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

FIFTH SECTION

DECISION

Application no. 36416/23
A.B.G.
against Spain

The European Court of Human Rights (Fifth Section), sitting on 3 July 2025 as a Committee composed of:

Stéphanie Mourou-Vikström*, President*,
María Elósegui,
Diana Sârcu*, judges*,

and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 36416/23) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 11 October 2023 by a Spanish national, Mr A. B. G., who was born in 1933 and lives in Leganés ("the applicant") and was represented by Mr M. Rubio Rubio, a lawyer practising in Leganés;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the judicial authorisation to vaccinate the applicant's son, A., against Covid-19, allegedly in breach of Articles 2, 3, 8 and 13 of the Convention.

2. In November 2002 A., at the time 19 years old, was incapacitated due to moderate intellectual disability and the parental guardianship was extended, so the applicant became his guardian. In the judgment it was noted that A.'s condition was persistent and irreversible, and that he lacked the necessary capacity to manage his life and his assets. From January 2003 onwards, A. was committed to a mental health facility. At the time of the events, he resided in that facility.

3. In September 2021 the direction of the mental health facility reported to the Valdemoro duty judge that A.'s relatives had expressed their disagreement to his vaccination against Covid-19 and asked the judge to

consider the appropriate measures to be taken. The direction of the facility attached a medical report stating that there were no medical contraindications for A.'s vaccination.

4. The Valdemoro First Instance Court No. 7 invited the applicant to state his position in the matter and ordered a forensic report on the benefits of vaccinating A. The applicant opposed to the procedure, arguing that Covid-19 vaccination was not compulsory in Spain, that A. had not consented to it, that the vaccines were experimental and that their risks were higher than their benefits.

5. On 8 November 2021 the First Instance Court authorised the vaccination of A., referring to the relevant domestic law (see paragraph 12 below) and stating that the measure was taken in the best interests of A.

6. The First Instance Court noted that, according to the forensic report, there were no medical reasons not to vaccinate A., as he was not suffering from any physical ailment. Conversely, his vaccination was desirable as he lived in an institution and, due to his condition, was not able to take the necessary preventive measures (such as keeping his distance from other persons or wearing a mask). The forensic report also stated that there was no evidence of any long-term negative effects of the vaccination and that the absence of vaccination entailed a risk for the health of the affected person and of those around him. The forensic report concluded that A.'s vaccination was recommended.

7. The First Instance Court heard A., who initially stated that he did not want to be vaccinated because her sister had told him that he would be vaccinated in their neighbourhood, and subsequently affirmed that he did not want to be vaccinated because his family would not allow him.

8. The First Instance Court concluded that A.'s vaccination was a necessary measure to protect his health considering (i) the medical and forensic reports, in which it was stated that there were no medical contraindications and that the vaccination was to his benefit; (ii) that A. refused to be vaccinated only to obey his family, (iii) that his relatives' arguments were not adequate to duly protect A.'s life and health; (iv) that the risks deriving from Covid-19 were higher than those deriving from the vaccine, which had been approved by the European Medicines Agency, (v) and that A. was at a higher risk of infection because he lived in an assistance centre.

9. The Madrid *Audiencia Provincial* upheld this decision, relying on the same reasons. The *Audiencia Provincial* further noted that there was no conflict between the applicant and his son. Rather, the disagreement occurred between the applicant and the facility where A. lived, so there was no need for A. to get a judicial defender, as he was represented in the proceedings by the public prosecutor (*Ministerio Fiscal*). The *Audiencia Provincial* stated that the applicant's arguments could not be upheld as they were not adequate to protect A.'s life and health and that A.'s vaccination was the appropriate measure to protect him from Covid-19.

10. The Constitutional Court declared the applicant's *amparo* appeal inadmissible.

11. Relying on Article 8, the applicant claimed that A.'s vaccination was authorised without his consent and over the objections of his guardian. He further argued that the imposition of a medical treatment without consent entailed a violation of Articles 2 and 3, as in this case the vaccine was experimental and put A.'s life at risk. Lastly, he submitted that the inadmissibility decision of the Constitutional Court violated his right to an effective remedy under Article 13.

