Tuberculosis, Human Rights and the Law

A Compendium of Case Law

First Edition

International Human Rights Clinic

University of Chicago Law School

Part of the TB, Human Rights and the Law Consortium

Acknowledgements

Primary Author:
Noorjit Sidhu

Contributing Authors:
Madison Clark
Marcela Barba
Gabriel Armas-Cardona
Richard Junqi Zhang
Laura Simone Tscherrig
Guilherme El Hadi Franco Morgulis
Laurent Cousinou
Lucia Goin

Editors:
Kimberly Rhoten
Ryan Maher
Shelbi Smith
Gabriel Armas-Cardona
Brian Citro

Project Director:
Brian Citro

Cover Photo by Mehak Sethi.

All other photos in the compendium were generously provided by the **Stop TB Partnership**.

Special Thanks to the Honorable Michael Kirby, the Honorable Edwin Cameron, the Honorable Oagile Key Dingake and all the participants at the "TB, Human Rights and the Law Judicial Workshop" held in Nairobi, Kenya in June 2016, Suzanne Zhou and her team of LLM researchers at University of Cambridge, Jennifer Furin, Fuad Mirzayev, Allan Maleche, Mihir Mankad, Colleen Daniels, Kiran Pandey, Evan Lyon, Lucica Ditiu, Susan Gzesh and the Pozen Family Center for Human Rights, Molly Blondell and Claudia Flores.

The **Global Drug-resistant TB Initiative (GDI)** generously provided funding to complete this project. The GDI is a Working Group of the Stop TB Partnership. Development and publication of this document was also made possible with financial support from the United States Agency for International Development.

THE UNIVERSITY OF CHICAGO
THE LAW SCHOOL

Global Drug-resistant TB Initiative
Accelerating the response

Foreword

Michael Kirby, Justice of the High Court of Australia (1996-2009)

In late 2015, I was asked to give the keynote address at the "TB, Human Rights and the Law Judicial Workshop" in New Delhi, India organized by the International Human Rights Clinic at the University of Chicago Law School and conducted jointly with the All India Institute of Medical Sciences. I readily admitted that I had little experience in the area of tuberculosis. Having, however, worked for 30 years on health, human rights and the law, and in particular in the struggle of people living with HIV to secure their rights I agreed to offer any lessons from that work to this context.

Tuberculosis is a, or perhaps the, major challenge to global health in the 21st Century. It has surpassed HIV as the leading killer from an infectious disease. It represents a serious impediment to the attainment of the Sustainable Development Goals (SDGs), which recognize the interdependence of health and development. SDG 3 aims to "attain healthy lives and well-being for all." The statistics surrounding tuberculosis are alarming: in 2015 alone, there were approximately 10.4 million new cases of tuberculosis and 1.8 million deaths from the disease. This means that many people are being left behind. Inclusive and equitable development is not being realized.

Now more than ever tuberculosis is an illness of poverty: of those that are vulnerable and marginalized and often forgotten by society. Historical epidemiological evidence corroborates the fact that tuberculosis control is more than a biomedical challenge. In the industrialized world, tuberculosis is something rarely encountered. Rates across Western Europe began to fall even before the discovery of chemotherapy. And following the introduction of chemotherapy treatment, the trend continued until the disease was no longer a public health threat. Yet current tuberculosis control approaches, including in parts of Asia and Sub-Saharan Africa, have not been able to achieve similar success.

The central truth about the tuberculosis crisis, as the cases in this compendium demonstrate, is that social and economic factors and structural barriers drive the epidemic. Individuals most vulnerable to tuberculosis infection are members of socially and economically disadvantaged groups, including the poor, mobile populations, persons living with HIV, prisoners, and people who use drugs. These groups face significant barriers to preventing and treating tuberculosis including financial and physical inaccessibility to testing and treatment services; a lack of awareness about the modes of transmission and prevention techniques; stigma and discrimination in the health system and society generally; and poor sanitation and unhealthy living conditions.

The prevalence of drug-resistant strains of tuberculosis reaffirms the socio-economic character of the disease. Drug resistance develops as a result of irrational or interrupted first-line treatment and a lack of infection control. These, in turn, result from the unavailability of good quality first-line drug combinations, interrupted access to treatment services, and poor quality health facilities, disproportionately impacting the most vulnerable groups. The specter of drug resistance now looms equally over the entire world—developed and developing.

This is why I welcome the first edition of the "Tuberculosis, Human Rights and the Law Case Compendium." It provides a critical tool for lawyers, jurists, human rights activists and members of the medical community to mobilize use of human rights and the law to combat tuberculosis. It collects

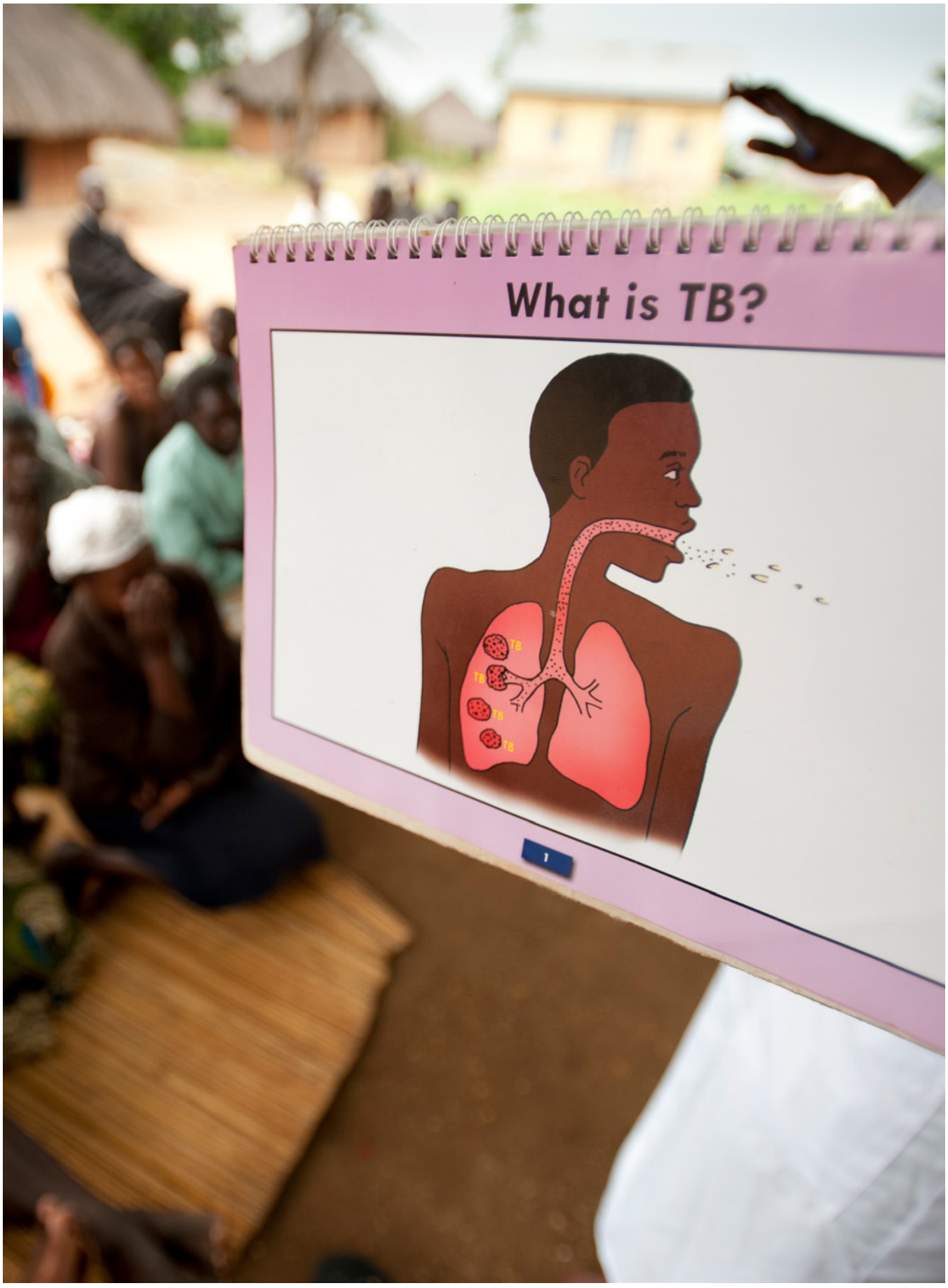
jurisprudence on tuberculosis from all around the world, involving a wide variety of issues, from access to testing and treatment, to immigration and asylum, to torture and discrimination. Similar efforts have been made in HIV and have proved successful in promoting awareness and further development of positive jurisprudence in the area of HIV, human rights and the law.

This compendium also constitutes an opportunity to encourage those who currently do not see the value of a human rights-based approach to tuberculosis to reassess their thinking. The primary features of such an approach are the recognition of the rights of people living with and vulnerable to tuberculosis, the prioritization of the needs of key populations, and the close participation of affected communities. A similar rights-based approach has been applied successfully in the fight against HIV around the world. The mobilization of affected communities in grassroots campaigns has spurred research and the development of new medicines. It has lowered the prices of existing drugs. People living with HIV have claimed their rights to information, participation, and informed consent. They have won greater protections against discrimination through litigation and advocacy based on international and constitutionally derived human rights.

Only when we put affected people at the center of our efforts, recognizing and protecting their rights, will we eradicate this millennia-old illness that has caused so much suffering. This compendium is a comprehensive tool in that effort. While the compendium highlights the significant instances of litigation that has already occurred involving tuberculosis, its greatest lesson may be to demonstrate the fact that we are only in the early stages of the use of human rights and the law to fight this disease. My hope is that practitioners and non-practitioners alike will use this compendium to promote and protect the rights of people with tuberculosis and expand the use of human rights and the law to defeat the disease once and for all. This is a moral goal right in itself. But it is also a practical objective as HIV has demonstrated.

Michael Kirby

The Hon. Michael Kirby, AC, CMG, was a Member of the United Nations Secretary-General's High–Level Panel on Access to Essential Medicines (2015-2016). He was a Justice of the High Court of Australia (1996-2009) and President of the International Commission of Jurists (1995-1998).


What is TB?
TB
TB
TB
TB
1

Purpose

This compendium is designed to serve as an archive of case law involving tuberculosis, human rights and law from domestic and regional jurisdictions. The case law is summarized for convenience and use by readers and arranged based on broad thematic issues. The aim of the arrangement is to illustrate the international scope of the legal issues involved and to provide insights to readers in one jurisdiction about how cases have been adjudicated elsewhere.

Research and Case Summary Methodology

This compendium is based principally on research conducted by students at the University of Chicago Law School, a team of LLM researchers at Faculty of Law, University of Cambridge, and independent researcher Gabriel Armas-Cardona. The research and drafting of case summaries was supervised by Brian Citro, Clinical Lecturer in Law in the International Human Rights Clinic at the University of Chicago Law School.

The case law in this compendium is not exhaustive of all cases involving tuberculosis in all jurisdictions. Research was conducted in Chinese, English, French, German, Portuguese and Spanish languages. This compendium includes cases identified from the following 20 jurisdictions: Argentina, Bolivia, Brazil, Canada, Chile, China, Colombia, the European Court of Human Rights, France, India, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, Kenya, Pakistan, Peru, the Philippines, South Africa, Switzerland, the United Kingdom, and the United States of America.

Cases were identified and summarized based on the following criteria:

- Prominence of tuberculosis in the case;
- Jurisdiction, focusing on jurisdictions with high incidence of tuberculosis or influential case law;
- Issue involved, towards the goal of providing thematic diversity and highlighting human rights issues; and
- Level of court, focusing on the highest court and appellate courts in each jurisdiction.

In the interest of providing a clear picture of the current global landscape of case law involving tuberculosis, summaries have been included in order to provide objective descriptions of the essential elements of each case, focusing on the factual and legal issues related to tuberculosis.

The case classification categories were chosen by the researchers and project supervisor based on shared issues in the case law. They are descriptive classifications meant to capture and catalog the primary factual and legal issues involved in the cases as accurately as possible, while promoting ease of use of the compendium. Many cases fit into more than one category, but have been placed by the researchers and project supervisor into the category that best reflects the primary factual and legal issues involved in the case.

Table of Case Summaries

Prisons and Torture or Cruel, Inhuman or Degrading Treatment or Punishment 1
Matter of the Penitentiary Complex of Curado 1
Paddock v. Correctional Medical Practitioner 3
Case T-271/14 4
Zhang Shaoquan v. Liaoning Lingyuan No.5 Prison, et al. 4
Case T-035/13 5
Reshetnyak v. Russia 6
Ridore v. Holder 8
Vasyukov v. Russia 9
Khatayev v. Russia 10
Redd v. Wright 11
BGE 134 IV 156 12
Yakovenko v. Ukraine 13
Gorodnichev v. Russia 14
REsp 802.435/PE, Reporting Justice Luiz Fux 15
Francois v. Gonzales 16
Clark v. Taylor 17
Khokhlich v. Ukraine 18
Loftin v. Dalessandri 19
Jolly v. Coughlin 20
Williams v. Greifinger 22
Hill v. Marshall 23
DeGidio v. Pung 24
Compensation, Insurance and Property 27
REsp 721.647/SC, Reporting Justice Maria Isabel Gallotti 27
Case T-20155 28
Sypchenko v. Russia 29
Samuel Martín Gomez Copa v. the 5th Civil Chamber of the Superior Court of Justice of Lima 30
REsp 726.828/SC, Reporting Justice Luiz Fux 31
Confederation of Ex-Servicemen v. Union of India and Others 31
Imtiaz Ali Malik v. Mst. Surrya Begum 33
BGE 98 V 81 33
Compulsory Isolation, Testing or Treatment 36
Daniel Ng'etich v. Attorney General 36
Case No. 21,681-2016 38
Minister of Health, Western Cape v. Goliath and Others 39
Toronto (City) Associate Medical Officer of Health v. McKay 40
Meylan v. Neuchâtel 40
Case of Conseil d'Etat, June 16, 1967 (case Conseil d'Etat, du 16 juin 1967, 66840) 41
Francisco De La Rama v. The People's Court 41
Immigration and Asylum 44
Lutsyuk v. Government of Ukraine 44
Tamarevichute v. Russia 45
R. (on the application of Secretary of State for the Home Department) v. Asylum Support

Adjudicator ... 46
Osagie v. Canada (Minister of Citizenship & Immigration) ... 47
6P.138/2002 ... 47
ATF 123 II 511 ... 48
Fung v. Canada (Minister of Employment & Immigration) ... 49
Right to Life ... 52
Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania ... 52
Paposhvili v. Belgium ... 54
SCP 0848/2014 ... 55
SCP 2024/2013 ... 56
Makharadze and Sikharulidze v. Georgia ... 57
Naisul Khatun v. State of Assam and Others ... 58
SCP 0001/2010-R ... 59
Employment Discrimination ... 62
Rajinder Kumar v. State of Haryana and Another ... 62
Tan Xiaosong v. Hangzhou Dingjin Food Company ... 62
Case No. 0410/2012 ... 63
Mankayi v. AngloGold Ashanti Limited ... 64
Michon-Hamelin v. Attorney General of Canada ... 66
School Board of Nassau County v. Arline ... 67
Causation ... 70
O. T. G. v. Provincia ART S.A., regarding an accident ... 70
Dudley Lee v. Minister for Correctional Services ... 70
Jaipur Golden Gas Victims v. Union of India and Others ... 72
Cringles v. Clyde Alloy Steel Company Limited ... 73
Right to Fair Trial and Effective Remedies ... 76
Nkala v. Harmony Gold Mining Company Limited ... 76
Chen Yuxiang v. Haizhou District Court, et al. ... 77
Alonso, Rolando Roberto Omar, regarding a complaint appeal ... 78
Negligence ... 80
Smt. Premshila Devi, Wife of Late Sunil Kumar v. State of Bihar ... 80
Muhammad Aslam v. Dr. Imtiaz Ali Mughal and Others ... 80
Sam v. Wilson ... 81
Social Determinants of Health ... 84
Case T-043/15 ... 84
National Ombudsman v. The Nation and Another (Province of Chaco), regarding the process of knowledge ... 85
Yanomami Indigenous Community v. Brazil ... 86
Right to Privacy ... 89
ARE 855.179 AgR/RJ, Reporting Justice Luiz Fux ... 89
Speaker v. U.S. Dept. of Health and Human Services Centers for Disease Control and Prevention ... 90

