

Biomedicine, Human Rights and Covid-19 vaccines



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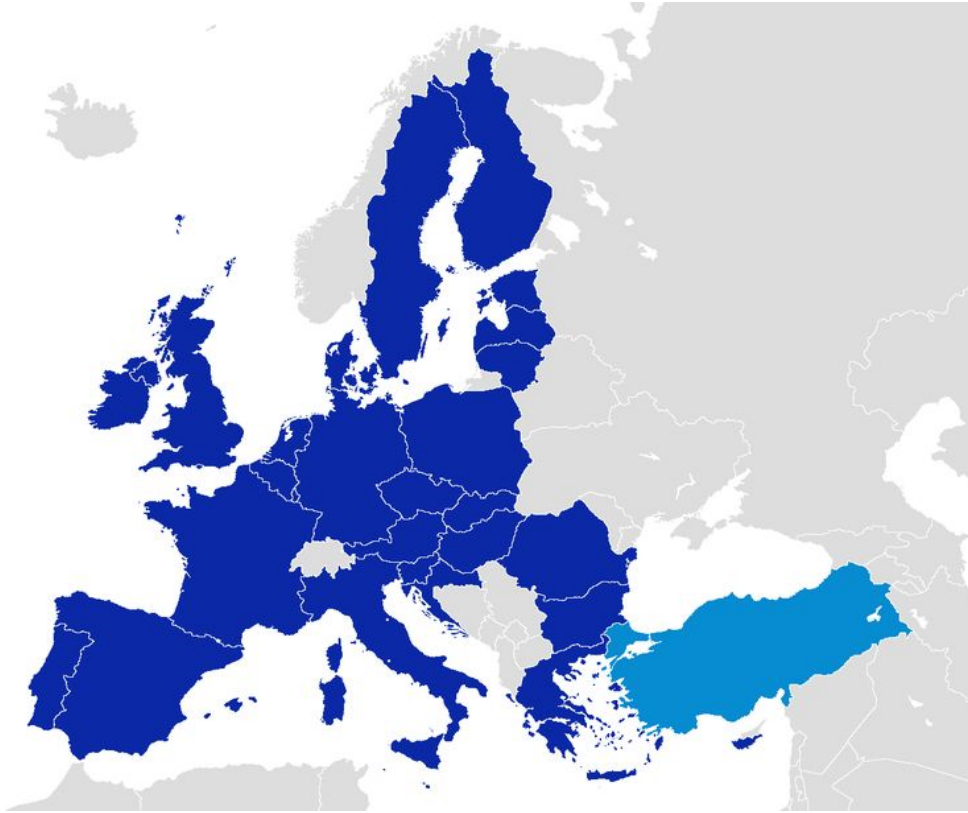
Outline

- Content Biomedicine/Oviedo Convention
- Biomedicine Convention and Human Rights' Concerns
- Consequences Member States: The Netherlands and Portugal
- ECHR and Patients' Rights
- Covid-19 measures and ECHR
- ECtHR and mandatory vaccination
- Conclusions

Background

- Steering committee on bioethics (CBIE)/Committee on Bioethics
- Dilemma
- Biomedicine/Oviedo Convention: 4/4/1997
- Objective: Harmonising existing HR standards & min. level HR protection
- Not exhaustive: Framework Convention

Biomedicine Convention: ratified (29), sign. (31)



France: December 2011

Content

- Scope
- Core rights: dignity, integrity and non-discrimination*
- Equal access to health care services*
- Health ethics: professional standards*
- Consent*
- Private life*
- Human genome
- Scientific research and consent*
- Organ donation and transplantation
- Infringements
- Interpretation
- Protocols
- Reservations

Biomedicine Convention: Human rights' concerns

General:

- Direct to Consumer Genetic testing: 23andme
- Stem cell research human embryos
- Organ trafficking
- Outsourcing/offshoring clinical trials
- Emerging medical technologies: Stem cell research opening patentability doors?

