
Research Assistant
Department of Philosophy and Sociology of Law
Under-Secretary-General responsible for the ECtHR

I. INTRODUCTION TO THE EUROPEAN COURT OF HUMAN RIGHTS

a. Development and Structure

The European Court of Human Rights (ECtHR) is a regional human rights judicial body based in Strasbourg, France. The Court began operating in 1959 and has delivered more than 10,000 judgments regarding alleged violations of European Convention on Human Rights (ECHR).

In 1998, the European human rights system was reformed to eliminate the ECHR, which previously decided the admissibility of complaints, oversaw friendly settlements, and referred some cases to the Court – in a manner like the current Inter-American System. Now, individual victims may submit their complaints directly to the ECtHR.

The European Court, or “Strasbourg Court” as it is often called, serves a complementary role to that of the European Committee of Social Rights, which oversees European States’ respect for social and economic rights.

To resolve many cases simultaneously, the ECtHR is organized into five sections, or administrative entities, which each have a judicial chamber. Each section has a President, Vice President, and several judges. The Court’s 47 judges are selected by the Parliamentary Assembly of the Council of Europe from a list of applicants proposed by the Member States.

Within the Court, the judges work in four different kinds of groups, or “judicial formations.” Applications received by the Court will be allocated to one of these formations:

1. Single Judge: only rules on the admissibility of applications that are clearly inadmissible based on the material submitted by the applicant.
2. Committee: composed of 3 judges, committees rule on the admissibility of cases as well as the merits when the case concerns an issue covered by well-developed case law (the decision must be unanimous).
3. Chamber: composed of 7 judges, chambers primarily rule on admissibility and merits for cases that raise issues that have not been ruled on repeatedly (a decision may be made by a majority). Each chamber includes the Section President and the “national judge” (the judge with the nationality of the State against which the application is lodged).
4. Grand Chamber: composed of 17 judges, the Grand Chamber hears a small, select number of cases that have been either referred to it (on appeal from a Chamber decision) or relinquished by a Chamber, usually when the case involves an important or novel question. Applications never go directly to a Grand Chamber. The Grand Chamber always includes the President and Vice-President of the Court, the five Section presidents, and the national judge.

b. Decision and Judgment

When the Court receives an application, the Court must determine if it meets all the admissibility requirements. An admissibility decision may be made by a single judge, a three-judge committee, or a seven-judge chamber. To be declared admissible, an application must meet the following criteria:

1. Exhaustion of domestic remedies
2. Six-month application deadline (from the final domestic judicial decision)

3. Complaint against a State party to the European Convention on Human Rights
4. Applicant suffered a significant disadvantage

If an application fails to meet any of these requirements, it will be declared inadmissible and cannot proceed any further. There is no appeal from a decision of inadmissibility.

Applicants may use the ECHR's Online Admissibility Checklist to determine if their complaint satisfies the requirements.

If an application is not struck from the list or declared inadmissible at an earlier stage, it will be assigned to one of the ECtHR's five sections and the State will be notified of the complaint. Now, both parties will have the opportunity to submit observations to the Court. These observations may contain specific information requested by the Chamber or President of the Section, or any other material that the parties decide is relevant. The Chamber has the option to consider admissibility and merits separately or concurrently, but it must notify the Parties if it plans to consider admissibility and merits together.

When a Chamber issues a judgment on the merits, there is a three-month period before the decision becomes final. During this period, either or both Parties may request that the application be referred to the Grand Chamber. However, the Grand Chamber only hears a limited number of exceptional cases.

If the Court ultimately decides a case in favor of the applicant, it may award just satisfaction (monetary compensation for the damages suffered) and require the State to cover the cost of bringing the case. If the Court finds that there has been no violation, then the applicant is not liable for the State's legal expenses.

The Committee of Ministers of the Council of Europe is responsible for enforcing the Court's judgments. States are bound by the decisions of the Court and must execute them accordingly. Often this means amending legislation to ensure that the violation does not continue to occur. However, the Court does not have the authority to overrule a national decision or annual national laws.

c. Enforcement

Prior to a decision on the merits, the Court will try to facilitate the arrangement of a friendly settlement. If a friendly settlement cannot be reached, the Court will then deliver a judgment on the merits. In instances where the Chamber hearing the case decides to issue an admissibility decision in conjunction with a judgment on the merits, then the Parties may include information about friendly settlements in the observation they submit to the Court.