Prisons and Torture or Cruel, Inhuman or Degrading Treatment or Punishment

Case	*Matter of the Penitentiary Complex of Curado*
Year	2016
Country	Brazil
Court/Body	Inter-American Court of Human Rights
Citation	I/A Court H.R., Matter of the Penitentiary Complex of Curado regarding Brazil. Provisional Measures. Order of the Inter-American Court of Human Rights of November 23, 2016
Facts and Law	The Inter-American Commission on Human Rights petitioned the Inter-American Court of Human Rights requesting the imposition of "provisional measures" on Brazil to protect the life and personal integrity of inmates, personnel and visitors of the Professor Aníbal Bruno Prison Complex (Curado Prison) in the State of Pernambuco. The request originated from a proceeding on precautionary measures underway before the Commission pursuant to the American Convention on Human Rights (American Convention) granted originally on behalf of people deprived of their liberty at the Curado Prison. The Commission noted in its petition that: (1) the conditions in the Curado Prison were inhumane and had promoted violent behavior among the inmates; (2) there was evidence of more than 100 cases of inmates not receiving necessary medical assistance; (3) the prison did not have a sufficient number of doctors or rehabilitation personnel; (4) the prison did not provide inmates adequate food; and (5) there were areas in the prison where inmates with tuberculosis and leprosy were kept, but no measures had been taken to treat or isolate these inmates. On May 22, 2014, the Court granted the Commission's request for provisional measures. Among other things, the Court directed Brazil to adopt measures to ensure prisoners had access to health care and to prevent the spread of contagious diseases. The Court ordered Brazil to: (1) draft and implement an emergency health care plan, including access to treatment for inmates with contagious diseases; (2) draft and implement an emergency plan to reduce overcrowding in the prison; (3) eliminate the presence of weapons of any kind in prison; (4) ensure proper safety, personal integrity and living conditions for all inmates, personnel and visitors; and (5) eliminate the practice of searches that violated visitors' rights to intimacy and dignity. Brazil reported that in order to comply with the provisional measures it had: (1) created a special committee to manage the health conditions of all inmates in the State of Pernambuco; (2) incorporated prisoner health care into the unified public health care system; (3) provided each facility of the Curado Prison with a multipurpose medical team; (4) implemented periodic vaccination campaigns to prevent the spread of contagious diseases; (5) conducted examinations to identify prisoners with tuberculosis; (6) provided treatment to inmates with tuberculosis; (7) transferred inmates with psychiatric conditions to a specialized hospital; (8) conducted individual medical consultations for all inmates on a monthly basis; (9) increased the size of the prison's medical staff; and (10) implemented measures to improve the quality of prison food. The representatives of the beneficiaries of these measures contended Brazil's efforts were insufficient and that health care at the Curado Prison, in particular, was still inadequate. The

Case	*Matter of the Penitentiary Complex of Curado (continued)*
	Commission also noted that Brazil had not presented a detailed plan to provide medical assistance to inmates with contagious diseases. On October 7, 2015, based on information demonstrating ongoing problems with the quality of health care in the Curado Prison, the Court extended the provisional measures. The Court directed Brazil to adopt additional urgent measures to ensure prisoners were provided adequate medical treatment and that inmates, personnel and visitors were not exposed to contagious diseases. The Court also stated that Brazil should adopt preventive health policies taking into consideration the special needs of vulnerable inmates, including prisoners with tuberculosis and HIV. In this regard, the Court noted with alarm the increasing number of prisoners with tuberculosis, remarking that the disease was likely to spread further because of the presence of inmates living with HIV. On November 18, 2015, the Court again extended the provisional measures after a report of violent acts occurring inside the prison. It highlighted the need to ensure the safety of the prisoners' legal representatives in particular. The Court also announced its intention to send a special team to the prison, with the state's consent, to monitor compliance with the measures *in loco*. During inspections by the Court's representatives to verify compliance with the resolutions, Brazil asserted that it had: (1) hired several new medical personnel and conducted a public bidding process to hire additional personnel; (2) hired a specialized doctor and created specialized medical teams for the treatment and prevention of contagious diseases, including tuberculosis; (3) identified prisoners with contagious diseases, including tuberculosis; and (4) provided training to medical personnel about tuberculosis and leprosy. The representatives of the Court deemed these measures insufficient. In particular, they noted that no permanent and continuous monitoring system had been implemented to actively investigate the incidence of contagious diseases in the prison and to supervise the treatment of inmates with such diseases.
Issues and Holdings	1. In response to an "extremely grave" and "urgent" situation, were provisional measures pursuant to the American Convention necessary to ensure Brazil did not cause irreparable harm to the human rights of inmates, personnel and visitors at the Curado Prison, in particular their rights to life and personal integrity? Yes. 2. Are states required under the American Convention to ensure prisoners are not subject to degrading conditions and are provided adequate medical assistance, including treatment for and prevention of contagious diseases such as tuberculosis? Yes. 3. Are states required under the American Convention to adopt policies to reduce and prevent overcrowding in prisons? Yes.
Decisions and Reasoning	1. Section 63.2 of the American Convention authorizes the Court to impose provisional measures on states in matters that have not yet been submitted to the Court. In order to exercise this authority, the Court must find that (1) there are urgent and extremely grave circumstances to justify such measures and (2) there is a risk of irreparable harm to a person(s). The Court determined that these circumstances were present in this case, given the condition of the Curado Prison. 2. The Court asserted that provisional measures are an important tool to protect human rights, to the extent they prevent irreparable harm to individuals. The Court noted that supranational and national rules establish protections for prisoners' human rights, including the rights to health, to adequate hygienic conditions, to adequate food and to proper medical assistance, including treatment and prevention of contagious diseases such as HIV and tuberculosis. The Court declared that, while Brazil had made efforts to realize these rights, the condition of prisoners' health and health care in the Curado Prison was still very low.

Case	*Matter of the Penitentiary Complex of Curado (continued)*
	In particular, the Court noted that the number of new cases of tuberculosis continued to increase and that this was directly related to the overcrowding and the inhumane and unhealthy conditions in the prison. The Court directed Brazil to provide periodic reports about measures taken to treat and prevent contagious diseases in each unit of the Curado Prison. 3. The Court noted with concern the increase in the number of incarcerated individuals in Brazil and in Pernambuco in particular. It observed that the exponential growth in the number of prisoners created difficulties for the adoption of structural changes in the prison system. This, in turn, created an environment in which violations of prisoners' human rights were more likely to take place. This was of particular concern in the Curado Prison. The Court ordered Brazil to submit a technical diagnostic within 90 days examining the causes of overcrowding and presenting a contingency plan to address the problem with concrete measures to guarantee inmates' rights to life and personal integrity. The Court also directed Brazil to adopt short-term measures necessary to prevent risks to the life and personal integrity of inmates, staff and visitors that persisted after the adoption of prior Court resolutions.

Case	*Paddock v. Correctional Medical Practitioner*
Year	2014
Country	South Africa
Court/Body	High Court of South Africa, Eastern Cape Local Division
Citation	Case No. 2248/2014
Facts and Law	Applicant, Paddock, was sentenced to twenty years' imprisonment in 2005, following his conviction for murder, robbery and unlawful possession of a firearm and ammunition. The first Respondent, Correctional Medical Practitioner, refused to recommend his release from prison on medical parole, despite his poor health, which included tuberculosis. Applicant claimed numerous health problems and mistreatment by prison officials. He suffered from a series of bodily problems, ranging from osteoporosis to broken wrist bones. He alleged the prison refused to provide him with replacement hearing aids when his became defunct. In 2010, he experienced severe breathing problems due to the collapse of his left lung, and his left pharyngeal nerve became paralyzed. He was informed that both conditions were the result of having contracted tuberculosis while incarcerated in 2009. In 2012, he experienced a severe bladder problem, requiring the use of a catheter. On the basis of these and other health problems, Applicant requested the first Respondent to recommend his release under Section 79 of the Correctional Services Act. Section 79 provides that an offender may be considered for medical parole, if he is suffering from a terminal or incapacitating disease, the risk of re-offending is low, and there are appropriate arrangements for his supervision within the community. Section 79 also requires applications to include a written medical report, specifically recommending medical parole. The first Respondent's medical report did not recommend Applicant for medical parole.
Issues and Holdings	Did Applicant qualify for release on medical parole under Section 79 of the Correctional Services Act, contrary to Respondent's decision not to recommend medical parole? No.
Decisions and Reasoning	The Court stated that it will set aside an administrative decision only if it is based on "bad or flawed reasoning and such reasoning was of material or substantial significance in prompting the decision-maker to come to his or her decision." The Court further noted that

Case	*Paddock v. Correctional Medical Practitioner (continued)*
	administrative decisions should not be overturned if legal requirements are met and the "decision is one that a reasonable authority could make." In this case, the Court held that Applicant provided insufficient evidence to show that Respondent acted inappropriately. The only allegation that was partially supported—that of a delay in processing Applicant's application—did not demonstrate a "failure of justice." The Court held that Respondent was not required to recommend Applicant for medical parole, despite his tuberculosis and other health conditions.

Case	*Case T-271/14*
Year	2014
Country	Colombia
Court/Body	Constitutional Court
Citation	Case T-271/14
Facts and Law	Plaintiff had suffered from HIV/AIDS and tuberculosis for several years, with progressively deteriorating health. A sentencing judge sentenced him to 28 months in prison for extortion. The judge rejected Plaintiff's request for house arrest, on the grounds that Law 1121 of 2006 denies house arrest for those guilty of extortion. Plaintiff filed a *tutela* (writ of protection of fundamental rights) claiming the sentencing judge failed to consider the medical evidence demonstrating that his condition was not compatible with imprisonment and that the prison did not have the medical equipment necessary to treat him. He requested that his imprisonment be substituted with house arrest, in order to protect his fundamental rights to life, health and physical integrity under the Constitution of Colombia.
Issues and Holdings	Did the sentencing judge's denial of Plaintiff's request for house arrest, without consideration of his poor health, including HIV/AIDS and tuberculosis, violate Plaintiff's fundamental rights to life, health and physical integrity under the Constitution of Colombia? No, but the Court ordered the prison to provide Plaintiff medical care.
Decisions and Reasoning	The Court held that Plaintiff could remain in prison, but that the prison must provide necessary medical care. The Court declared that the state, having the right to punish, also has the duty to protect prisoners' legal rights, even while imposing a punishment. The Court noted that the criminal procedure code allows a guilty party to serve his sentence at home when he has a serious condition due to illness or a serious illness that is incompatible with living in prison. However, Law 1121 of 2006 denies certain benefits to those guilty of serious crimes, including house arrest. The Court recognized that the law's purpose was to satisfy popular demand that those who commit serious crimes go to jail. The Court held that, if Plaintiff "must remain incarcerated, the State must provide the necessary treatment to prevent, control, and overcome his health condition." The Court ordered the prison to provide Plaintiff "the highest possible level of care," including guaranteeing him "adequate conditions of hygiene, safety, sanitation and food."

Case	*Zhang Shaoquan v. Liaoning Lingyuan No.5 Prison, et al.*
Year	2013
Country	People's Republic of China
Court/Body	High Court of Liaoning Province
Citation	(2013) 辽法委赔字第8号

Case	*Zhang Shaoquan v. Liaoning Lingyuan No.5 Prison, et al. (continued)*
Facts and Law	Claimant, Zhang Shaoquan, filed a petition with Respondent, Liaoning Lingyuan No.5 Prison, claiming compensation for the death of his family member, Zhang Lei, in the prison. The petition was denied, and Claimant brought this lawsuit against Respondent. Claimant argued that Zhang Lei's death was caused Respondent's negligent medical treatment of Lei's tuberculosis during his confinement.
Issues and Holdings	Was Claimant entitled to state compensation for the prisons treatment of his family member, Zhang Lei, who was diagnosed with tuberculosis and died in prison? No.
Decisions and Reasoning	The Court found that Article 17 of People's Republic of China State Compensation Law (Compensation Law) establishes the circumstances under which claimants are entitled to compensation for the actions of prison authorities, including, among other things, assault, abuse and illegal use of weapons. The Court found that Zhang Lei's death was not caused by any of the acts listed in the Compensation Law. In addition, the Court held that Respondent had taken reasonable measures to treat Lei after he was diagnosed with tuberculosis, including isolation, medical treatment and pardon from hard labor. The Court denied Claimant's argument that Respondent's denial of Lei's medical parole was invalid and had contributed to his death. The Court stated that under the Department of Justice's administrative regulation (司狱字(2001)第145号), prisoners with life sentences are not eligible for medical parole and may only receive the medical treatment in prison. Lei was sentenced to life imprisonment; therefore, the Court held that Respondent had correctly denied his request for medical parole. The Court held that Respondent had taken reasonable measures to treat Lei in prison and Claimant was thus not entitled to state compensation.

Case	*Case T-035/13*
Year	2013
Country	Colombia
Court/Body	Constitutional Court
Citation	Case T-035/13
Facts and Law	Plaintiff, Valdez, had been in prison since 2011. He was housed in the medical ward, as he had been HIV-positive since 2006 and had tuberculosis. During his imprisonment, the medical ward stopped providing him tuberculosis treatment. He believed it was because his tuberculosis had become resistant to first-line drugs, i.e., multidrug-resistant tuberculosis (MDR-TB). In 2012, he learned of a comprehensive treatment appropriate for him, which involved hospitalization followed by home care. He filed a *tutela* (writ of protection of fundamental rights) for access to the treatment and for house arrest instead of detention in prison. A sentencing judge accepted the medical evidence that Plaintiff suffered from a serious illness that was incompatible with imprisonment and granted Plaintiff's request. However, the judge suspended the order seven months later, before it was implemented. Plaintiff's transfer to the hospital was conditioned on his medical evaluation, which the judge determined was now dated, due to the pathology having evolved over time. The sentencing judge required that Plaintiff undergo a new medical evaluation, in order to be transferred for treatment. The Appellate Court ordered more information and included other parties in the matter, including regional health institutions, the Office of the Attorney General and the Ministry of Social Protection.

Case	*Case T-035/13 (continued)*
Issues and Holdings	1. Did the sentencing judge violate Plaintiff's rights to health and a dignified life, to due process, and to special protection of people with HIV/AIDS, by suspending his transfer to a hospital to receive appropriate MDR-TB treatment until a new medical evaluation was made, even though Plaintiff's health had not improved? Yes. 2. Did the prison violate Plaintiff's right to health and a dignified life, by not providing him appropriate medical care for MDR-TB? Yes.
Decisions and Reasoning	1. The Court held that the sentencing judge violated Plaintiff's rights to health, to due process, and to special protection of people with HIV/AIDS. The Court noted that the criminal procedure code allows a guilty party to serve his sentence at home when he has a serious condition due to illness or a serious illness that is incompatible with living in prison. The Court further noted that the right to health under the Constitution of Colombia applies to all people, including prisoners, a view supported by the United Nations Standard Minimum Rules for the Treatment of Prisoners. Finally, the Court noted that the state has a special consideration to care for people with HIV/AIDS. The Court held that the sentencing judge's suspension of Plaintiff's transfer to a hospital for MDR-TB treatment violated each of these principles. 2. The Court held that the prison violated its duty to Plaintiff by not providing him medical care he needed for MDR-TB. Using similar reasoning as above, the Court emphasized that the right to health belongs to a group of rights that cannot be restricted by the state's punitive power, but rather must operate in full effect for prisoners. Suspension of Plaintiff's treatment without adequate justification violated those rights. The Court also held that, while Plaintiff had not exhausted the ordinary legal mechanisms available to him, it accepted the *tutela* because his case was exceptional due to his HIV-positive status, which afforded him special protection from the state.

Case	*Reshetnyak v. Russia*
Year	2013
Country	Russia
Court/Body	European Court of Human Rights
Citation	Application No. 56027/10
Facts and Law	Applicant, Reshetnyak, was diagnosed with tuberculosis in 2000 and underwent treatment several times in tuberculosis hospitals. In 2005, Applicant experienced a reactivation of the illness. He was found guilty in March 2006 of aggravated robbery and sentenced to six years and six months' imprisonment. He was to serve the time in a medical correctional facility because he required treatment for tuberculosis. Between June and November 2006, Applicant received tuberculosis treatment in the prison hospital in colony no. 3. In November 2006, he was transferred to medical correctional colony no. 8. The colony functioned as a hospital for inpatient treatment of inmates, most of whom suffered from tuberculosis. Following his transfer to colony no. 8, he was examined by a tuberculosis specialist and diagnosed with infiltrative, focal tuberculosis of the left lung, with a subsequent prescription of medicine. Examinations between 2006 and 2007 led to amendment of his treatment to include only moderate analgesic and anti-inflammatory drugs, vitamins, nasal drops, cough medicine, hepatoprotectors and herbal sedatives. In March 2007, a prison doctor prescribed a dose of antibacterial medicine. Applicant continued complaining of coughing, fever, chest pain, and headache. Examinations continued and his conditions worsened. In February 2008, prison doctors

Case	*Reshetnyak v. Russia (continued)*
	finally diagnosed Applicant with infiltrative and disseminated destructive tuberculosis of the upper lobe of the left lung. His antibacterial drug regimen began only then. However, Applicant's condition continued to worsen and doctors authorized his release from the hospital in February of 2009. His condition deteriorated further, and he was taken to the hospital in November 2010, where he began receiving second-line anti-tuberculosis drugs. Applicant tested sputum smear-negative for tuberculosis at the end of his treatment in the hospital. Following his release, however, he began receiving first-line drugs again. Applicant tested sputum smear-positive for tuberculosis in February 2011 and was prescribed second-line treatment. A few months later, Applicant underwent drug susceptibility testing for the first time. The tests showed resistance to two of the four first-line medicines and at least one second-line drug. In August 2011, he was transferred to the tuberculosis department of detention facility no. 2, where, despite his subsequent treatment, his condition was deemed "moderately severe" and he required inpatient care. Applicant alleged he had not received adequate medical care for his tuberculosis while in detention, that the conditions of his detention in a medical correction colony were inhumane, and that there had not been effective legal remedies available to accomplish the redress of his rights violations. Applicant brought suit against Russia, arguing Russia's treatment of him violated his rights to be free from torture or inhuman or degrading treatment or punishment and to an effective remedy and investigation under Articles 3 and 13 of the European Convention on Human Rights (Convention). Russia claimed that during the entire period of Applicant's detention, neither the overall population in the colony nor his room's population exceeded the maximum design capacity. Russia argued, therefore, that Applicant always had his own sleeping place. Russia provided further information on housing and sanitary conditions in the colony dormitories, highlighting that each dormitory room had seven windows and was cleaned twice per day. Russia asserted that sufficient food rations and bathing opportunities were provided, and schedules were healthy. Russia argued that the treatment provided to Applicant during his detention was of the highest standards. Applicant, however, contended that the conditions of his detention were appalling and overcrowded, the facility housed more than four-hundred people above its maximum capacity, the windows ventilated insufficiently, inmates were not permitted to spend enough time outside, the lavatory did not have hot water, disinfection was only rarely performed, and food was scarce and of poor quality.
Issues and Holdings	1. Did Russia's treatment of Applicant, including delayed testing and inconsistent treatment of Applicant's tuberculosis, violate his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention? Yes. 2. Did Russia's lack of domestic legal recourse for Applicant's complaint of inadequate medical care violate Applicant's right to an effective remedy and investigation under Article 13 of the Convention? Yes.
Decisions and Reasoning	1. The Court emphasized that although Russia had conducted several tests on Applicant, it took authorities almost five years to perform the necessary drug susceptibility test, which revealed Applicant suffered from multidrug-resistant tuberculosis. The Court held that the fact alone that Applicant was examined and seen by doctors was not proof of adequate treatment by Russia. The Court found that Russia's cessation of Applicant's antibacterial drug treatment on multiple occasions provided poof of inadequate medical care. The Court also noted that there were long delays between instances of Applicant's marked deterioration and the authorities' response. The Court thus held that Applicant did not receive comprehensive and effective treatment during his detention. This lack of adequate treatment exposed him "to prolonged

Case	*Reshetnyak v. Russia (continued)*
	mental and physical suffering diminishing his human dignity," which amounted to inhuman and degrading treatment under Article 3 of the Convention. 2. The Court stated that the existence of remedies "must be sufficiently certain not only in theory but also in practice." The Court found that the avenues for remedy put forth by Russia were inadequate. The Court considered several additional avenues for remedy within Russia, but declared that the remedies were insufficient. The Court dismissed Russia's objection that Applicant had not exhausted all domestic remedies and held that Russia had violated Applicant's right to an effective remedy and investigation under Article 13 of the Convention.