Covid-19:

- Who should we treat first?
- Mandatory vaccination?
- Duty of care and patient safety

Consequences for The Netherlands

- Signature 4 April 1997
- Council of State 2000: critical opinion
- Letter 20 March 2015: no ratification
- Comments:
 - Misconception direct effect art. 3
 - 'Balancing' human dignity – progress medical research
 - Number of reservations

Biomedicine Convention and Portugal

- Ratification: 13 August 2001
- Consequences legal framework?
- References case law?
- Health care practice?

ECHR and Patients' Rights: General

- Right to life and access to medicines (art. 2)
- Prohibition of torture and inhuman, degrading treatment and informed consent (art. 3)
- Fair trial and mental health (art 5)
- Individual autonomy; Reproductive care issues; Access to medical record; Confidentiality medical information (Art. 8)

Covid-19 measures and the ECHR



- Access to medicines/ vaccines as a human right: Right to Life (Art 2)?
 - consequences States
- Vaccination and the Informed consent requirement: inhuman/degrading treatment (Arts. 3)
- The right not to be vaccinated and private life (Art. 8)
 - considerations?
- Processing health related Covid-19 data (art 8) at work?

The ECtHR and mandatory vaccination

- Legal basis and legitimate aim: Protection of health individual, 3rd persons & society
 - EHRM 15 March 2012, *Solomakhin v. Ukraine*, no. 24429/03,
 - EHRM 6 October 2015, *Memlika v. Greece*, no. 37991/12,
- Proportionality & subsidiarity measure:
 - EComRM 10 December 1984, *Acmanne v. Belgium*, no. 10435/83
 - EComRM 15 Januari 1998, *Boffa e.o. v. San Marino*, no. 26536/95,
 - ECtRM 10 June 2010; *Jehovah's Witnesses of Moscow e.a. v. Russia*, no. 302/02

ECtHR and mandatory vaccination/immunization (2)

- ECtHR and health issues: 'wide margin of appreciation of domestic authorities'
- Access registration vaccination data: GDPR-proof (Art. 9, 30)
- Confidentiality data
- Enforcement mechanisms

Vaccines and ethical/legal controversies: Discussion

- Testing a vaccine in vulnerable populations?
- Increasing vaccine refusal rates, a need for action?
- Refusal non-vaccinated mentally retarded person admission nursery home?
- Non-vaccinated health care staff, what are the options?
- Vaccine shortages: Will vaccines reach low-income countries during a global pandemic?
- A need for compulsory licensing?

Conclusions

- Biomedicine Convention: Patients' Rights treaty
- Direct and indirect effect
- ECtHR's doctrine on negative *and* positive obligations essential in health-related matters
- Health related cases brought before the Court have most frequently been argued under Arts 2, 3, 5, 8 and 14
- ECtHR's wide margin of appreciation on vaccination policies

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Content

NEW! UPDATED! Introduction to the ECHR and the ECtHR ➡

i Access to Justice for Women ➡

Admissibility Criteria ➡

i Alternative measures to detention ➡

Anti-discrimination ➡

i Asylum and the ECHR ➡

Bioethics ➡

i Business and Human Rights ➡

Child-friendly Justice ➡

i Combating Trafficking in Human Beings

CPT Standards ➡

i Data Protection and Privacy Rights ➡

Introduction

This free online course has been developed by the European Programme for Human Rights Education for Legal Professionals “HELP” in close cooperation with the Bioethics Unit of the Council of Europe.

The course consists of eight modules:

1. Introduction
2. Free and Informed Consent
3. Medical Confidentiality and Protection of Health Related Data
4. Protection of the Embryo and Procreation
5. End of Life
6. Genetic Testing
7. Biomedical Research
8. Transplantation of Human Organs and Tissues

The course was launched in **September 2018**.

The Erasmus logo, featuring the word "Erasmus" in a white, elegant, cursive script font, set against a dark red background.

Discussion: Covid-19 triage and difficult choices

- Emergency medics routinely make critical treatment calculations based on their patients' chances of survival. But as the coronavirus pandemic overwhelms hospitals, physicians are facing the prospect of large-scale triage that some say resembles the stark choices of war.
- **Q. What is the dilemma and how to solve it cf Oveido Convention?**