RELEVANT LEGAL FRAMEWORK

A. Domestic law

12. The relevant provisions of Act No. 41/2002 of 14 November 2002 regulating patient autonomy and rights and obligations regarding clinical information and documentation can be found in *Pindo Mulla v. Spain* [GC], no. 15541/20, § 57, 17 September 2024. The following provision is also relevant in the circumstances of the present case:

> **Section 9. Limits of informed consent and consent by representation**
>
> "3. Consent shall be granted by representation in the following circumstances:
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> ...
>
> b) When the patient's capacity has been judicially modified and this is so provided for in the judgement.
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> ...
>
> 6. [In cases of consent by representation] the decision shall always be taken in the best interests of the patient's life and health. Those decisions that are contrary to these interests shall be brought to the attention of the judicial authority, directly or through the Public Prosecutor's Office, so that it may adopt the corresponding decision (...).
>
> 7. The giving of consent by representation shall be appropriate to the circumstances and proportionate to the needs to be met, always in favour of the patient and with respect for his or her personal dignity. The patient shall be involved as far as possible in decision-making throughout the healthcare process. If the patient is a person with a disability, appropriate support measures shall be provided, including information in appropriate formats, ... in a manner that is accessible and understandable to persons with disabilities, to enable them to give their consent on their own behalf."

13. On 20 April 2023 the Constitutional Court issued a judgment concerning the vaccination against Covid-19 of a person with modified legal capacity (judgment 38/2023), in which it stated:

> "[In the framework of section 9 § 6 of Act No. 41/2002], the civil judge does not simply establish the fact of disability in order to automatically apply the prescribed medical treatment, as if it was a legally binding legal consequence. Rather, he or she must balance various factors ....
>
> ...

[The measure indicated in section 9 § 6 is] a strictly protective measure, which can be adopted by the judicial authority for a single legitimate purpose: the protection of the person who is prevented from or incapable of giving consent in a context of risk to his or her health. The action of the public authority is strictly aimed, in this case, at making up for the impossibility or limitation of the person concerned to give consent and, therefore, to decide on the health action (in this case, the administration of the vaccine) on the basis of his or her purely individual interest. Of the double dimension, public and private, of vaccination as a health protection mechanism, this legal scenario only contemplates, in sum, the strictly private or individual dimension.

...

[T]he first balancing factor to be taken into account in application of section 9 § 6 of Act No. 41/2002 is the content of the will of the disabled person insofar as this will has been expressed, as it is obvious that a judicial decision that necessarily imposes vaccination without taking into account the criteria expressed by the patient himself (even if, due to the disability, this manifestation may have limited value or be incomplete) denies this person any decision-making autonomy (...).

...

This legal regime has two major consequences on the balancing exercise required for the application of section 9 § 6 of Act No. 41/2002: (i) on the one hand, as has already been anticipated, the decision adopted must respond to the strict aim of protecting the person with a disability, without the possibility of pursuing different interests of third parties or public interests, with the particular ideology of the person who must provide support being equally irrelevant; (ii) on the other hand, the balancing of the benefits and prejudices must be adapted to this aim; in particular, both the decision taken by the person providing support and the judicial decision reviewing that decision must be based on arguments that allow the criterion adopted to be considered proportionate to the needs of the person with a disability, in accordance with the circumstances."

B. Relevant international materials

14. The Convention on Human Rights and Biomedicine (the Oviedo Convention) provides as follows:

Article 5 – General rule

"An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.

The person concerned may freely withdraw consent at any time."

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.

...

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."

15. The explanatory report to this Convention provides as relevant:

"41. Some individuals may not be able to give full and valid consent to an intervention due to either their age (minors) or their mental incapacity. It is therefore necessary to specify the conditions under which an intervention may be carried out on these people in order to ensure their protection.

42. ... [I]t is for domestic law in each country to determine, in its own way, whether or not persons are capable of consenting to an intervention and taking account of the need to deprive persons of their capacity for autonomy only where it is necessary in their best interests.

...

44. Whenever a person is acknowledged to be incapable of giving consent, the Convention establishes the principle of protection whereby, according to paragraph 1, the intervention must be for the direct benefit of the person (...).

...

46. ... [T]he participation of adults not able to consent in decisions must not be totally ruled out. This idea is reflected in the obligation to involve the adult in the authorisation procedure whenever possible. Thus, it will be necessary to explain to them the significance and circumstances of the intervention and then obtain their opinion."

16. Reference to other relevant international materials, such as the International Covenant on Economic, Social and Cultural Rights and the European Social Charter can be found in *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, §§ 129-40, 8 April 2021.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 8 of the Convention

17. The applicant complained that the domestic courts authorised A.'s vaccination over the objections of his guardian and, moreover, without A.'s own consent.