Case	*Ridore v. Holder*
Year	2012
Country	United States of America
Court/Body	9th Circuit Court of Appeals
Citation	696 F.3d 907
Facts and Law	Petitioner, Ridore, was a citizen of Haiti admitted to the United States as a lawful permanent resident in 1973. Between 1991 and 2004, he committed a series of criminal offenses, prompting federal immigration authorities to initiate removal proceedings. Petitioner claimed that upon his return to Haiti he would be imprisoned for a prolonged period of time under conditions that would qualify as "torture" under the Convention Against Torture (CAT). The Immigration Judge (IJ) found that Haitian prisons "allow beriberi and tuberculosis to run rampant through the prison population" thus reflecting "their willingness to use the jails to harm the inmates so that they will never be a threat to the population again." The IJ held that such prison conditions did qualify as torture under CAT and granted protection to Petitioner under the treaty. The Department of Homeland Security appealed the decision to the Board of Immigration Appeals (BIA). The BIA sustained the appeal and vacated the decision of the IJ that granted Petitioner protection under CAT. Petitioner petitioned for review, arguing that the BIA acted beyond the scope of its authority by reviewing the IJ's decision under a *de novo* rather than a "clear error" standard.
Issues and Holdings	1. In overruling the IJ's grant of protection to Petitioner under CAT, did the BIA fail to apply a "clear error" standard of review to the IJ's factual findings that conditions in Haiti's prisons, including rampant tuberculosis, and the government's complicity in such conditions constituted torture? Yes. 2. In overruling the IJ's cancelation of Petitioner's removal, did the BIA fail to apply a "clear error" standard of review when finding the IJ gave disproportionate weight to the potential hardship Petitioner would face in Haiti as a criminal deportee? No.
Decisions and Reasoning	1. The Court held that the BIA failed to examine the IJ's factual findings. Instead, the BIA abided by the holdings and evidence of other precedential cases, which counseled in favor of removal. The failure to engage with the IJ's evidentiary record meant that the BIA incorrectly applied a *de novo*, rather than a "clear error," standard of review. The Court held that the "BIA cannot disregard the IJ's findings and substitute its own view of the facts," which the BIA did in evaluating whether Petitioner was likely to be subject to torture if returned to Haiti. The Court remanded the issue to the BIA "to review the IJ's CAT protection findings for clear error." 2. The Court held that the BIA gave proper deference to the IJ's factual findings when the BIA vacated the IJ's decision to cancel Petitioner's removal to Haiti. Nonetheless, the Court held that the BIA's decision to vacate the cancellation of removal was tainted by

Case	*Ridore v. Holder (continued)*
	its inappropriate *de novo* review of the IJ's findings on the conditions in Haitian prisons. Ultimately, the Court remanded the issue to the BIA for a reweighing of the equities of removal. The Court implied agreement with the IJ's conclusions that prison conditions, including rampant tuberculosis, could warrant a claim of torture under CAT or otherwise justify cancellation of removal.

Case	*Vasyukov v. Russia*
Year	2011
Country	Russia
Court/Body	European Court of Human Rights
Citation	Application No. 2974/05
Facts and Law	Applicant, Vasyukov, was an inmate in a Russian prison sentenced for murder. He filed suit against the Russian Federation alleging that he contracted tuberculosis and was denied adequate medical assistance while in detention. Applicant claimed that from October 1998 to September 2004 he was confined in the same cell with an inmate with active tuberculosis and that his requests to be placed elsewhere, or to have the situation dealt with, were ignored. He further alleged that he experienced delays in testing for tuberculosis and interruptions in his treatment. Russia alleged that after September 2004 Applicant refused testing and treatment for tuberculosis while in detention. Applicant did not dispute this. Applicant claimed Russia violated his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights (Convention).
Issues and Holdings	1. Did Russia's failure to appropriately diagnose and treat Applicant for tuberculosis during his detention prior to September 2004 amount to a violation of his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention? Yes. 2. Did Russia's failure to test and treat Applicant for tuberculosis after September 2004, due to Applicant's refusal to cooperate, violate his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention? No.
Decisions and Reasoning	1. The Court held that Russia's failure to duly diagnose Applicant with tuberculosis and provide him adequate medical assistance during his detention at the correctional colony violated his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention. Specifically, the Court held that due to the "lack of adequate medical treatment, applicant was exposed to prolonged mental and physical suffering diminishing his human dignity." Russia's failure to diagnosis and treat applicant for tuberculosis prior to September 2004 thus amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. 2. The Court held that Russia's failure to treat Applicant after September 2004 was a result of his refusal to accept treatment and therefore did not constitute a violation of his rights under Article 3 of the Convention. The Court noted the absence of evidence that Applicant's refusals "were the result of coercion or manipulation." It emphasized that the authorities "took steps to ensure that the applicant's decision was well informed and that he had complete understanding of the consequences of his actions." The Court further noted that the authorities had offered Applicant psychological support during this period. The Court thus held that the authorities ultimately had no choice but to accept Applicant's decision to decline medical services.

Case	*Khatayev v. Russia*
Year	2011
Country	Russia
Court/Body	European Court of Human Rights
Citation	Application No. 56994/09
Facts and Law	Applicant, Khatayev, was diagnosed with tuberculosis in 2000. He was convicted of aggravated robbery in 2007. After his conviction, he was examined by a tuberculosis specialist, who started him on a drug regiment and nutrition plan. In 2008, Applicant was transferred from a correctional colony to a special medical correctional facility. Throughout his detention in both facilities, Applicant complained of a variety of health issues, including a phlegm cough related to tuberculosis, as well as dizziness, fatigue, and stomach ache. In 2009, Applicant complained of injuries allegedly resulting from two beatings by prison staff. Russia contended that the wounds were self-inflicted, in response to his placement in a "punishment cell." Applicant alleged Russia violated his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights (Convention) by failing to provide him effective medical assistance, refusing to send him to a specialized tuberculosis clinic, and failing to diagnose him with renal tuberculosis. Applicant claimed that his treatment during the two instances of alleged beatings and the inadequacy of investigations following the alleged beatings also constituted violations of rights under Article 3 of the Convention.
Issues and Holdings	Did Russia's failure to provide Applicant adequate medical assistance, the alleged beatings, or the inadequate investigation of the alleged beatings violate Applicant's right to be free from torture or inhuman or degrading treatment under Article 3 of the Convention? No, with regard to the medical treatment and alleged beatings. Yes, in failing to adequately investigate the alleged beatings.
Decisions and Reasoning	The Court held that Russia did not violate Applicant's right to be free torture or inhuman and degrading treatment under Article 3 of the Convention with regard to the adequacy of medical treatment provided to him. The Court noted that claims of inadequate medical treatment had to be examined on a "case-by-case" basis. It determined that the medical colony provided Applicant adequate treatment, insofar as it correctly diagnosed his condition, took steps to prevent further onset of symptoms, and prescribed the necessary anti-tuberculosis medicines. The Court attributed "particular weight" to the fact that medical personnel "created the necessary conditions" for Applicant to follow through on his treatment. In particular, the Court noted that "the intake of medicines by the applicant was supervised and directly observed by the facility medical personnel as required by the DOTS strategy." The Court further highlighted that when Applicant refused to cooperate with the treatment medical personnel "offered him psychological support and attention, providing clear and complete explanations about medical procedures, the desired outcome of the treatment and the negative side-effects of interrupting the treatment, irregular medication or fasting." The Court also held that Russia provided a convincing explanation for each reported injury, including that Applicant had self-inflicted certain injuries. However, the Court held that the alleged beatings were not adequately investigated. Among other things, it noted that the investigation's forensic examination occurred several months after the alleged beatings took place. The Court declared that Article 3 in conjunction with Article 1—establishing the state's general duty to secure everyone within their jurisdiction the rights and freedoms of the Convention—required Russia to perform a "prompt", "thorough" and "effective" official investigation. The Court held that Russia's investigation did not meet this obligation, constituting a violation of Applicant's rights under Article 3 of the Convention.

Case	*Redd v. Wright*
Year	2010
Country	United States of America
Court/Body	2nd Circuit Court of Appeals
Citation	597 F.3d 532
Facts and Law	Appellant, Redd, was an inmate at the Auburn Correctional Facility in the state of New York. The New York Department of Correctional Services (DOCS) administered purified protein derivative (PPD) tuberculin skin tests routinely to all inmates to detect latent tuberculosis infections. Under a DOCS policy established in 1996, an inmate refusing the PPD test would first be counseled about its importance, and would then be placed in tuberculosis hold and "keeplock status" for continued refusal. Inmates refusing the PPD test also experienced limitations on their telephone usage, personal visits, showers and exercise privileges. DOCS placed Appellant in tuberculosis hold in 2001 after he refused to undergo a PPD test on religious grounds. The 1996 policy effective at the time did not contain a religious objector exception, unlike the later policy adopted in 2004. Prison officials rejected Appellant's offer to submit to sputum testing and instead applied the 1996 tuberculosis hold policy and performed chest x-rays on him. In 2004, Appellant filed suit against Respondents, several employees of New York DOCS, claiming that his placement in tuberculosis hold violated his constitutional and statutory rights. In particular, Appellant brought a § 1983 action against Respondents, alleging violations of: (1) the right to free exercise of religion under the First Amendment to the U.S. Constitution, the Religious Freedom Restoration Act of 1993 (RFRA), and the Religious Land Use and Institutionalized Persons Act of 2000 (RLUPIA), with respect to the requirement that Appellant submit to a PPD test despite his religious objections; (2) the right to be free from cruel and unusual punishment under the Eight Amendment to the U.S. Constitution, with respect to implementation of a policy that authorized an indefinite period of confinement in tuberculosis hold; and (3) the right to due process under the Fourteenth Amendment to the U.S. Constitution, with respect the denial of Appellant's release from tuberculosis hold after one year in confinement. The District Court granted summary judgment to Respondents, and Appellant appealed.
Issues and Holdings	1. Were Appellant's rights to free exercise of religion under the First Amendment to the U.S. Constitution and RLUPIA "clearly established" with regard to Respondents' actions requiring Appellant to submit to a PPD tuberculin skin test despite religious objections, therefore requiring an inquiry by the Court as to whether those rights were violated? No. 2. Was Appellant's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution "clearly established" with regard to Respondents' actions, including implementation of a policy that authorized indefinite confinement in tuberculosis hold, therefore requiring an inquiry by the Court as to whether the right was violated? No. 3. Was Appellant's right to due process under the Fourteenth Amendment to the U.S. Constitution "clearly established" with regard to Respondents' denial of Appellant's release from confinement after one year in tuberculosis hold, therefore requiring an inquiry by the Court as to whether the right was violated? No.
Decisions and Reasoning	1. The Court found that Appellant's religious liberty claims derived from RLUIPA and the First Amendment to the U.S. Constitution. Under either RLUIPA or the First Amendment, the Court noted that Appellant must demonstrate that the state imposed "a substantial burden on the exercise of his religion" to prove a violation and to overcome the qualified immunity of Respondents. Respondents may then overcome that claim by

Case	*Redd v. Wright (continued)*
	demonstrating that the challenged action furthered a "compelling governmental interest" and was the "least restrictive means" of furthering that interest. The Court concluded that Appellant failed to show that it was "clearly established" that the Respondents' 1996 Policy "was not reasonably related to a legitimate penological interest." The state advanced a compelling interest for its tuberculosis hold policy and demonstrated it was least restrictive means available and therefore did not violate Appellant's rights to religious liberty. 2. Appellant argued that Respondents' 1996 Policy facially violated his right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution because it did not allow him enough exercise and confined him for an indefinite period. The DOCS had recently amended the policy to address similar concerns, in response to prior court cases, including *Jolly v. Coughlin*. The Court held that the circumstances of Appellant's confinement did not violate the Eighth Amendment, because the conditions he claimed were owed to him were not "clearly established" as rights at the time of the violation. Appellant also argued that Respondents violated the Eighth Amendment in how they applied the 1996 Policy to him, in particular, because they failed to provide him with regular showers and exercise, as required by the policy. The Court held that Appellant's as-applied challenge had not been properly before the lower court, since he had not alleged in his complaint to the court that Respondents violated his Eighth Amendment right by failing to properly follow the 1996 policy. The Court thus declined to entertain Appellant's as-applied challenge of the policy. 3. Appellant argued that confining him in tuberculosis hold "without sufficient procedural safeguards" violated his right to due process under the Fourteenth Amendment to the U.S. Constitution. The Court, however, resolved that it was not "clearly established" that Appellant had a right to be released from tuberculosis hold after one year or that he was owed some kind of notice that he could be exempt from the 1996 policy as a religious objector.

Case	*BGE 134 IV 156*
Year	2007
Country	Switzerland
Court/Body	Swiss Supreme Court (Bundesgericht, Tribunal fédéral)
Citation	BGE 134 IV 156
Facts and Law	On September 13, 2006, Interpol Moscow issued an arrest warrant for Claimant, X, for fraud and money laundering. On December 22, 2006, Claimant was arrested in Switzerland and placed in extradition custody. Claimant was opposed to a facilitated extradition process. On December 28, 2006, the federal Department of Justice (DOJ) issued an extradition warrant. Claimant appealed in vain against the warrant. In the extradition procedure that followed, the DOJ authorized Claimant's extradition to Russia, provided Russia would guarantee that the incarceration conditions would be compliant with Article 3 of the European Convention on Human Rights (Convention), which protects against torture or inhuman or degrading treatment or punishment. Claimant again appealed, arguing that he needed medication on a permanent basis, as his thyroid glands had been removed, but the first instance court rejected the appeal. Claimant brought suit against Switzerland and claimed that the extradition violated his rights under Article 3 of the Convention.

Case	*BGE 134 IV 156 (continued)*
Issues and Holdings	1. Was there a risk that Claimant would be exposed to inhuman or degrading treatment or punishment prohibited by Article 3 of the Convention if he was extradited to Russia? Yes. 2. Could the risk of Claimant's exposure to inhuman or degrading treatment have been mitigated by requiring diplomatic assurances from Russia, wherein Russia undertook to ensure Claimant's physical and mental integrity? Yes. 3. Was the wording of Russia's diplomatic assurances clause sufficiently precise to ensure Claimant's safety? No.
Decisions and Reasoning	1. The Court referred to previous Swiss case law, as well as cases from the European Court of Human Rights, and held that conditions of incarceration in Russia amounted to violations of the right to be free from torture or inhuman or degrading treatment under Article 3 of the Convention. The Court found that evidence showed that many prisoners in Russia had tuberculosis or were HIV-positive. The Court thus held that there was a risk that Claimant would be exposed to treatment or punishment in violation of Article 3 of the Convention. 2. The Court held that courts should assess the potential risks faced by claimants on a case by case basis. The Court noted that the European Court of Human Rights did not consider diplomatic assurances to be ineffective. In the present case, the Court held that the risk of Claimant being exposed to inhuman or degrading treatment or punishment prohibited under Article 3 of the Convention was minimized to a bearable degree, such that it was a theoretical risk. The Court thus held that the risk could be mitigated by Russia's diplomatic assurances. 3. The Court held that Russia's diplomatic assurance needed to be more precise and allow for: (1) the Swiss representation in Russia to pay visits to Claimant at any time, without notification; (2) the representation to be informed about the whereabouts of Claimant at all times; (3) Claimant to speak with his public defender without constraints and surveillance; and (4) Claimant's relatives to visit him at any time. The Court sent the case back to the lower court for review and amendment in line with the its decision.

Case	*Yakovenko v. Ukraine*
Year	2007
Country	Ukraine
Court/Body	The European Court of Human Rights
Citation	Application No. 15825/06
Facts and Law	Applicant, Yakovenko, was an inmate in the Ukraine at the Sevastopol ITT detention center. He claimed he was being held in a small cell that was constantly overcrowded and that the cell was infested with cockroaches and ants, and no attempt was made to exterminate them. He further claimed he was exposed to infectious diseases, including tuberculosis. Applicant later contracted tuberculosis while in detention. He claimed that he was diagnosed as "suffering from tuberculosis of the lymph nodes" and recommended for hospitalization, but the administration refused, because it could not afford to provide four officers to guard him in a hospital. Applicant brought suit against Ukraine claiming that Ukraine had violated his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the European Human Rights Convention (Convention) due to "detention conditions in a pretrial detention center (e.g., overcrowding, sleep deprivation and lack of natural light and air) and the authorities' failure to provide timely and appropriate medical assistance to applicant in respect of his HIV and TB infections."