In exceptional cases, the Court may grant applicants "interim measures," which are designed to protect the applicant from further harm while the case proceeds before the Court. Requests for interim measures are only granted when there is an imminent risk of irreparable harm such as death or torture. They are most often granted in extradition and deportation cases.

d. Jurisdiction

The Court has jurisdiction to decide complaints ("applications") submitted by individuals and States concerning violations of the ECHR, which principally concerns civil and political rights. It cannot take up a case on its own initiative. Notably, the person, group or non-

governmental organization submitting the complaint (“the applicant”) does not have to be a citizen of a State Party.

However, complaints submitted to the Court must concern violations of the Convention allegedly committed by a State Party to the Convention and that directly and significantly affected the applicant. As of March 2014, 47 States have ratified the Convention. Some of these States have also ratified one or more of the Additional Protocols to the Convention, which protect additional rights.

II. THE CASE: VELOUR AND OTHERS v. PORTUGAL

a. Facts of the Case

i. The Background Facts

The case at hand concerns the application of Eli Velour (EV) and both his parents, regarding the domestic courts’ decision to cease the medical treatment at Great Ormond Street Hospital (GOSH) as well as deciding on terminating artificial respiration, in which EV had been receiving artificial ventilation and palliative care since his admission on 11 October 2016.

EV is suffering from a very rare and severe disease called infantile onset encephalomyopathic mitochondrial DNA depletion syndrome (MDDS) causing mutations deteriorating mitochondrial cells in every part of the patient’s body. Despite the fact that the more commonly encountered type of the disease lacks intermission with the brain cells, therefore not affecting the brain activities of the patient, EV is persistently encephalopathic, meaning that there are no usual signs of normal brain activities including responsiveness, interaction or crying.

The parents became aware of a form of therapy which has been used on patients with a less severe condition known as TK2 mutation. The parent afterwards, contacted Dr. I, Professor of Neurology at a medical centre in America. Dr. I confirmed that the treatment had not been used on humans with EV’s condition but that there was a “theoretical possibility” that the treatment might be of benefit to EV.

However, before a treatment plan could be agreed, due to EV’s episode of brain seizures regarding his epilepsy, which started around 9 January and continued intermittently until 27 January, the treating clinicians informed the parents that EV was suffering severely and that the nucleoside treatment would be futile in addition to solely prolonging EV’s suffering. The expert team in Barcelona considering EV’s case also reached the same conclusion.

ii. Decisions of Domestic Courts

The meaning of “futile” was the subject of argument at the domestic level. The domestic courts, however, with a consensus argued that the treatment lacked benefit, for EV suffered from additional conditions and disabilities.

1. The High Court

In February 2017 GOSH made an application to High Court for an order stating it would be lawful, and in EV’s best interests to withdraw artificial ventilation and cease the palliative care

provided. The application was opposed by the parents and the question of possible nucleoside therapy was raised as the proceedings progressed. They put the information before the High Court that Dr. I was willing to treat EV. Accordingly, the order ultimately included a third element, that it would not be in EV's best interest to undergo nucleoside treatment. As the evidence proved the unlikelihood of the treatment improving EV's condition or being any benefit to EV's brain from the testimony of Dr I, as well as EV's guardian stating that travelling to the USA to receive an experimental treatment would be against EV's best interests, on 11 April 2017, the High Court acceded to GOSH's applications. High Court stated that although parents had parental responsibility to have the power on giving consent whether to expose their child to such treatment, overriding control was vested in the court exercising its independent and objective judgement in the child's best interests. The term "best interests" encompasses medical, emotional, and all other welfare issues. The judge concluded that

i. there was a consensus from all the doctors that had examined EV as well as the medical expert instructed by the parents that the nucleoside treatment would be futile,

ii. that subjecting EV to nucleoside treatment would be to enter unknown territory and could possibly subject him to pain.