18. Therefore, the first question to be examined is that of the authorities' ignoring the guardian's protest against the vaccination.

19. The Court observes that the applicant, as guardian, was A.'s legal representative and thus, in principle, had the authority to act on his behalf. The Court will therefore proceed on the assumption that the applicant's own rights under Article 8 were directly affected (see, *a contrario*, *Rõigas v. Estonia*, no. 49045/13, § 128, 12 September 2017).

20. The Court has stated that compulsory vaccination – as an involuntary medical treatment – amounts to an interference with the right to respect for one's private life, which includes a person's physical and psychological integrity, as guaranteed by Article 8 § 1 (see *Vavřička and Others*, cited above, § 263).

21. According to the information submitted to the Court, by 1 July 2025 A. had not been vaccinated against Covid-19. However, since the applicant argued that the alleged violation derived from the domestic courts' decisions, rather than the administration of the vaccine, the Court assumes that there has been an interference with the right to respect for private life.

22. The Court will therefore ascertain whether or not this interference can be accepted as justified in the light of the conditions set out in the second paragraph of Article 8 (see ibid., § 265 and *Pindo Mulla v. Spain* [GC], no. 15541/20, § 129, 17 September 2024).

23. The Court observes, firstly, that the interference was provided by law. According to Article 9 of Act No. 41/2002, in cases where the patient has diminished legal capacity because of a judicial decision, the consent shall be given by his representative. Nevertheless, in those cases, the decision should always be taken in the best interest of the patient's life or health. Where the representative's views are contrary to those interests, the problem should be reported to the judicial authorities for them to take the appropriate decision (see paragraph 12 above).

24. With regard to the legitimate aim of the interference, the Court notes that, according to the Constitutional Court, measures taken under section 9 § 6 of Act No. 41/2002 are aimed at protecting the health of those persons who are unable to consent. The Court therefore accepts that the interference pursued the legitimate aim of protection of A.'s health and the rights of others in the context of a pandemic which posed a serious risk to the population at large (see, *mutatis mutandis*, *Vavřička and Others*, cited above, § 272, and *Pasquinelli and Others v. San Marino*, no. 24622/22, §§ 94-96, 29 August 2024).

25. It remains to be examined whether this interference was necessary in a democratic society.

26. The applicable principles in this regard have been summarised in *Vavřička and Others*, cited above, §§ 273-75.

27. The Court reiterates that the Contracting States are under a positive obligation, by virtue of the relevant provisions of the Convention, notably Articles 2 and 8, to take appropriate measures to protect the life and health of those within their jurisdiction (see *Vavřička and Others*, cited above, § 282 and references therein). It considers in this context that the decision to authorise A.'s vaccination responded to the pressing social need to protect him against Covid-19, as well as to public health considerations reflecting the necessity to control the pandemic.

28. The Court observes that the decision to authorise A.'s vaccination was not the result of a general policy establishing a vaccination mandate (see, *a contrario*, *Vavřička and Others*, cited above), but of an individual decision taken in his respect, balancing several factors. Firstly, adequate precautions were taken to ensure that the medical intervention would not be to A.'s detriment. Both the medical report submitted by the mental health facility and the forensic report confirmed that there were no contraindications for A.'s

vaccination and that it would be to his benefit (see *Solomakhin v. Ukraine*, no. 24429/03, §§ 36, 15 March 2012).

29. The domestic courts thoroughly examined the applicant's allegations and based their decisions on reasonable grounds (ibid., § 38), taking into account all the relevant elements, including the absence of a firm opposition by A. to the vaccine. Besides, the applicant had at his disposal judicial remedies before the civil courts and ultimately the Constitutional Court, to contest the decision (see *Vavřička and Others*, cited above, § 295). While it is true that in his case the Constitutional Court declared his *amparo* appeal inadmissible, it had previously addressed the relevant principles to be taken into account in similar situations (see paragraph 13 above). The fact that the applicant was not successful in his *amparo* appeal does not diminish the significance of this jurisprudential safeguard of fundamental rights (see *Vavřička and Others*, cited above, § 295).