Case	*Yakovenko v. Ukraine (continued)*
	Ukraine argued that Applicant's claims, regarding his poor detention conditions and insufficient medical treatment while in detention, should be dismissed because Applicant had not resolved his domestic remedies to challenge the conditions of his detention and treatment.
Issues and Holdings	Did Ukraine violate Applicant's right to be free from torture or to inhuman or degrading treatment or punishment under Article 3 of the Convention, regarding the poor detention conditions Applicant faced in prison as well as Ukraine's failure to provide timely and appropriate medical assistance to Applicant in respect of his HIV and tuberculosis infections? Yes.
Decisions and Reasoning	The Court rejected Ukraine's arguments that Applicant had not exhausted domestic remedies. The Court found that Ukraine had not shown how Applicant's usage of such proceedings in Ukraine "could have brought about an improvement in Applicant's detention conditions". The Court found that human rights reports as well as international reports on detention conditions in Ukraine prisons were considered evidence in support of Applicant's claims. The Court held, on the basis of the evidence submitted, that Applicant's cell was continuously severely overcrowded, contributing to contraction of disease such as tuberculosis. The Court found that the Ukraine had failed to provide sufficient medical care for Applicant's treatment of his HIV and tuberculosis. The Court found that Applicant had contracted tuberculosis as a result of his poor detention conditions. Furthermore, the Court found that Applicant had been refused admission to a hospital when requiring medical treatment and instead, was forced to stay in prison for a period of over ten days. The Court found that Ukraine had failed to provide hospitalization services for Applicant after several doctors treated Applicant. The Court held that Ukraine's failure to provide "timely and appropriate medical assistance" constituted inhuman and degrading treatment, as proscribed by Article 3 of the Convention. The Court held that Ukraine violated Applicant's rights under Article 3 of the Convention due to the poor conditions Applicant had faced while in detention and Ukraine's failure to provide timely and appropriate medical assistance to Applicant for the treatment of Applicant's HIV and tuberculosis.

Case	*Gorodnichev v. Russia*
Year	2007
Country	Russia
Court/Body	European Court of Human Rights
Citation	Application No. 52058/99
Facts and Law	In February 1995, Applicant, Gorodnichev, was detained pending trial on charges of theft and two assaults. He was subsequently convicted and imprisoned. In November 1995, Applicant was diagnosed with pulmonary tuberculosis. Prison authorities moved him to a hospital where he was detained in a cell designed for six people, but which housed 24 other detainees suffering from tuberculosis. In 1999, doctors reported that one of Applicant's lungs had deteriorated. In same year, Applicant was forced to wear handcuffs to multiple public hearings, despite his requests to have them removed. During the period of February 2000 and March 2001, he was transferred to a correctional colony and kept in the facility's anti-tuberculosis clinic. At the colony, the prison administration sent Applicant to a disciplinary isolation cell (SHIZO) for 25 days, despite being aware of the state of his illness.

Case	*Gorodnichev v. Russia (continued)*
	Applicant brought this suit alleging Russia violated his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights (Convention).
Issues and Holdings	1. Did Russia provide sufficient evidence to prove that Applicant received adequate medical treatment while detained? No. 2. Did Russia violate Applicant's right to be free from inhuman treatment under Article 3 of the Convention by holding him in the SHIZO isolation cell for 25 consecutive days? Yes. 3. Did Russia violate Applicant's right to be free from degrading treatment under Article 3 of the Convention by forcing him to wear handcuffs to public hearings? Yes.
Decisions and Reasoning	1. The Court held that Russia provided no evidence other than its own statements and documents proving that Applicant received the necessary treatment for tuberculois while detained. Russia's *ex post facto* assertions of adequate treatment did not serve to prove the government's assertion of proper care for Applicant without additional evidence. 2. The Court held that by isolating Applicant in a SHIZO for 25 consecutive days, especially given the accompanying food restrictions, Russia subjected him to inhuman treatment in violation of Article 3 of the Convention. 3. The Court held that forcing Applicant to wear handcuffs during public hearings amounted to degrading treatment, because the measure was disproportionate relative to the security needs identified by Russia. Russia thus violated Applicant's right to be free from degrading treatment under Article 3 of the Convention in requiring him to wear handcuffs during public hearings.

Case	*REsp 802.435/PE, Reporting Justice Luiz Fux*
Year	2006
Country	Brazil
Court/Body	Superior Court of Justice
Citation	REsp 802.435/PE
Facts and Law	Claimant, Silva, brought suit against Respondent, the State of Pernambuco, requesting compensation for being wrongfully imprisoned for thirteen years, from September 1985 to August 1998. Claimant was arrested in September 1985 because he was under parole and there was a police investigation about his possible participation in a crime. He was then kept in prison for thirteen years, even though he was never convicted of any crime. During Claimant's imprisonment, he contracted tuberculosis and became blind during an inmate riot. The first instance judge awarded damages to Claimant in the amount of BRL 396,000. The State Court of Pernambuco partially upheld the judge's decision, increasing the value of damages to BRL 2,000,000. Respondent appealed to the Superior Court of Justice, claiming that the order's damages was excessive and diverged from the usual standard.
Issues and Holdings	1. Was Respondent liable for wrongfully imprisoning Claimant for thirteen years, during which Claimant contracted tuberculosis and became blind during an inmate riot? Yes. 2. Was Respondent required to pay Claimant punitive damages, taking into consideration that Claimant contracted tuberculosis during his wrongful imprisonment? Yes.

Case	*REsp 802.435/PE, Reporting Justice Luiz Fux (continued)*
Decisions and Reasoning	1. The Court found that the restriction of an individual's freedom violates the most basic rights of every citizen. The Court held that the fact that Claimant did not request to be released was no excuse for the violation of his rights. The Court noted that this was particularly egregious considering Claimant had financial constraints and did not have access to basic education. The Court declared that the Federal Constitution of Brazil and the Universal Declaration of Human Rights establish human dignity as an essential right in the construction of a fair and equal society. The Court found that all courts must take this basic principle into consideration when adjudicating matters. The Court thus held that Respondent was liable for the wrongful imprisonment of Claimant for thirteen years. 2. The Court held that Claimant's health must be considered in the determination of damages, and that awarded damages should reflect the actual harm inflicted on Claimant. The Court held that Respondent's wrongful imprisonment of Claimant for thirteen years in humane conditions, without due process, had severely violated Claimant's fundamental rights. Moreover, Claimant's imprisonment had negatively impacted his health, since he became blind and contracted tuberculosis. According to the Court, these circumstances forced Claimant to face a situation of "death in life." The Respondent's liability in this case was clear, but damages were quantified in a proportional fashion. Given the gravity of the facts in the case, the Court held a larger amount of punitive damages should be awarded, upholding the State Court's award of BRL 2,000,000.

Case	*Francois v. Gonzales*
Year	2006
Country	United States of America
Court/Body	3rd Circuit Court of Appeals
Citation	448 F.3d 645
Facts and Law	Appellant, Francois, was a native-born citizen of Haiti admitted to the United States as a lawful permanent resident in 1979. He was convicted of possession of a controlled substance in state court in 1992. He was convicted of aggravated assault in state court and sentenced to six years in prison in 1997. Appellant returned to Haiti three times in 2003. On August 10, 2003, he arrived at JFK International Airport in New York City on his way back from Haiti, seeking admission to the United States as a returning resident. He was denied entry, and was instead taken into the custody of the Bureau of Immigration and Customs Affairs (ICE) because of his criminal convictions. Soon after, Appellant was served with a Notice to Appear, under the charge that he was a removable alien due to his criminal convictions. During the removal proceedings, Appellant applied for asylum, withholding of removal and relief under Article 3 of the Convention Against Torture (CAT). In support of his CAT claim, he argued that if he were returned to Haiti, he would be tortured by Haitian authorities and imprisoned for an indefinite length of time. He supported this allegation with reports describing the severe conditions in Haitian prisons, including "a lack of basic hygiene, malnutrition, [and] poor quality health care." The reports also included claims that many prisoners suffered from "preventable diseases," such as AIDS and tuberculosis. The immigration judge (IJ) denied Appellant's claims for asylum and withholding of removal, but granted his CAT claim based on the reported conditions of Haitian prisons. The Department of Homeland Security (DHS) appealed to the Board of Immigration Appeals (BIA), and the BIA reversed the IJ's decision. Appellant filed a petition for *habeas*

Case	*Francois v. Gonzales (continued)*
	corpus, but the District Court denied him *habeas* relief, concluding that he failed to show more than "isolated instances" of torture in Haitian prisons. Appellant appealed the decision.
Issues and Holdings	1. Should the Court have reviewed the BIA's decisions on questions of law *de novo*, but defer to the BIA's factual findings? Yes. 2. Did the evidence of generally unhealthy prison conditions in Haiti, including tuberculosis among prisoners, rise to the level of torture, entitling Appellant to relief under CAT? No.
Decisions and Reasoning	1. The Court found that its standard of review must be limited in scope to only the questions of law presented and to the BIA's applications of law to fact. The Court thus reviewed the BIA's legal decisions *de novo*, but deferred to the BIA's findings on questions of fact. 2. The Court held that Appellant's claim of torture under CAT rested solely on evidence of generalized prison conditions, rather than specific treatment likely to be directed toward him. Appellant cited country reports as evidence of his claim that he would be indefinitely detained in appalling prison conditions amounting to torture. The Court agreed with Appellant as to the severity of the conditions. However, the Court held that a prior decision, *Auguste v. Ridge*, controlled and precluded relief. In *Auguste*, the court held that "conditions of confinement, without more, do not constitute torture under the CAT." The Court held that Appellant had only provided proof of general prison conditions, not that he would be intentionally targeted for acts of coercion, force, cruelty or brutality. On this basis, the Court held that Applicant was not entitled to relief under CAT.

Case	*Clark v. Taylor*
Year	2005
Country	United States of America
Court/Body	9th Circuit Court of Appeals
Citation	145 Fed. Appx. 204
Facts and Law	Appellant, Clark, was a California state prisoner. He alleged that Respondents, prison officials, improperly diagnosed him with tuberculosis and unnecessarily treated him for the illness, when he did not in fact have the disease. He claimed that the resulting anti-tuberculosis medication prescriptions and quarantine in a different prison constituted "deliberate indifference to his serious medical needs," amounting to cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution. The District Court granted summary judgment in favor of Respondents and Appellant made a *pro se* appeal. The Court reviewed the matter *de novo*.
Issues and Holdings	1. Did the District Court properly grant summary judgment against Appellant's claim that Respondents violated his right to be free from cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution when they misdiagnosed him with tuberculosis and subjected him to unnecessary treatment? Yes. 2. Did the District Court abuse its discretion in denying Appellant's request for appointment of counsel? No.
Decisions and Reasoning	1. The Court held that the District Court properly granted summary judgment in favor of Respondents, citing *Jackson v. McIntosh*, where the court held that the difference of opinion between a prisoner and prison doctors fails to show "deliberate indifference" on the part of the doctors to the prisoner's "serious medical needs."

Case	*Clark v. Taylor (continued)*
	2. The Court held that the District Court did not abuse its discretion in denying Appellant's request for appointment of counsel because exceptional circumstances warranting appointment had not been adequately demonstrated.

Case	*Khokhlich v. Ukraine*
Year	2003
Country	Ukraine
Court/Body	European Court of Human Rights
Citation	Application No. 41707/98
Facts and Law	In 1996, Applicant, Khokhlich, was sentenced to death after being convicted of two counts of murder and other crimes. In 1997, Applicant was diagnosed with tuberculosis during a regular medical examination while on death row. In 1999, the Constitutional Court of Ukraine held that the death penalty was unconstitutional. The death penalty was abolished and replaced by life imprisonment. In 2000, the Regional Court commuted Applicant's sentence to life imprisonment. Applicant complained that the conditions to which he was subjected on death row in Khmelnitskiy Prison amounted to inhuman and degrading treatment prohibited under Article 3 of the European Convention on Human Rights (Convention). In particular, Applicant alleged that he experienced constant hunger on death row, was only allowed to take a hot shower once a week, and was forced to use a bathroom in an unacceptable condition. Applicant further claimed that he contracted tuberculosis when he was placed in a cell with a prisoner suffering from the disease. Ukraine claimed that, during Applicant's four years on death row, he had not once applied to any authority regarding his alleged rights violations.
Issues and Holdings	1. Did Applicant fail to provide adequate notice to Ukraine of the alleged violations before submitting them to Court, so that domestic remedies were not adequately exhausted? No. 2. Did Ukraine's treatment of Applicant on death row, including minimal bathing, food insufficiency and exposure to unhygienic conditions, violate Applicant's right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention? Yes. 3. Did Ukraine violate Applicant's right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention, by allegedly placing him in a cell with a prisoner with tuberculosis? No.
Decisions and Reasoning	1. The Court noted that the burden of proof was on Ukraine to prove non-exhaustion of domestic remedies and that Applicant had access to an effective complaint and redress mechanism. The Court emphasized that Applicant and his mother lodged several complaints with the prison governor and other prison authorities regarding the detention conditions and medical treatment. Moreover, the Court stated that Applicant was not fully aware of the entire range of rights for redress, so he could not be held to the highest standard of informing the authorities about his grievances. The Court found that Article 35 § 1 of the Convention requires not only that a domestic remedy be available, but that it also be effective in redressing the alleged breach. The Court concluded that Ukraine had not sufficiently established that recourse to the remedies unused by Applicant would have afforded him effective redress. The Court thus rejected Ukraine's objection that Applicant had not exhausted domestic remedies.

Case	*Khokhlich v. Ukraine (continued)*
	2. The Court considered the cumulative effects of the detention conditions Applicant experienced. It noted that he was prevented from taking outdoor walks, receiving extra food from his mother and receiving visits from relatives, and that he had been placed in a single cell for more than six months. The Court concluded that the conditions of detention had caused Applicant considerable mental suffering and diminished his human dignity. The Court thus held that Ukraine violated Applicant's right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention. 3. The Court rejected Applicant's claim that his rights under Article 3 of the Convention had been violated on the basis that he allegedly contracted tuberculosis from a prisoner he shared a cell with. Prison records indicated that the prisoner who had allegedly transmitted tuberculosis to Applicant had contracted the illness after he shared a cell with Applicant. The Court noted the report of an independent medical commission that found the prisoner's tuberculosis was not active while he and Applicant shared a cell. The Court also highlighted that Applicant and the prisoner suffered from two different types of tuberculosis. The Court thus found that Applicant had not contracted tuberculosis as a result of Ukraine's assignment of Applicant to a cell with a prisoner who had tuberculosis. The Court also held that Ukraine had provided Applicant with adequate tuberculosis treatment.

Case	*Loftin v. Dalessandri*
Year	2001
Country	United States
Court/Body	10th Circuit Court of Appeals
Citation	3 Fed. Appx. 658
Facts and Law	Appellant, Loftin, was incarcerated at Garfield County Jail for two weeks in July 1996 before being transferred to a correctional facility to serve his sentence. While at the jail, he was confined in a cell with three other cellmates. He alleged they all ate, slept, showered and used the toilet inside the shared cell. He also claimed that he tested negative for exposure to tuberculosis before his confinement. It was not disputed that two of his cellmates had tested positive for tuberculosis. After his cellmates tested positive, Appellant immediately asked to be moved to another cell. He alleged that the undersheriff of the jail denied his request for transfer, despite the availability of empty cells, because the cellmates with tuberculosis were also scheduled to be transferred to the correctional facility and jail policy was to keep such inmates together. Respondents, prison officials, contended that they only isolated inmates who both tested positive and actively showed symptoms of tuberculosis. In this instance, they argued that Appellant's cellmates did had not displayed active symptoms of the illness. In September 1996, Appellant tested positive for tuberculosis after he was transferred to a correctional facility. He claimed he only could have been exposed to tuberculosis while he was at Garfield County Jail, since he did not share a cell after his transfer. He was given isoniazid (INH) therapy, but claimed an adverse reaction to the medication and had to discontinue treatment due to headaches and vomiting. He further alleged the treatment caused him to experience neurological problems. Appellant brought a § 1983 action against Respondents claiming they violated his right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution by allowing inmates who tested positive for tuberculosis to remain in his cell, thus exposing him to the disease. The District Court granted summary judgment in favor of Respondents and Appellant appealed.

Case	*Loftin v. Dalessandri (continued)*
Issues and Holdings	1. Did the District Court err in granting summary judgment against Appellant's claim that Respondent's treatment of him, including detaining him in a cell with two tuberculosis-positive cellmates, violated his right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution? Yes. 2. Was the magistrate judge below correct in denying Appellant's request for the appointment of counsel? No.
Decisions and Reasoning	1. The Court held that in order to prove a breach of duty rising to the level of a violation of the Eighth Amendment right to be free from cruel and unusual punishment, a prisoner must demonstrate that he was "incarcerated under conditions posing a substantial risk of serious harm," and that the prison official "acted with deliberate indifference" by knowing of and disregarding the risk. The Court considered precedent from the Supreme Court of the United States, including *Helling v. McKinney*, recognizing that exposure to contagious diseases might violate the Eighth Amendment if prison officials act with deliberate indifference in exposing a prisoner to a "sufficiently substantial risk of serious damage to his future health." The Court held that there was a "an arguable basis under the Eighth Amendment" for Plaintiff's claims in this case and thus reversed the decision and remanded the case. 2. The Court held that while the District Court was not authorized to require an attorney to represent the indigent Appellant because it was a civil case, the District Court could have made "an appropriate request that legal assistance be provided." An abuse of discretion was determined because the magistrate judge did not discuss any of the factors relevant to a request for counsel, including the merits of Appellant's claim, his ability to present his claims *pro se*, and the complexity of the case.