2. The Court of Appeal

The applicants sought to argue that the High Court judge had erred by relying on the "best interests" test alone, before the Court of Appeal. They argued that there was a viable alternative treatment option put by them and in these circumstances, the parent's treatment option should only be overridden if it was established that the option would likely cause the child "significant harm". The applicants also claimed that it was the hospital who had applied to prevent the delivery of a therapy which it did not, itself provide and that therefore, it was outside the powers of the court for it did not have jurisdiction to uphold the hospital's position. The Court of Appeal therefore, concluded that the Court (High Court) had not acted outside its powers and the administration of nucleoside therapy, which involves nothing more than the introduction of some powder into the nutritional feed to EV's body would be benign and despite not causing any significant harm, it would most certainly be against the baby's best interests. The Court of Appeal concluded that there was a distinction between the medical description of futility and the concept of futility in law, and that in the present case, this distinction in the light of the judge's finding would be rather insignificant because the potential benefit of nucleoside therapy would be zero, would, therefore, be, "pointless and of no effective benefit". Accordingly giving the decision of approval.

3. Supreme Court

The applicants requested permission to appeal from the Supreme Court who heard their application on 8 June 2017. The applicants repeated the arguments made before the lower courts with a focus on the respect for their parental rights under Article 8 of the Convention. The Supreme Court rejected the applicants' request for permission on the basis that no point of law of general, public importance had been identified. The Supreme Court reiterated the finding of the Court of Appeal that even if the "best interests" test were replaced with a test of "significant harm", it is likely that EV would suffer significant harm if his present suffering is prolonged without any realistic prospect of improvement. The court in 19 June 2017 recalled the

importance of protecting the applicants' right to petition this Court and accordingly granted a further stay until midnight on 11 July 2017 for EV.

b. Relevant Law

i. Domestic Law and Practice

The Children Act 1989

Subsection 1 is titled "Welfare of the child". It provides:

(1) When a court determines any question with respect to—

(a) the upbringing of a child; ...

the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

The Act also addresses "parental responsibility". It provides that where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child. Each of the parents, or the mother if she is unmarried, has parental responsibility for the child. Section 3 states. In the Act "parental responsibility" means:

"all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property."

Section 8 (1) grants the courts the powers to make orders with respect to children in certain circumstances, known as "specific issue" orders.

ii. International Law and Practice

1. United Nations

Article 3 (1) of the United Nations Convention on the Rights of the Child states:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

2. Council of Europe

The Council of Europe's 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 (opened to signature at Oviedo on 4 April 1997), contains the following principles regarding consent:

Chapter II – Consent

Article 6 – Protection of persons not able to consent

1. Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.
2. Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

3. Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The individual concerned shall as far as possible take part in the authorisation procedure.

4. The representative, the authority, the person or the body mentioned in paragraphs 2 and 3 above shall be given, under the same conditions, the information referred to in Article 5.
5. The authorisation referred to in paragraphs 2 and 3 above may be withdrawn at any time in the best interests of the person concerned.

3. European Union

The European Union's Charter of Fundamental Rights, which became legally binding with the entry into force of the Lisbon Treaty on 1 December 2009, contains the following Article:

Article 24 – The rights of the child

- “1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents unless that is contrary to his or her interests.”

iii. European Convention on Human Rights

Article 2 – Right to Life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - (a) in defence of any person from unlawful violence;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 5 – Right to Liberty and Security

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

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his affecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. A release may be conditioned by guarantees to appear for trial.

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

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

Article 6 – Right to a Fair Trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 8 – Right to Respect for Private and Family Law

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

c. Complaints

The second and third applicants complained on their own behalf and on behalf of the first applicant under Articles 2 and 5 of the Convention. They argued that the hospital has blocked life-sustaining treatment to EV in violation of the positive obligation under Article 2. In respect of Article 5, they argued that EV is deprived of his liberty within the meaning of that article by the order of 11 April 2017.

The second and third applicants complained on their own behalf under Articles 6 and 8 of the Convention. Under Article 6 the complained that the Court of Appeal concluded that their intended parental decisions would cause the first applicant “significant harm” without hearing witness evidence on this point. Under Article 8 they argued that the declaration by the High Court of 11 April 2017 and subsequent domestic court decisions amount to a disproportionate interference in their parental rights because the domestic courts had taken their decisions in the “best interests” of the child. Whereas they should have asked whether there is a likelihood that the child “is suffering, or likely to suffer, significant harm”. As a result, the interference in their parental rights under Article 8 is disproportionate and cannot be justified.