30. As to the applicant's argument concerning the safety of the vaccination, the Court notes that, although entirely safe for the great majority of recipients, in rare cases vaccination may prove to be harmful to an individual, causing serious and lasting damage to his or her health (ibid., § 301). However, the Court is satisfied with the reasoned conclusions of the domestic authorities based on the fact that there were no contraindications to vaccinate A., and the vaccines had been approved by the European Medicines Agency (ibid.).

31. The Court also observes that A. was involved in the proceedings and his opinion was taken into account. In this connection, the applicant does not claim that A.'s statements before the domestic authorities were not genuine or were in any way influenced by third persons other than his relatives (see paragraph 7 above).

32. Lastly, the applicant does not submit any arguments to sustain that the impugned interference with the enjoyment of his right to respect for private life was particularly intense (ibid., §§ 303-09).

33. The Court therefore finds that the reasons adduced by the national authorities to justify the interference were relevant and sufficient and the interference was proportionate to the legitimate aim pursued. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

34. Furthermore, in so far as the complaint can be understood as being made indirectly, that is to say, on behalf of A. whose own lack of consent was overruled by the authorities, the Court recalls that the question of consent to medical treatment concerns the core of a person's right to respect for his private life and belongs to the category of non-transferable rights (see *Rõigas*, cited above, § 127).

35. In this case, while the applicant was A.'s legal guardian and had the authority to act on his behalf, the domestic proceedings resulting in the authorisation of A.'s vaccination were pursued precisely because those

authorities considered that the applicant's position was at variance with A.'s best interests. In the absence of any manifest flaws in those proceedings, the Court considers that the applicant cannot rely on the right to informed consent on behalf of his son in the present context. The complaints before the domestic authorities were lodged on the applicant's own behalf and, in the case of the *amparo* appeal, also on behalf of A.'s sister, but not explicitly on behalf of A. Moreover, as pointed out above, A.'s opinion was indeed taken into account in the domestic proceedings. Lastly, the Court takes into account that A. had ultimately not been vaccinated so his physical integrity was not affected.

36. It follows that this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

B. Alleged violation of Articles 2 and 3 of the Convention

37. The applicant further claimed that the imposition of a medical treatment without consent was in breach of Articles 2 and 3 of the Convention, arguing that the vaccine was experimental, putting A.'s life at risk.

38. The Court has applied Article 2 where an individual has died and where there was a serious risk of an ensuing death (see *Brincat and Others v. Malta*, nos. 60908/11 and 4 others, § 82, 24 July 2014). Cases concerning medical interventions, including those carried out without the consent of the patient, will generally lend themselves rather to be examined under Article 8 of the Convention. In some cases, the Court has nonetheless accepted that, under certain conditions, medical interventions can reach the threshold of severity to be regarded as treatment prohibited by Article 3 of the Convention (see *Y.P. v. Russia*, no. 43399/13, § 34, 20 September 2022).

39. In the present case, the Court recalls that at the time when the application was submitted, and at least until 1 July 2025, A. had not been vaccinated (see paragraph 21 above). In any event, the applicant has not in any way substantiated that the administration of the vaccine could put A. in a life-threatening situation capable of engaging the State's responsibility under Article 2 or that it reached the threshold of severity of Article 3 of the Convention. Besides, the Court has already established that the decision to authorise his vaccination was in accordance with Article 8 of the Convention. In particular, the domestic courts considered, on the basis of the medical reports before them, that there were no medical contraindications to vaccinating A.

40. It follows that these complaints, outside the scope of the Articles relied on, are incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Alleged violation of Article 13 of the Convention

41. Lastly, the applicant alleged a breach of his right to an effective remedy, as the Constitutional Court had declared his *amparo* appeal inadmissible, while other analogous complaints had been declared admissible.

42. The Court considers that this complaint is to be examined as an alleged violation of the applicant's right of access to a court under Article 6.

43. The Court has accepted that the conditions of admissibility of an *amparo* appeal may be stricter than for an ordinary appeal and that proceedings before the Constitutional Court may be more formal (see *Arribas Antón v. Spain*, no. 16563/11, §§ 42 and 50, 20 January 2015). Moreover, it is primarily for the national authorities, and in particular the courts, to interpret domestic legislation, and particularly in relation to the interpretation of procedural rules, such as admissibility requirements (ibid., § 46).

44. While the applicant claims that other analogous complaints were declared admissible by the Constitutional Court, he did not submit any documents to sustain his assertions or any specific arguments to show that the Constitutional Court decision was arbitrary or unreasonable.

45. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 September 2025.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President