Case	*Jolly v. Coughlin*
Year	1996
Country	United States of America
Court/Body	2nd Circuit Court of Appeals
Citation	76 F.3d 468
Facts and Law	Plaintiff, Jolly, was a Rastafarian inmate at Attica Correctional Facility. Defendants, officials of the New York State Department of Correctional Services' (DOCS), tuberculosis control policy required all inmates to undergo a purified protein derivative (PPD) tuberculin skin test for latent tuberculosis and penalized inmates who objected. The DOCS's policy was to confine inmates who refused PPD tests in medical keeplock, a form of confinement wherein inmates were permitted to leave their cells only for one 10-minute shower per week. In 1991, Plaintiff refused the PPD screening test for latent tuberculosis on the basis of religious objections. He was placed in medical keeplock indefinitely, pursuant to the DOCS policy. He filed this action in 1992. In 1995, he moved for a preliminary injunction based on the claims that Respondents' treatment violated: (1) his right to the free exercise of religion under the Religious Freedom Restoration Act of 1993 (RFRA); and (2) his right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. The District Court held that Plaintiff demonstrated a "substantial likelihood of success on the merits" for both claims. The District Court also held that Plaintiff would suffer irreparable harm without the preliminary injunction. Defendants appealed.
Issues and Holdings	1. Did Plaintiff's claim that Defendants violated his right to free exercise of religion under RFRA when they confined him in medical keeplock for refusing a PPD tuberculin skin test on religious grounds have a substantial likelihood of success on the merits? Yes.

Case	*Jolly v. Coughlin (continued)*
	2. Did Plaintiff's claim that Defendants violated his right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution when they confined him in medical keeplock for refusing a PPD tuberculin skin test have a substantial likelihood of success on the merits? Yes.
Decisions and Reasoning	1. The Court held that in order for Plaintiff to succeed on his RFRA claim, he needed to demonstrate that his right to free exercise of religion had been "substantially burdened." The Court held that a substantial burden on the free exercise of religion exists where the state places "substantial pressure on an adherent to modify his behavior and to violate his belief." In this case, the Court held that Plaintiff had sufficiently demonstrated a substantial burden on his free exercise of religion because he had shown that it is sinful for a Rastafarian to ingest artificial substances, including those involved in the PPD tuberculin skin test. Where a claimant demonstrates that a substantial burden exists, the state can justify its actions by showing that the burden "furthers a compelling state interest and is the least restrictive means of furthering that interest." The Court noted that the states interest in preventing the transmission of tuberculosis in prisons was compelling and significant. However, Plaintiff's indefinite confinement in medical keeplock failed to achieve that interest. In particular, the Court found that Plaintiff did not have active tuberculosis and thus his confinement was not necessary to prevent transmission of the disease. In addition, the Court held Defendants' policy of medical keeplock did not effectively combat the spread of tuberculosis because, though isolated, an inmate in medical keeplock continues to share a "common breathing space" with other inmates, enabling transmission of the illness. Moreover, the screening test itself was held to be an ineffective means of preventing the spread of tuberculosis because of its "high margin of error." The Court declared that allowing a religious exemption to the medical keeplock policy would not jeopardize the prison's ability to properly diagnose and treat tuberculosis. Omission of a few religious objectors would not compromise the population data necessary for effective screening. Lastly, the Court held that Defendants failed to prove that Plaintiff's confinement in medical keeplock was the least restrictive means of furthering their compelling interest to control and treat tuberculosis. 2. The Court held that in order to demonstrate a violation of his right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution Plaintiff needed to demonstrate, from an objective point of view, that the conditions of confinement resulted in "serious deprivations of basic human needs" and that, from a subjective point of view, Defendants imposed those conditions with "deliberate indifference." The Court held that the District Court's finding that the objective prong of the Eighth Amendment inquiry was satisfied was "not clearly erroneous," emphasizing the fact that he was kept in medical keeplock for over three-and-a-half years while he refused to undergo the tuberculosis screening test. Though Plaintiff could have ended his confinement by consenting to the test, the Court held that that option did not vitiate his claim of cruel and unusual punishment. The Court further held that the District Court's finding that Defendants were aware of the "undisputed conditions and harm" to Plaintiff resulting from the medical keeplock policy was also "not clearly erroneous." The Court thus held that Plaintiff had satisfied the objective and subjective prongs in demonstrating a violation of the right to be free from cruel and unusual punishment and had shown "a substantial likelihood of success on the merits" of his Eighth Amendment claim.

Case	*Williams v. Greifinger*
Year	1996
Country	United States of America
Court/Body	2nd Circuit Court of Appeals
Citation	97 F.3d 699
Facts and Law	Plaintiff, Williams, was an inmate at Sing Sing Correctional Facility. In 1993, he refused to submit to the Correctional Facility's purified protein derivative (PPD) tuberculin skin screening test for latent tuberculosis, because he had experienced "a very mysterious breathing problem" after a previous PPD test. As a result, he was confined in medical keeplock for 589 days. Out-of-cell exercise was prohibited during his time in medical keeplock. The rationale for was Plaintiff's confinement was posed a risk of contagion to other as long as he refused to be tested for tuberculosis. Plaintiff ended his stay in medical keeplock by submitting to the screening test. Plaintiff alleged that the PPD test and medical keeplock policy violated his right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution. He filed a *pro se* complaint in the District Court against Defendants, the Deputy Commissioner and Chief Medical Officer of the New York State Department of Correctional Services (DOCS), seeking damages for the "inhumane condition of confinement" he had experienced after refusing the test for tuberculosis. In 1995, Plaintiff moved for summary judgment in the District Court, seeking a determination that his constitutional rights had been violated as a matter of law. Defendants cross-motioned for summary judgment, asserting that they should prevail against the Eighth Amendment claim and that they were immune from suit under the doctrine of qualified immunity anyway. The District Court ruled that the medical keeplock policy did in fact violate Plaintiff's right under the Eighth Amendment, but that Defendants possessed qualified immunity and were thus immune to suit. Plaintiff appealed.
Issues and Holdings	1. Did Defendants violate Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution when they confined him in medical keeplock for refusing to submit to the PPD tuberculin skin test? Yes. Affirmed, as not raised on appeal by Defendant. 2. Did Defendants possess qualified immunity as government officials, thus barring the suit against him? No.
Decisions and Reasoning	The Court began with a discussion of the escalating tuberculosis problem in the country, and in prisons in particular, and explained the various forms of the disease. The Court then examined the DOCS policy, which mandated PPD tuberculin skin testing for latent tuberculosis for all inmates and staff upon their arrival at the prison, with annual retesting. Individuals who refused the screening were counseled and encouraged to consent to the test, with continued refusal resulting in medical keeplock. 1. Defendants did not appeal the District Court's holding that Plaintiff's confinement in medical keeplock violated his right to be free from cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution. The Court only discussed the issue briefly. It found that medical keeplock offered few protections against the spread of tuberculosis. For example, the Court noted that correctional officers who interacted with inmates in medical keeplock did not wear masks, nor was the air these inmates breathed partitioned off from other areas of the prison. The inmates themselves were not made to wear masks when they showered or met in the visiting room. The Court further noted that the DOCS's medical keeplock policy had been subject to previous litigation, namely the case of *Jolly v. Coughlin,* in which similar confinement was ruled to be cruel and unusual for its lengthy duration, unhygienic conditions and lack of opportunity for exercise, among other reasons. The Court affirmed the District

Case	*Williams v. Greifinger (continued)*
	Court's decision finding that Defendants' medical keeplock policy violated Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution. 2. The Court assessed Defendants' immunity defense by examining the development of the qualified immunity doctrine. The Court noted that *Harlow v. Fitzgerald* held: "[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known." Other cases held that even if the law was "clearly established," government officials could assert qualified immunity by showing their actions were "objectively reasonable." Relying on such precedent, the Court emphasized that summary judgment on the grounds of qualified immunity is appropriate only where the court finds either that "the asserted rights were not clearly established," or that "no rational jury could fail to conclude that it was objectively reasonable for the defendants to believe that they were acting in a fashion that did not violate a clearly established right." Defendant argued that reasonable minds could disagree about the constitutionality of DOCS's medical keeplock policy. The Court, however, concluded that Defendant failed to provide any case law in support of their claim that Plaintiff's right to physical exercise, which was compromised during medical keeplock, was not "clearly established" during his confinement. Moreover, the Court held that it was not objectively reasonable for Defendants to believe that the deprivation of Plaintiff's right to exercise did not violate a clearly established right. The Court dismissed Defendants' argument that permitting inmates who had not been screened for tuberculosis to exercise with the general population would incite "fear and disruption among inmates and staff," stating that any such disruption could be quickly resolved through a tuberculosis sputum test or x-ray. The Court reversed the District Court's summary judgment in favor of Defendants on the issue of qualified immunity and remanded the case.

Case	*Hill v. Marshall*
Year	1992
Country	United States of America
Court/Body	6th Circuit Court of Appeals
Citation	962 F.2d 1209
Facts and Law	Plaintiff, Hill, was an Ohio inmate. He brought a § 1983 civil rights suit against Defendants, including the Deputy Superintendent of Treatment at the institution in which he was imprisoned, alleging they provided him improper medical care for tuberculosis in violation of his right to be free from cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution. Plaintiff underwent a pure-protein-derivative (PPD) tuberculin skin test and tested positive for latent tuberculosis. He was prescribed preventative isoniazid (INH) therapy. Plaintiff was transferred two times during his treatment, and claimed he was unable to access his medication following his second transfer, despite his complaints to the administration. Defendant disputed this allegation, claiming Plaintiff did not make an effort to obtain the medication, which was available to him. Plaintiff alleged that Defendant failed to investigate his claims that he was not receiving his medication. Defendant did, however, testify that the "pill line" was closed at times, when it should have been open, "that prescriptions were not always filled or received by inmates, and that prescriptions were sometimes altered or destroyed by the head nurse without a doctor's approval."

Case	*Hill v. Marshall (continued)*
	The jury in the District Court found that Defendant had been "deliberately indifferent" to Plaintiff's medical needs. Defendant moved for judgment notwithstanding the verdict or for a new trial. The District Court conditionally granted Defendant's motion for a new trial, unless Plaintiff agreed to take a remittitur of the entire amount of the punitive damages award. Plaintiff agreed, but appealed the remittitur. Defendant appealed their liability under "supervisory capacity" and the denial of the motion for judgment notwithstanding the verdict.
Issues and Holdings	Did the District Court err in finding that Defendant was liable under "supervisory capacity" for the Plaintiff's improper preventative treatment for tuberculosis? No.
Decisions and Reasoning	The Court found that the standards for liability under supervisory capacity were established by *Monell v. Dep't of Social Serv.* In particular, Plaintiff needed to plead and prove Defendant's direct personal involvement, as "*respondeat superior* does not provide a basis for imposing liability upon a municipality in a § 1983 action." The Court held that in this case Defendant could properly be held liable in his supervisory capacity because Plaintiff alleged and provided evidence that Morris personally ignored his complaints. The Court found that Defendant had referred Plaintiff's complaints about not receiving his INH preventative therapy to "the very person whom he knew to be wrongly altering and destroying some of the inmates' prescriptions." The Court found that Defendant "personally had a job to do, and he did not do it." The Court held that Defendant had abandoned the duties of his position, resulting in a violation of Plaintiff's right to be free from cruel and unusual punishment under the Eighth Amendment of the U.S. Constitution.

Case	*DeGidio v. Pung*
Year	1990
Country	United States of America
Court/Body	8th Circuit Court of Appeals
Citation	920 F.2d 525
Facts and Law	Appellant, DeGidio, and several other inmates at the Minnesota Correctional Facility at Stillwater, Appellants, filed this class action in 1984 against Pung, Respondent, and other prison officials, Respondents, claiming that Stillwater's tuberculosis screening and control policies were negligent and constituted cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution. A case of active tuberculosis was first found in the correctional facility in 1982. Over the course of the next few years, nearly two hundred inmates were infected. The District Court held that Respondents' response to the tuberculosis problem in the correctional facility was negligent and reckless, "exhibiting deliberate indifference to the serious medical needs of the inmates," in violation of the Eighth Amendment. However, the District Court denied Appellants' injunctive relief, on the basis that the Eighth Amendment violations "had been remedied during the course of [the] litigation." Appellant was awarded attorney's fees and costs. According to the District Court, Stillwater lacked adequate supervision and control over tuberculosis. For instance, until 1986, it did not have a written protocol for tuberculosis testing and control. The District Court found the correctional facility's intake screening for tuberculosis was deficient "because not all incoming inmates were tested and because two-step testing (follow-up test eight to ten weeks after initial test) was not done." The District Court held that Stillwater's method of antibiotic isoniazid (INH) preventative therapy lacked the safeguards necessary to ensure compliance with the treatment regimen.

Case	*DeGidio v. Pung (continued)*
	The District Court further held that Stillwater's response to the outbreak of active tuberculosis was deficient, as evinced by delayed diagnoses, ineffective treatment of diagnosed patients and "a lack of general awareness" of the risks posed by, and status of, tuberculosis in the prison. Additionally, the District Court found there were deficiencies in the investigations that followed the diagnoses of the first active tuberculosis cases. Respondents appealed, claiming the District Court erred in its holding that tuberculosis prevention and control at Stillwater violated the Eighth Amendment and in concluding that the lawsuit "was a catalyst for the remedial changes that were made" during the litigation. Respondent asserted that the changes addressing the alleged Eighth Amendment violations were made in response to the escalating tuberculosis problem in the prison, and were not due to the threat or pressures of ongoing litigation. Appellants cross-appealed, claiming the District Court miscalculated their damages and incorrectly held that a medical care consent decree could not be involved in their claims. Though Stillwater had reformed its policies, tuberculosis continued to present a threat to the health of the inmates at the time of the appeal.
Issues and Holdings	1. Did Appellants need to prove "intentional deprivation of medical care" in order to establish "deliberate indifference" to prisoners' "serious medical needs" on the part of Respondent? No. 2. Did Stillwater's policies and procedures relating to the prevention and treatment of tuberculosis in the prison violate Appellants' right to be free from cruel and unusual punishment under the Eighth Amendment to the U.S. Constitution? Yes.
Decisions and Reasoning	1. In determining that "an intentional deprivation of medical care" is not required to establish "deliberate indifference to serious medical needs," the Court cited *City of Canton v. Harris*, where the Supreme Court held that a city may be held liable for inadequately training its employees when the failure to train amounts to and reflects a city policy or custom. The Court thus held that an "intentional deprivation of medical care" is not required to establish "deliberate indifference." Instead, a consistent pattern of reckless or negligent conduct by prison officials is sufficient to establish "deliberate indifference to serious medical needs." 2. The Court held that Respondents violated Appellants' right to be free from cruel and unusual punishment through their negligent and reckless response to the tuberculosis outbreak in the prison. In making this determination, the Court largely adhered to the District Court's factual findings. The Court affirmed the District Court's finding that "the continuing pattern of reckless and negligent conduct of the Stillwater officials" constituted "deliberate indifference to serious medical needs" and amounted to a violation of the Eighth Amendment. Precedent from the 10th Circuit Court of Appeals affirmed this reasoning.


TB and HIV
You can have HIV only.
You can have both.
you have TB, test for HIV. If you have HIV, test for TB.

Compensation, Insurance and Property

Case	*REsp 721.647/SC, Reporting Justice Maria Isabel Gallotti*
Year	2011
Country	Brazil
Court/Body	Superior Court of Justice
Citation	REsp 721.647/SC
Facts and Law	Claimant, Fabre, brought suit for damages against Respondent, his health insurance company, Companhia de Seguros Alianca do Brasil S/A. Claimant suffered from HIV/AIDS and intestinal tuberculosis. The illnesses had caused him to seek early retirement. Respondent refused to pay for Claimant's medical expenses, asserting that they were pre-existing conditions and thus not subject to insurance coverage. Respondent argued that, even if it was forced to pay damages for Claimant's medical expenses, punitive damages should not be awarded because its insurance agreement with Claimant allowed it to refuse to pay for expenses relating to pre-existing conditions. The State Court of Santa Catarina held Respondent liable and awarded Claimant damages.
Issues and Holdings	1. Did Respondent have the burden to prove that Claimant's medical conditions pre-dated the insurance agreement between Claimant and Respondent? Yes. 2. Should Respondent have required prior medical exams in order to avoid paying expenses for Claimant's pre-existing conditions? Yes. 3. Was Respondent liable for punitive damages for its refusal to pay for Claimant's medical expenses, when Respondent had no concrete evidence to prove that Claimant's conditions pre-existed their insurance agreement? Yes.
Decisions and Reasoning	1. The State Court of Santa Catarina highlighted that there was no evidence in the case records indicating that Claimant's medical condition pre-dated his insurance agreement with Respondent. To the contrary, the State Court found that the initial report by Respondent indicated that Claimant's illnesses were not present at the date the insurance agreement was executed. The Court did not review this finding by the State Court. 2. The Court confirmed the State Court's ruling and held that Respondent may only argue that Claimant's medical condition pre-dated the insurance agreement if (1) a prior medical exam had been performed or (2) Respondent was able to provide concrete evidence that Claimant had acted in bad faith. The Court held that Respondent had failed to require prior medical exams in order to avoid paying for Claimant's pre-existing conditions. 3. The Court found that Respondent had failed to provide evidence indicating that Claimant's illnesses, HIV/AIDS and intestinal tuberculosis, arose prior to the execution of their insurance agreement. The Court explained that the purpose of insurance agreements is to ensure that the beneficiary will have its medical expenses covered. The Court concluded that there was no plausible reason for Respondent's refusal to pay for Claimant's medical expenses. The Court held that Respondent's behavior was unmotivated and negligent, and that such behavior should, by default, require Respondent to pay punitive damages.

Case	*REsp 721.647/SC, Reporting Justice Maria Isabel Gallotti (continued)*
	The Court reduced the value of the punitive damages from BRL120,000 to 50,000, considering it sufficient to deter other insurance companies from similar behavior.

Case	*Case T-20155*
Year	2008
Country	Colombia
Court/Body	Supreme Court of Justice
Citation	Case T-20155
Facts and Law	Plaintiff, Sierra, filed a *tutela* (writ of protection of fundamental rights), claiming the state violated her rights to social security and health, in connection to the right to live in dignified conditions, under the Constitution of Colombia, by failing to provide her treatment for tuberculosis. Plaintiff had been a beneficiary of the national Institute of Social Insurance for many years. She was diagnosed with tuberculosis in 2007. The Institute of Social Insurance informed Plaintiff that she must request treatment from the Health Ministry of the Santander Department. The Santander Department, in turn, referred Plaintiff to the national government, which informed her that the medicines she required were not available in the country. The Santander Department argued that the *tutela* was inadmissible, because it did not affect fundamental rights and that the department was an administrative unit that did not have a duty towards Plaintiff. The Santander Department contended that, while it had been distributing medicine for tuberculosis to departmental providers, the Ministry of Social Protection had taken up the responsibility of providing medicine directly to beneficiaries. The Ministry of Social Protection did not respond to the *tutela*. The lower court admitted the *tutela* and ordered the Santander Health Ministry to provide Plaintiff treatment for tuberculosis. In particular, the lower court ordered the Santander Department to "assume [Plaintiff's] comprehensive treatment," without regard to contractual responsibility or administrative or budgetary limitations. The Santander Department was to bare all associated costs. The lower court exempted the Ministry of Social Protection from any responsibility, but admonished the Ministry, stating that its provision of medicine to the departments did not justify its denial of Plaintiff's urgently needed treatment.
Issues and Holdings	1. Did Plaintiff fulfill the procedural requirements for a *tutela,* i.e., that her fundamental rights under the Constitution of Colombia were threatened? No, but the Court admitted the *tutela* because violations of the rights to social security and health could threaten fundamental rights. 2. Did the Santander Department bear the entire obligation to provide Plaintiff treatment for tuberculosis? Yes
Decisions and Reasoning	1. The Court held that the *tutela* was admissible. The Court acknowledged that the view that the rights to social security and health were not fundamental, and thus not within the ambit of a *tutela* action. However, the Court noted that protection of these rights is often necessary for the protection of fundamental rights, such as the rights to life and personal integrity. The Court noted that those fundamental rights can be violated by denial or delay of medical treatment. The Court thus decided that the use of a *tutela* in this case was appropriate. The Court also noted that Plaintiff could transmit tuberculosis to people around her, emphasizing that the *tutela* would also protect them. 2. The Court agreed with the lower court and held that the Santander Department was obliged to treat medical illnesses. It further declared that disregarding this obligation would constitute a violation of fundamental rights. The Court repeated the lower court's

Case	*Case T-20155 (continued)*
	admonishment of the Ministry of Social Protection, stating that both the Ministry and the Santander Department's refusal to provide treatment to Plaintiff forced her to submit this unnecessary *tutela* and delayed her treatment for tuberculosis.

Case	*Sypchenko v. Russia*
Year	2007
Country	Russia
Court/Body	European Court of Human Rights
Citation	Application No. 38368/04
Facts and Law	Applicant, Sypchenko, sued the Bataysk Town Administration for provision of housing in 2004. Applicant was entitled under domestic law to housing because he suffered from severe tuberculosis for several years. Section 14 § 5 of the Law on the Prevention of Spread of Tuberculosis in the Russian Federation provides that individuals suffering from infectious tuberculosis who live with family must be provided housing within one year of their application. The Batayskiy City Court ordered the town administration to grant Applicant and his family sanitary housing of a statutorily mandated size. That judgment was affirmed on appeal in the Rostov Regional Court. By March 2005, the town had not provided Applicant housing, claiming it lacked available housing that would meet the City Court's required specifications. In July 2005, the Presidium of the Rostov Regional Court amended the City Court's judgment, via "supervisory review," holding that the lower court had erroneously provided Applicant with the maximum possible surface area per person rather than the minimum. The Presidium thereby instructed the town to provide Applicant a smaller housing structure. Applicant contended that the smaller flat would be insufficient given his condition and family size. Applicant alleged that the Russia's treatment of his housing application violated his right to a fair trial under Article 6 of the European Convention on Human Rights (Convention). In conjunction, Applicant alleged Russia violated his right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 of the Convention. Applicant also complained that the smaller living conditions would endanger his and his family's health in violation of his rights to life and to be free from torture or inhuman or degrading treatment or punishment under Articles 2 and 3 the Convention. The Court dismissed the Article 2 and 3 complaints with minimal reasoning, describing them as "manifestly ill-founded."
Issues and Holdings	1. Did the Presidium of the Regional Court's amendment of the City Court's judgment via "supervisory review," resulting in smaller accommodations for Applicant and his family, violate Applicant's right to a fair trial under Article 6 of the Convention? Yes. 2. Did the Presidium of the Regional Court's amendment of the City Court's judgment via "supervisory review," resulting in smaller accommodations for Applicant and his family, violate Applicant's right to peaceful enjoyment of possession under Article 1 of Protocol No. 1 of the Convention? Yes. 3. Did Russia's non-enforcement of the City Court's judgment that granted Applicant and his family larger accommodations, affirmed on appeal in the Regional Court, violate Applicant's rights under Article 6 of the Convention and Article 1 of Protocol No. 1 of the Convention? Yes.
Decisions and Reasoning	1. The Court declared the "principle of legal certainty" to be one of the fundamental aspects of the rule of law. The principle limits higher courts' "power to quash or alter binding and enforceable judicial decisions" to the "correction of fundamental defects."

Case	*Sypchenko v. Russia (continued)*
	The Court resolved that rights under Article 6 of the Convention would be diminished if final and binding decisions were quashed by higher courts on applications made by government officials without sufficient justification. Balancing individual interests and the need to ensure proper administration of justice, the Court held that the Presidium of the Regional Court could only reexamine lower court decisions "for correction of fundamental defects." According to the Court, "[t]he fact that the Presidium disagreed with the assessment made by the first-instance and appeal courts was not, in itself, an exceptional circumstance" sufficient to justify amendment of the final judgment. The Court held that the Presidium of the Regional Court's amendment of the final judgment via supervisory review violated Applicant's rights under Article 6 of the Convention. 2. The Court found that there is a "legitimate expectation" that an obligation confirmed by a "binding and enforceable" judgment will be honored. In this case, the obligation was to provide Applicant with a "possession"—i.e., the larger apartment. The Court found that the smaller flat offered to Applicant through the amended judgment provided housing space that was below the minimum amount dictated by the previous courts, which "frustrated applicant's reliance on a binding judicial decision" and deprived him of housing "he had legitimately expected to receive." The Court thus held that the amendment violated Applicant's right to peaceful enjoyment of possession under Article 1 of Protocol No. 1 of the Convention. 3. The Court held that enforcement of the amended judgment did not release Russia from its obligation to enforce the original final judgment. The Court found that Russia did not provide any reasonable justification for its failure to enforce the original judgment. The Court thus held that Russia's failure to enforce the original final judgment violated Applicant's rights under Article 6 of the Convention and Article 1 of Protocol No. 1 of the Convention. The Court declared that Russia was required to provide Applicant with an apartment sized according to the original judgment's larger specifications. Applicant had requested EUR 65,000 "in connection with his suffering and deterioration of his health." The Court noted Applicant's "distress and frustration" and awarded him EUR 1,500 in compensation. The Court did not refer to the deterioration of his health as a basis for compensation.

Case	*Samuel Martín Gomez Copa v. The 5th Civil Chamber of the Superior Court of Justice of Lima*
Year	2007
Country	Peru
Court/Body	Constitutional Court
Citation	00115-2007-PA/TC
Facts and Law	Plaintiff, a former mineworker, filed a pension application with the Social Security Office (SSO), but was rejected. The grounds of the rejection were that Plaintiff had not fulfilled the requirements for a miner's pension, i.e., that he had not been exposed to toxic and unhealthy risks during his work. Plaintiff filed an *amparo* (writ of protection of fundamental rights) against the SSO. The court of first instance admitted the *amparo*, rejecting the SSO's argument that Plaintiff's case required a more complete method of review. The SSO appealed and the appellate court, Defendant in the present case, agreed with the SSO that Plaintiff had not been exposed to health risks during his work, thus upholding the SSO's rejection of Plaintiff's pension application.

Case	*Samuel Martín Gomez Copa v. The 5th Civil Chamber of the Superior Court of Justice of Lima (continued)*
Issues and Holdings	Did Plaintiff fulfill the requirements to access a miner's pension, including being exposed to health risks during his work? Yes.
Decisions and Reasoning	The Court held that Plaintiff fulfilled the requirements entitling him to a miner's pension. The Court noted that Plaintiff had tuberculosis and determined that his health condition justified an in-depth analysis. The Court found that Plaintiff was more than 50 years old and had worked for 22 years in a site that had exposed him to health risks. The Court noted that Articles 1 and 2 of the miner's pension law allowed a miner to retire from age 50 to 55, if he had worked for 30 years, with at least 15 years involving exposure to toxic or unhealthy risks. However, the Court applied Article 3 of the law that allowed a miner to retire when he had at least 15, but not 30, years of contributions, permitting the National Social Health Insurance program (currently known as *EeSalud*) to pay a proportion of the pension.

Case	*REsp 726.828/SC, Reporting Justice Luiz Fux*
Year	2006
Country	Brazil
Court/Body	Superior Court of Justice
Citation	REsp 726.828/SC
Facts and Law	Claimant, Domingues, filed a law suit against Respondent, the National Treasury, requesting access to certain social security funds (PIS/PASEP) in order to pay for his medical expenses resulting from tuberculosis. The Regional Federal Court of the Fourth Circuit granted Claimant access to the funds, holding that if the law allows disabled individuals to access the funds a similar right should be granted to individuals with severe illnesses, including tuberculosis. Respondent appealed the decision, arguing that the PIS/PASEP fund may only be accessed under cases expressly provided for under applicable law.
Issues and Holdings	Was Claimant entitled to access social security funds in order to pay for medical expenses resulting from tuberculosis, despite the fact that such access was not expressly provided for under law? Yes.
Decisions and Reasoning	The Court held that in exceptional cases, such as those involving severe illness, including tuberculosis, access to PIS/PASEP funds should be granted when it is necessary to ensure access to health care. The Court thus held that Claimant was entitled to access PIS/PASEP social security funds to pay for medical expenses resulting from tuberculosis.

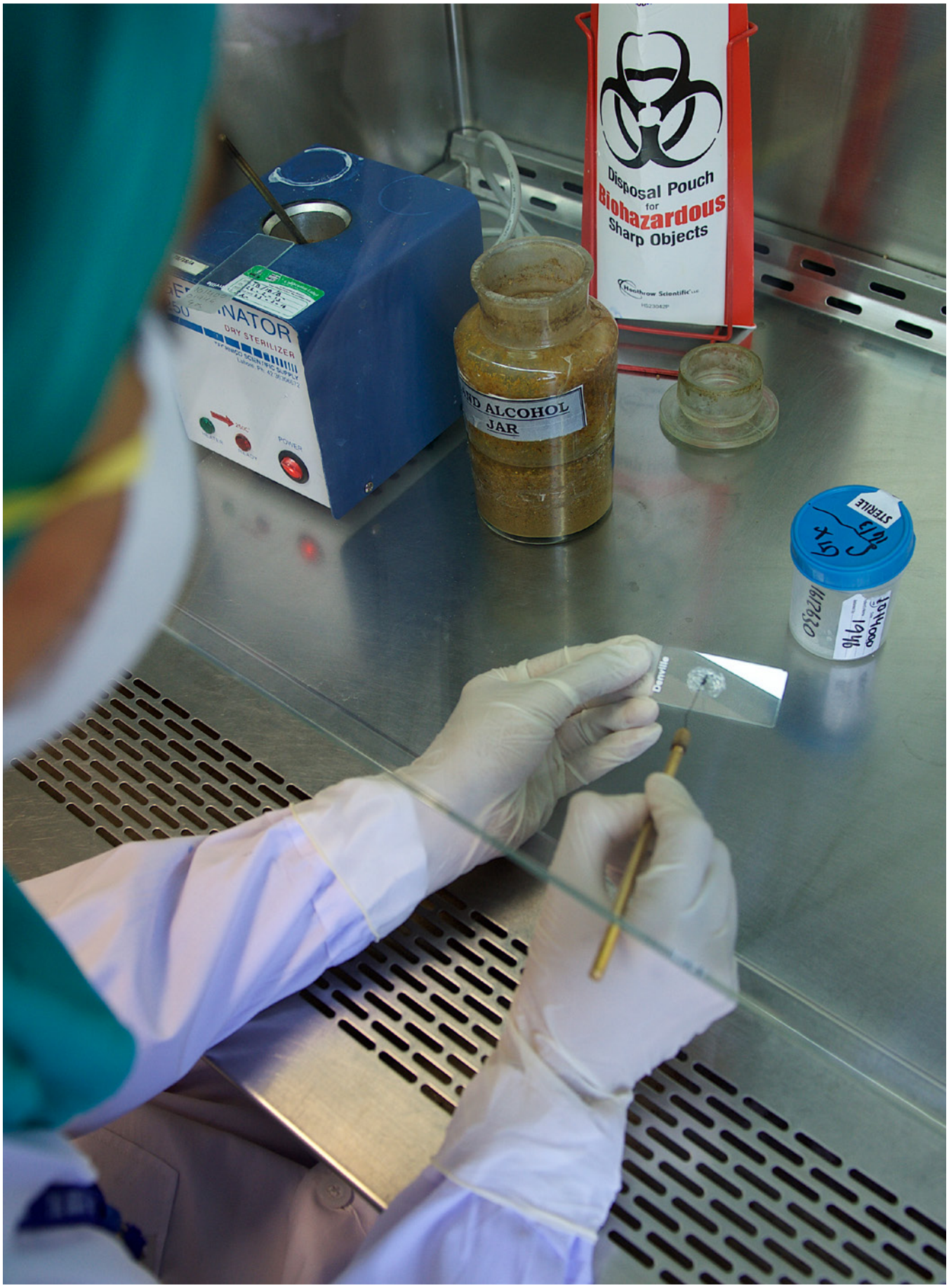
Case	*Confederation of Ex-Servicemen v. Union of India and Others*
Year	2006
Country	India
Court/Body	Supreme Court of India
Citation	Writ Petition (civil) 210 of 1999
Facts and Law	Petitioner, a Confederation of groups representing ex-defense workers, filed suit against the Union of India (India) seeking fulfillment of their self-proclaimed "fundamental right" to full and free medical care of ex-servicemen, their families and dependents. India's health care policy did not cover the treatment of certain "serious illnesses" for ex-servicemen, such as tuberculosis. Petitioner specifically sought the extension of such care to cover a list of disabilities, including tuberculosis. Petitioner argued that India's health policy discriminated against ex-defense workers by treating them differently than retired Civilian Central Government employees and

Case	*Confederation of Ex-Servicemen v. Union of India and Others (continued)*
	in-service defense personnel. In contrast to ex-defense workers, retired Civilian Central Government employees and in-service defense personnel received full and free treatment for all disabilities, including tuberculosis. Petitioner claimed that, although ex-defense workers and their families were treated in military hospitals without costs, priority for hospital beds was given to active, in-service members. Petitioner alleged that, for these reasons, India's health policy violated ex-defense workers' rights to equality before the law and to be free from discrimination. India asserted that, though the ex-defense workers had provided a valuable service to the country, they should not be treated the same as in-service defense personnel or retired Civilian Central Government employees for the purposes of health care. India noted that retired civil personnel were a part of the Central Government Health Scheme—a contributory health program that retired civil personnel paid into during their employment. India argued that Petitioner's class of personnel was therefore not "similarly situated," as they had not been a part of this contributory scheme during their employment. India also contended that Petitioner's class could not be compared to in-service defense personnel.
Issues and Holdings	Did India violate ex-defense workers' rights to equality before the law and to be free from discrimination under Article 14 of the Constitution of India by denying them full and free healthcare benefits, including for the treatment of diseases, such as tuberculosis, that were not covered by India's health policy? No.
Decisions and Reasoning	The Court held that "getting free and full medical facilities is not a part of fundamental right[s] of ex-servicemen." The Court explained that the judiciary does not carry a responsibility to "fill in gaps" and issue directions to agencies in the absence of legislative or administrative instruction. Moreover, the Court found that gap filling was not necessary in this case, because India had recently instituted a voluntary contributory scheme for ex-defense personnel similar to that provided to civil personnel—the Ex-Servicemen Contributory Health Scheme, 2002. The Court found that servicemen who have already retired, as well as in-service personnel, were eligible to join the scheme with a one-time contributory payment, with "no restriction on age or medical condition." The Court held that requiring defense workers to pay into a medical plan was constitutional, but it directed India to either waive the amount of contribution or to pay such amount on behalf of ex-servicemen who had retired prior to January 1, 1996. The Court held that India's refusal to extend full and free medical services to ex-servicemen did not violate their rights under Article 14 of the Constitution of India. The Court stated that Article 14 is "defined to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminatory and hostile legislation." The Court ruled that differentiation of groups on a categorical basis is allowed if "legal, valid and reasonable." In particular, the Court held that there is a twin-test for determining whether "a classification"—i.e., a differentiation of classes of persons—is legal and permissible under Article 14. First, it must be founded on an "intelligible differentia." Second, the "differentia must have a rational nexus to the object sought to be achieved by the statute or legislation in question." The Court held that India's classification of and provision of different health care options to ex-defense workers, retired Civilian Central Government employees and in-service defense personnel was rational, based on the fact that the government had a civil contributory scheme in which ex-defense workers could participate. The Court rejected Petitioner's arguments that ex-servicemen had a "legitimate expectation" that they would be provided health care that would cover serious diseases, such as tuberculosis. The Court found that because ex-defense workers had not been provided with such health care in the past and had not received an express promise of its provision in the future they could not rely on such a presumption.

Case	*Imtiaz Ali Malik v. Mst. Surrya Begum*
Year	1978
Country	Pakistan
Court/Body	Supreme Court of Pakistan
Citation	Appeal No. 518 of 1977
Facts and Law	On the recommendation of the Chief Minister of Punjab, two residential plots were allotted to Respondent, Mst. Surrya Begum, and another woman, Mst. Amir Jan. In October 1975, they received a letter from the government indicating that the allotments had been formally bestowed upon them. Soon after, however, in November 1975, their allotments were withdrawn by the government. The allotments were then allotted to Appellant, Imtaiz Ali Malik, in December 1975. Respondent, and the other similarly situated woman challenged the government's cancellation of their allotments, arguing that the grant could not be withdrawn without notice or an opportunity for contestation, especially in light of the fact that they had already deposited the requisite first installment on the land. The lower court found that the government was required to bring notice before it could withdraw the legal right to allotment and ruled in favor of Respondent. Appellant argued that the allotments were in the nature of an *ex gratia* administrative action, and therefore no legal right had accrued to Respondent. On this basis, Appellant claimed that withdrawal of the land did not require formal proceedings. Appellant claimed the Provincial Government gave him the land for his faithful service as a government employee. In addition, Appellant suffered from tuberculosis and alleged that, as a result of both his health and service, Respondent could not show she was more entitled than he was. Appellant claimed that, as a *bona fide* allottee, he "could not be made to suffer" and bear the loss.
Issues and Holdings	Did the lower court err in ruling in favor of Respondent on the basis that the granted allotment of land could not be withdrawn without provision of notice? No.
Decisions and Reasoning	The Court declared that administrative authorities must not act arbitrarily and capriciously. The Court held that because the allotment was given to Respondent by the Chief Minister accompanied by a formal allotment letter and official administrative actions, Respondent's rights to the allotment could not be withdrawn without notice and the opportunity to contest. Although the allotment was returned to Respondent, the Court found that Appellant was "a deserving case," as a low-paid government servant suffering from tuberculosis. The Court took the opportunity to express its "hope" that the government would allot Appellant a similar plot of land.

Case	*BGE 98 V 81*
Year	1972
Country	Switzerland
Court/Body	Swiss Supreme Court (Eidgenössisches Versicherungsgericht, now the Bundesgericht, Tribunal fédéral)
Citation	BGE 98 V 81
Facts and Law	Claimant, Z, had tuberculosis in the left forearm and several other unrelated illnesses. He became unable to work in December 1966, following a relapse of tuberculosis in his arm. Respondent, insurance company Artisana, allocated daily allowances to Claimant based on his 100% work inability until October 1970. Respondent then reduced Claimant's daily allowances from CHF 20 to CHF 8, in response to a medical evaluation that determined Claimant's tuberculosis-related work incapacity was only 40%. Daily allowances for

Case	*BGE 98 V 81 (continued)*
	non-tuberculosis-related incapacities, which constituted the other 60% of Claimant's incapacity, were only due for 720 days. The Cantonal Court upheld Respondent's reduction in Claimant's daily allowances. Claimant appealed to the Supreme Court, claiming the reduction violated his rights under Article 12bis of the Health Care Act.
Issues and Holdings	Was it lawful for Respondent to stop paying Claimant's daily allowances for non-tuberculosis-related illnesses? No.
Decisions and Reasoning	The Court reviewed the calculation of Claimant's daily allowances and Respondent's articles of association. The Court found that, according to Article 12bis of the Health Care Act, daily allowances for illnesses other than tuberculosis were independent from those paid for tuberculosis-related work incapacity. The Court held that, for non-tuberculosis-related work incapacities amounting to less than 100%, the duration of daily allowances was to be extended according to the size of the incapacity. Given that allowances were due for 720 within 900 days for a complete work incapacity due to non-tuberculosis-related illnesses, allowances for a 60% incapacity would be due for a longer period of time, in order to provide the required statutory amount over time. The Court remanded the case back to the Cantonal Court for further factual investigation in line with its ruling.


Disposal Pouch
for
Biohazardous
Sharp Objects
Healthrow Scientific
HS23042P
DRY STERILIZER
POWER
ALCOHOL
JAR
STERILE
Danville

Compulsory Isolation, Testing or Treatment

Case	*Daniel Ng'etich v. Attorney General*
Year	2016
Country	Kenya
Court/Body	High Court of Kenya at Nairobi, Constitutional and Human Rights Division
Citation	Petition No. 329 of 2014
Facts and Law	In 2010, two of three Petitioners, Ng'etich and Kirui, were arrested and imprisoned under Section 27 of the Public Health Act, on the basis that they failed to take tuberculosis medication prescribed to them. Section 27 states: "Isolation of persons who have been exposed to infection: Where, in the opinion of the medical officer of health, any person has recently been exposed to the infection, and may be in the incubation stage, of any notifiable infectious disease and is not accommodated in such manner as adequately to guard against the spread of the disease, such person may, on a certificate signed by the medical officer of health, be removed, by order of a magistrate and at the cost of the local authority of the district where such person is found, to a place of isolation and there detained until, in the opinion of the medical officer of health, he is free from infection or able to be discharged without danger to the public, or until the magistrate cancels the order." Section 27 had been used by public health authorities to arrest, charge and incarcerate individuals who stopped treatment for infectious diseases, notably tuberculosis. Following their arrest, Petitioners were imprisoned at Kapsabet G.K. Prison in order to undergo tuberculosis treatment. They were sentenced to eight months' imprisonment or until they completed their treatment. During their detention, they were confined for forty-six days in isolation. Petitioners claimed they slept on the floor of their cells for over a week without bedding and were only issued a blanket after the third Petitioner, a non-governmental organization, the Kenya Legal and Ethical Issues Network on HIV and AIDS (KELIN), intervened on their behalf. Petitioners also alleged they were not provided a balanced diet, as required for people undergoing tuberculosis treatment, and that they were held together with fifty other prisoners in a room meant for ten inmates. Petitioners further claimed the prison authorities did not institute precautions to prevent the transmission of tuberculosis. Petitioners brought suit against Respondents, the Attorney General of the Republic of Kenya and various public health authorities, alleging that Respondents' use of Section 27 to arrest and imprison them for the purposes of treatment was unlawful and in violation of their rights under the Constitution of Kenya. Pursuant to an application made on behalf of Petitioners, the Eldoret High Court ordered that they be released to their respective homes, where they were to continue treatment under supervision. The Eldoret High Court held that the incarceration of Petitioners was unconstitutional and not in accordance with the Public Health Act. The High Court stated that Kapsabet G.K. Prison—and prison generally—was the "worst of choices" for the confinement of Petitioners. The High Court further declared that the eight-month duration of the confinement was "unreasonably long," particularly as it had not been based on any medical opinion. Petitioners filed an amended petition in the High Court at Eldoret, which was transferred to the Constitutional and Human Rights Division of the High Court at Nairobi, by consent of the parties. Petitioners claimed their arrest, incarceration and treatment in prison violated their

Case	*Daniel Ng'etich v. Attorney General (continued)*
	constitutional rights under Articles 24(1) (limitations of rights or fundamental freedoms only allowable if by reasonable and justifiable laws), 25 (fundamental rights and freedoms that may not be limited), 28 (right to human dignity), 29 (freedom and security of the person), 39(1) (freedom of movement), 47(1) (rights of an arrested person), and 51(1) (right of a detained person to retain all rights and fundamental freedoms, except to the extent any particular right or freedom is clearly incompatible with custody or imprisonment) of the 2010 Constitution of Kenya.
Issues and Holdings	1. Did Section 27 of the Public Health Act authorize Respondents' involuntary confinement of Petitioners in prison for eight months for the purpose of tuberculosis treatment? No. 2. Did Respondents' involuntary confinement of Petitioners in prison for the purpose of tuberculosis treatment violate their rights under the Constitution of Kenya? Yes, in regards to the rights to liberty and freedom of movement under Articles 29 and 39.
Decisions and Reasoning	1. The Court declared that the issue of whether Respondents could isolate Petitioners and other patients with tuberculosis or other infectious diseases who refused to voluntarily follow their treatment was not in dispute. Instead, the dispute centered on whether isolation in prison was the "best course to follow." The Court stated that the purpose of the Public Health Act was to "safeguard . . . public health." It decided that the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights of the United Nationals Economic and Social Council (Siracusa Principles) should be applied in order to interpret Section 27. Relying on the Siracusa Principles, the Court declared that "public health may be invoked as a ground for limiting rights," however, such measures must be "the least restrictive and intrusive" means. The Court further held that any measure to control tuberculosis by isolation must be taken in accordance with the World Health Organization's Guidance on Ethics of Tuberculosis Prevention, Care, and Control of 2010 (WHO Guidelines). The Court noted that the WHO Guidelines established that "community-based care should always be considered before isolation or detention is contemplated." The Court stated that prisons serve a punitive function and do not solely fulfill the purpose of isolation. The Court further decided that isolating infectious disease patients (such as Petitioners) in order to prevent the transmission of disease was not the least restrictive means. Therefore, on the basis of the WHO Guidelines and Siracusa Principles, the Court decided that Petitioners' detention in prison was an unjustifiable punitive measure not sufficiently directed at protecting the public's health. The Court held that Petitioners' confinement in prison was thus contrary to the purpose of the Public Health Act, not authorized by the law and "patently counter-productive." 2. The Court stated that the population of Kenya has "scant information about the dangers of diseases" like tuberculosis. The population's lack of resources and knowledge made it less likely for individuals to comply with treatment for infectious diseases. The Court noted that Kenya had limited alternative resources for isolation and therefore defaulted to the "easy option" of confining people in prison, rather than establishing the appropriate community treatment services. Nonetheless, the Court held that since Petitioners had a constitutional right to health it was Respondents' burden to prove that there were appropriate isolation facilities in prisons, not Petitioners. The Court acknowledged that Respondents have a duty to isolate people who do not follow treatment, as required by the Public Health Act, but they must also observe patients' constitutional rights. The Court held that Respondents' confinement of Petitioners and other patients with tuberculosis violated their rights to liberty and freedom of movement under Articles 29 and 39 of the Constitution of Kenya.

Case	*Daniel Ng'etich v. Attorney General (continued)*
	The Court ordered the fourth Respondent, Minister for Public Health and Sanitation, to issue a circular within 30 days of the judgment to all public and private medical facilities and public health officers "clarifying that Section 27 of the Public Health Act …does not authorize the confinement of persons suffering from infectious diseases in prison facilities for the purposes of treatment." The Court further ordered the Minister for Public Health and Sanitation to develop a policy within 90 days of the judgment, in consultation with county governments, on the involuntary confinement of persons with TB that is "compliant with the Constitution and that incorporates principles from the international guidance on the involuntary confinement of individuals with TB."

Case	*Case No. 21.681-2016*
Year	2016
Country	Chile
Court/Body	Supreme Court
Citation	N° 21.681-2016
Facts and Law	Plaintiff, Zeigler, director of a hospital, brought an application of protection of constitutional rights (*recurso de protección*, a writ similar to the *amparo* that is common throughout Latin America) against Defendant, Yesenia Del Carmen Farías Aravena, on behalf of Defendant's newborn child. Defendant refused to allow the administration of the Bacillus Calmette–Guérin (BCG) vaccine that prevents tuberculosis to her child. Plaintiff argued that not providing the vaccine was a violation of the Ministry of Health's order, requiring vaccination for preventable diseases, including tuberculosis. At the time of trial, the newborn was hospitalized with whooping cough. Defendant explained that she had not vaccinated her child based of possible negative consequences associated with the ingredients in the vaccine. Defendant noted that besides the issue of vaccination, she had followed all other procedures proscribed by doctors for caring for her newborn. Defendant knew vaccination was a standard practice, but doubted whether vaccines were essential or safe. She requested the hospital to accredit the safety of the vaccine, but the hospital could only do so verbally. Defendant claimed that mandatory vaccination was a violation of her rights and petitioned the Supreme Court to require the Ministry of Health to provide certificates of safety for vaccines. The appellate court ordered the newborn vaccinated. The court outlined the legal basis for mandatory vaccination to include the Ministry of Health's order, the sanitation code and the Convention on the Rights of the Child. The appellate court declared that the right to life and physical and psychological integrity established a state duty to protect the health and life of each person, even against their own wishes or the wishes of their family. The court also noted that Defendant's decision not to vaccinate her child would affect the rest of the population, due to the possible spread of tuberculosis.
Issues and Holdings	Did public health laws and the newborn's right to life impose an obligation on Defendant to allow mandatory BCG vaccination against tuberculosis of her child? Yes.
Decisions and Reasoning	The Court held that Defendant had an obligation to vaccinate her newborn. The Court explained that the legal support for mandatory vaccination stems from the Ministry of Health's order and the sanitary code. The Court further noted that the President has the power to require vaccination of humans and animals to protect the population from communicable diseases. The Court also affirmed that the National Health Service "may take all necessary measures to ensure, in the interests of public health," the vaccination of the population. The Court thus held that Defendant's refusal to allow her child to be vaccinated against tuberculosis was unlawful and a violation of the newborn's right to life.

Case	*Case No. 21.681-2016 (continued)*
	The Court did not order Defendant to allow administration of the BCG vaccine for tuberculosis to her child, because the child was too old at the time of the ruling, but it required Defendant to allow the administration of all future mandatory vaccines.

Case	*Minister of Health, Western Cape v. Goliath and Others*
Year	2008
Country	South Africa
Court/Body	High Court of South Africa, Cape of Good Hope Provincial Division
Citation	(2) SA 248
Facts and Law	Applicants, Goliath and others, were diagnosed with highly infectious and extensively drug-resistant tuberculosis (XDR-TB). Applicants were voluntarily admitted to the Brooklyn Chest Hospital for treatment. However, during the course of their treatment, some Applicants "refused to be isolated or treated for XDR-TB, and regularly absconded from the facility." They asserted, as justifications for their non-compliance, the deplorable conditions of the hospital (the only XDR-TB treatment facility in Cape Town), as well as "financial and family responsibilities." They argued that they could not be forced into isolation on the basis of their XDR-TB pursuant to their rights to freedom and security under Section 12 of the Constitution of South Africa. Applicants brought suit against Respondent, The Minister of Health of the Province of the Western Cape.
Issues and Holding	Did the State violate Applicants' rights to personal freedom under Section 12 of the Constitution of South Africa by enforcing their compulsory admission and continued isolation in a hospital on the basis of their XDR-TB? No.
Decisions and Reasoning	The Court stated that it was "undisputed" that the compulsory isolation of Applicants amounted to a "deprivation of freedom." Nonetheless, it held that the "use of involuntary detention may be legitimately countenanced as a means to assure isolation and prevent infected individuals [from] possibly spreading infection to others." The Court resolved that, in this case, due to the valid public health concerns involved, the deprivation of Applicants' freedom was not "arbitrary" or "without just cause." The Court thus held that the State did not violate Applicants' rights to personal freedom under Article 12 of the Constitution of South Africa when it enforced their compulsory admission and isolation in a hospital for XDR-TB. The Court noted that there is no reliable data on treating or curing XDR-TB and that South Africa's 2007 Department of Health tuberculosis policy guidelines specify that XDR-TB patients "must be hospitalized." The Court found that the compulsory isolation of Applicants was supported by several international conventions and principles, including: Article 12 of the International Covenant on Civil and Political Rights (ICCPR), permitting limitations on the right to liberty of movement in order to protect public health; Article 25 of the Siracusa Principles on the Limitations and Derogation Provisions in the ICCPR, which provides that public health may be invoked as a ground for limiting certain rights; and Article 5 of the European Convention on Human Rights, which provides an exception to the right to liberty and security of the person for the "lawful detention of persons for the prevention of the spreading of infection diseases." The Court held that the State's conduct was also consistent with the legislation of other democratic countries. For example, Section 14(1) of the Constitution of Ghana permits limitations on the right to liberty "in the case of a person suffering from an infectious or contagious disease . . . for the purpose of his care or treatment or the protection of the community." In addition, the Court found that the State's actions were consistent with the 2003 Health Act of South Africa.

Case	*Toronto (City) Associate Medical Officer of Health v. McKay*
Year	2007
Country	Canada
Court/Body	Ontario Court of Justice
Citation	2007 ONCJ 444
Facts and Law	Respondent, McKay, had an extremely drug-resistant form of tuberculosis (XDR-TB). He had been detained in a hospital under the authority of the Health Protection and Promotion Act, R.S.O. 1990, (HPPA). Applicant, the Associate Medical Officer of Health for the City of Toronto, applied to extend Respondent's detention for a further four months, claiming his release into the community would "present a significant risk to the health of the public." Applicant cited Respondent's failure to follow his tuberculosis treatment, leading to his diagnoses of XDR-TB, as well as his long-term alcoholism. Applicant argued that Respondent's pattern of alcoholism and previous failures to complete treatment indicated he would likely become infectious again upon release into the community. Applicant argued that, on this basis, Respondent should be detained in the hospital for an additional four months.
Issues and Holdings	Did Applicant meet the burden to justify Respondent's continued detention in a hospital to treat his XDR-TB, i.e., that Respondent would "present a significant risk to the health of the public" if released? Yes.
Decisions and Reasoning	The Court considered the provisions of HPPA that weighed the interests of public health against Respondent's interest in liberty. In particular, Court considered the language that stated: "[T]he judge by order may extend the period of detention and treatment for not more than four months, and upon further motions by the medical officer of health the judge may extend the period of detention and treatment for further periods each of which shall not be for more than four months if the discharge of the person from the hospital or other appropriate facility would present a significant risk to the health of the public." The Court decided that Respondent's previous record of alcoholism, to the point of incontinence and incapacitation, the significant risk he would relapse, and the particularly dangerous form of tuberculosis he suffered from had the cumulative potential to create "a public health crisis of enormous proportions" if he were released. The Court thus determined that Respondent's release would pose a significant risk to the health of the public. It held that Applicant had therefore met its burden to justify Respondent's detention for an additional four months.

Case	*Meylan v. Neuchâtel*
Year	1978
Country	Switzerland
Court/Body	Supreme Court
Citation	ATF 104 Ia 480
Facts and Law	Respondent, Meylan, refused to let his children be examined by a doctor. Under Federal law, every child going to primary school must undergo a medical examination, as established by the federal legislation aimed at reducing the spread of tuberculosis. Respondent claimed that his children's health may be threatened by this examination. In refusing to allow his children to be examined, Respondent had failed to comply with the legislation and was convicted and instructed to pay a fine. Respondent appealed and brought the case to the Supreme Court.

Case	*Meylan v. Neuchâtel (continued)*
Issues and Holdings	Did the requirement that Respondent submit his children to medical examination aimed at preventing tuberculosis violate his and his children's rights to personal freedom under the Federal and Cantonal Constitutions of Switzerland? The Court allowed the appeal, but did not decide this issue conclusively.
Decisions and Reasoning	The Court declared that the right to personal freedom is a Federal constitutional right not explicitly written into the constitution. The Court explained that the right guarantees individuals the freedom to decide freely and independently in matters related to their bodies. The Court held that an individual's personal freedom may be infringed even in the absence of severe injuries or lesions. The Court found this to be the case even for simple blood tests and the vaccination of children against diphtheria and smallpox. However, the Court held that the right to personal freedom is not absolute, but may be limited, including for the necessity of a public interest and by the principle of proportionality. The Court thus admitted the appeal, but did not explicitly rule on whether the personal freedom of Respondent's children would be violated by the involuntary medical examination for tuberculosis.

Case	*Case of Conseil d'Etat, June 16, 1967 (case Conseil d'Etat, du 16 juin 1967, 66840)*
Year	1967
Country	France
Court/Body	Conseil d'Etat
Citation	Conseil d'Etat, du 16 juin 1967, 66840
Facts and Law	French law mandated vaccination against tuberculosis, in order to prevent the spread of the disease within the country. The French Government passed a bill to mandate the vaccination of children in public schools. Under the law, children could be excluded from public schools if they did not comply. Respondent challenged the bill, claiming it violated children's right to freedom of education.
Issues and Holdings	Did the bill mandating vaccination of all children in public schools against tuberculosis, as a requirement for attendance, violate the right to freedom of education? No.
Decisions and Reasoning	The Court held that the law enacted by the French Government to prevent the spread of tuberculosis did not exceed the Government's powers. The Court also held that the bill requiring children in public schools be vaccinated against tuberculosis did not violate the right to freedom of education.

Case	*Francisco De La Rama v. The People's Court*
Year	1946
Country	Philippines
Court/Body	Supreme Court of Manila
Citation	G.R. No. L-982
Facts and Law	Petitioner, De La Rama, filed two petitions with the Supreme Court against Respondent, The People's Court. Petitioner alleged that Respondent acted with "grave abuse of discretion" in denying his petition for bail on the grounds of his poor health. The Supreme Court remanded the first petition to Respondent because Petitioner had filed a supplementary petition which brought forth new facts on the state of his health. In the first case, the Supreme Court held that bail should generally be provided to individuals with particularly poor health.

Case	*Francisco De La Rama v. The People's Court (continued)*
	Petitioner filed a motion asking to be confined and treated in a hospital while the dispute was ongoing. Capitulating to the motion, Respondent ordered the temporary confinement of Petitioner in the Quezon Institute, where he was diagnosed with early stage pulmonary tuberculosis, as well as chronic granular pharyngitis. The Institute recommended that Petitioner "continue his stay in the sanatorium for purposes of proper management, treatment and regular periodic radiographic check-up." Petitioner filed a motion with Respondent reiterating his petition for bail, claiming it was necessary that he be released on bail and treated by a tuberculosis specialist in his own house. In particular, Petitioner complained that he could no longer afford treatment in the Institute. The Special Prosecutor contended that Petitioner could continue treatment in the Institute in the charity ward. Respondent therefore denied Petitioner's request for bail and ordered that he be confined to the Institute. Petitioner appealed that judgment, bringing the matter back before the Supreme Court.
Issues and Holdings	Did Respondent act with "grave abuse of discretion" in denying Petitioner's bail petition, requested in order to receive treatment for tuberculosis by a specialist in his home, and in ordering Petitioner's continued confinement in the Quezon Institute for treatment? Yes.
Decisions and Reasoning	Petitioner's first request for bail was denied by Respondent on grounds that he suffered from latent and not active tuberculosis. However, the Institute observed that Petitioner's tuberculosis was indeed active and stated that Petitioner was in a severe physical condition. The Court noted that Respondent had denied Petitioner's first request for bail in order to test whether he had active tuberculosis, implying that Petitioner would be granted bail if the disease as active. The Court determined that Petitioner was within the category of individuals with poor health who should be granted bail because he had active tuberculosis, in addition to other ailments. Precedent from earlier cases clarified that continued detainment in prison that threatens injury to health or endangerment of life was adequate grounds for bail. The Court thus held that Respondent acted with "grave abuse of discretion" in refusing to release Petitioner on bail. The Court set aside Respondent's denial of Petitioner's bail petition, ordering Respondent to render a new decision in line with the Court's findings and relevant precedent.

Immigration and Asylum

Case	*Lutsyuk v. Government of Ukraine*
Year	2013
Country	United Kingdom
Court/Body	High Court of Justice, Queen's Bench Division, Divisional Court
Citation	2013 EWHC 189 (Admin)
Facts and Law	Appellant, Lutsyuk, was convicted of robbery and sentenced to two years' imprisonment in a high security penal colony in Ukraine. While out on conditional bail, he fled to the United Kingdom. Appellant was traced to the United Kingdom in 2009. Ukraine delayed its submission of the extradition request to the United Kingdom and Appellant was not arrested until 2011. In 2011, the District Judge sent Appellant's case to the Secretary of State for decision on whether Appellant should be extradited to Ukraine. Appellant appealed the District Judge's order. In 2012, the Secretary of State ordered Appellant's extradition. Appellant argued that, due to Ukraine's alleged poor prison conditions, his extradition to the country would violate his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights (Convention).
Issues and Holdings	Would the extradition of Appellant to Ukraine have violated his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention? Yes.
Decisions and Reasoning	The Court weighed multiple sources of evidence on prison conditions in Ukraine. The Court emphasized that the U.S. State Department had reported that prison conditions "remained poor" in the country and generally failed to meet international standards. The Court found, based on the evidence submitted, that there was overcrowding, abuse and a lack of necessities in Ukrainian prisons. In particular, the Court highlighted evidence of the prevalence of contagious diseases, including tuberculosis, in Ukrainian prisons. The Court cited the State Penitentiary Service (SPS) estimation that 42% of prisoners in tuberculosis hospitals under SPS control were terminally ill with the tuberculosis and 44% were terminally ill with HIV/AIDS. The Court considered Ukraine's evidence that the conditions in Ukrainian prisons would not violate Appellant's rights. This included reference to the Criminal Executive Code of Ukraine (Code). The Code defined acceptable prison conditions, monitoring requirements, and other standards for the penal system. The Court held, in regards to the Code, that though "there is in that document a good deal about what should be, there is a good deal less about what is – in terms of the actual conditions in which prisoners are detained." The Court found that Ukraine had failed to show the adequacy of conditions within the prisons in practice. The Court held that Applicant's extradition to Ukraine would violate his right to be free from torture or inhuman or degrading treatment or punishment under Article 3 of the Convention and thus allowed his appeal.

Case	*Tamarevichute v. Russia*
Year	2008
Country	United Kingdom
Court/Body	High Court of Justice Queen's Bench Division Divisional Court
Citation	[2008] EWHC 534 (Admin)
Facts and Law	Appellant, Tamarevichute, was a 50-year-old Lithuanian woman of Roma origin. Respondent, the Russian Government, sought her extradition for multiple drug-related offenses after she fled to the United Kingdom with her daughter while on conditional bail. The request for Appellant's extradition was made in April 2006. In 2007, the District Judge ordered that the case proceed to the Secretary of State for her decision on extradition. Appellant appealed the District Judge's order. The Secretary of State ordered extradition. Appellant sought appeal of the District Judge's order on the basis of two main arguments. First, Appellant argued that the district Judge should not have advanced the case to the Secretary of State because the extradition was barred by the United Kingdom's Extradition Act 2003 (Act). She argued that the Act barred her extradition by reason of "extraneous considerations," which includes discrimination at trial or punishment on the basis of an extraditee's race. Appellant argued that there was a "real risk" that she might be prejudiced as a Roma "gypsy" at her trial and during punishment in Russia. Appellant contended that she was deliberately "set up" by the local militia because of her Roma origin and that her ethnicity would produce further discrimination and undue punishment if she were returned to Russia. Second, Appellant argued that the conditions of Russian prisons, including a high incidence of tuberculosis, would violate her rights under European Convention on Human Rights (Convention). In particular, Appellant argued that extradition would violate her rights to be free from torture or inhuman or degrading treatment or punishment, to liberty and security of person, and to a fair and public hearing by an independent and impartial tribunal under Articles 3, 5 and 6 of the Convention.
Issues and Holdings	1. Did the United Kingdom's Extradition Act bar extradition of Appellant on the basis of "extraneous considerations," that Appellant would face discrimination on the basis of her Roma origin at future trial and punishment in Russia? No. 2. Would extradition of Appellant have violated her rights to be free from torture or inhuman or degrading treatment or punishment, to liberty and security of person, and to a fair and public hearing by an independent and impartial tribunal under Articles 3, 5 and 6 of the Convention. No.
Decisions and Reasoning	1. The Court found that "extraneous considerations" of the Extradition Act were established if there is a "reasonable chance" or "serious possibility" of the relevant prejudice arising. The Court acknowledged that Appellant provided "powerful evidence of widespread discrimination against the Roma" in Russia. However, general prejudice against her ethnicity was not sufficient to bar extradition, without evidence that such prejudice would specifically affect her trial. The Court held that the term "gypsy" was not pejorative and that use of the term in documents submitted alongside the extradition request were not evidence of discrimination in Russian criminal courts. The Court found that events referenced by Appellant, like the 2006 destruction of the Dorozhnoe settlement of the Roma by the Russian government, did not suggest any complicity on the part of Russian courts. The Court thus determined that there was not a "reasonable chance" or "serious possibility" that Appellant would suffer prejudice upon extradition on the basis of her Roma origin. She therefore did not meet the requirements of the Extradition Act's "extraneous considerations" bar against extradition.

Case	*Tamarevichute v. Russia (continued)*
	2. The Court found that, in order to prove Applicant's rights under Article 3 of the Convention would be violated by extradition to Russia, she had to show a "real risk" that extradition would expose her to ill-treatment amounting to torture or to inhuman or degrading treatment. The Court determined that a prior case, *ZB v. Russian Federation*, which found Russian prison conditions did not breach an extraditee's rights under Article 3, controlled here. Evidence from this case indicated, among other things, that "considerable improvements had been made to the prison system" in Russia during the previous few years. The Court held that Appellant offered insufficient evidence to rise above this case's prior ruling and therefore had not shown a "real risk" that extradition would expose her to ill-treatment rising to the level of a violation of Article 3. Court did not address Appellant's evidence showing a high incidence of tuberculosis in Russian prisons. The Court found "no need" to consider Appellant's claims that extradition would violate her rights under Articles 5 and 6 of the Convention, because the Court's findings "are the same in respect of Article 3."

Case	*R. (on the application of Secretary of State for the Home Department) v. Asylum Support Adjudicator*
Year	2006
Country	United Kingdom
Court/Body	High Court of Justice, Queen's Bench Division
Citation	No. CO/10382/2005
Facts and Law	Appellant, the Secretary of State, brought suit against Respondent, Asylum Support Adjudicator, in regards to three separate cases in which Respondent ruled in favor of asylum. In each case, Respondent considered an appeal by a failed asylum seeker and granted asylum in reversal of the National Asylum Support Service's decision. Each of the three asylum seekers suffered from tuberculosis. To succeed on appeal to Respondent, the asylum seekers needed to show that they were destitute and "unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason." In the first case considered by the Court, Mohammed Osman, an Iranian national, claimed he was destitute and unable to leave the United Kingdom because his tuberculosis required uninterrupted treatment. He provided letters from his doctors emphasizing his need for continuous treatment and the provision of local housing. In the second case, Zainab Yillah, a national of Sierra Leone, claimed she was unable to leave the United Kingdom because she would pose a risk to others by traveling in close proximity to them. In a similar third case, Alhaj Adam Ahmad, a Sudanese national claimed he was unable to travel because his tuberculosis would pose a risk to others near him.
Issues and Holding	Did Respondent err in granting asylum to the three asylum seekers who claimed they were unable to leave the United Kingdom due to their tuberculosis? Yes.
Decisions and Reasoning	The Court found that Respondent erred in equating the terms "unable" and "inadvisable." In order to qualify for asylum, the Court held that asylum seekers must be "unable" to leave the United Kingdom, not merely that their travel would be "inadvisable." Respondent asserted that denial of asylum in these three cases was inadvisable on two grounds: that the asylum seekers might expose fellow travelers to tuberculosis, and that they would not receive the same high level of tuberculosis care in their home countries. The Court held that, although Respondent may have sufficiently established that it was inadvisable to deny relief to the three asylum seekers, it had not sufficiently demonstrated that they were unable to leave the United Kingdom. The Court found that, although the three individuals

Case	*R. (on the application of Secretary of State for the Home Department) v. Asylum Support Adjudicator (continued)*
	would be greatly availed by continuing tuberculosis treatment within the United Kingdom, their illnesses did not render them "unable" to travel. They therefore did not qualify for asylum. The Court quashed the three grants of asylum adjudicated by Respondent, concluding that the three asylum seekers would not be supported by, or allowed to remain in, the United Kingdom.

Case	*Osagie v. Canada (Minister of Citizenship & Immigration)*
Year	2005
Country	Canada
Court/Body	Federal Court
Citation	2005 FC 120
Facts and Law	Applicant, Osagie, was a refugee from Nigeria. He had been a member of the Nigerian Army until he deserted his position on the basis of alleged human rights violations committed by the Nigerian Army. Desertion was punishable by imprisonment. He applied for judicial review of a decision regarding his refugee application under humanitarian and compassionate grounds. Humanitarian and compassionate grounds for refugee status are derived from the Immigration and Refugee Protection Act, S.C. 2001 (IRPA). IRPA establishes that, upon request of a foreign national or on his own initiative, the Respondent, Minister of Citizenship and Immigration, may examine the circumstances and grant the foreign national permanent resident status, "if the Minister is of the opinion that it is justified by humanitarian and compassionate considerations." Applicant alleged that Respondent failed to consider poor conditions in Nigerian prisons, including high rates of tuberculosis and HIV, when assessing his refugee application.
Issues and Holdings	Did Respondent, Minister of Citizenship and Immigration, commit a reviewable error in dismissing Applicant's refugee application by failing to take into consideration evidence of poor conditions allegedly constituting torture in Nigerian prisons, including high rates of tuberculosis and HIV? Yes.
Decisions and Reasoning	The Court held that Respondent must properly weigh relevant evidence before deciding on a refugee application based on humanitarian and compassionate grounds. Respondent must also provide a sufficient explanation for his decision. In particular, the Court held that "a blanket statement that the agency has considered all the evidence will not suffice when the evidence omitted . . . appears squarely to contradict the agency's finding of fact." The Court held that Respondent had a duty to address the evidence of poor prison conditions when reviewing Applicant's refugee application, including high rates of tuberculosis and HIV, lack of clean drinking water and overcrowding. The Court found that Respondent failed to properly weigh this evidence, and instead remained silent on the evidence of poor conditions in Nigerian prisons. The Court held that Respondent committed a reviewable error and referred the application back for redetermination.

Case	*6P.138/2002*
Year	February 7, 2003
Country	Switzerland
Court/Body	Swiss Supreme Court (Bundesgericht, Tribunal fédéral)
Citation	6P.138/2002

Case	*6P.138/2002 (continued)*
Facts and Law	Claimant suffered from tuberculosis. He was granted refugee status in Switzerland in 1996. In April 2001, he was found guilty of group property theft, damage to property, multiple breaches of domestic peace and fraud, as well as other infractions. The District Court of Lenzburg convicted Claimant to five years in prison and expelled him from the country for eight years. Upon appeal, the highest Cantonal Court confirmed the previous decision, but reduced the overall imprisonment to four years. Claimant appealed to the Supreme Court. Claimant argued that the deportation and imprisonment were disproportionate and thus violated his rights under Article 55 para. 1 of the Swiss Criminal Code (Code) (currently Art. 66a). The Article allows authorities to expel persons and ban foreigners from the country for 3 to 15 years. In its decision, the Supreme Court also considered Article 65 of the Asylum Act, regarding refugee status, Articles 13 and 25 of the Swiss Constitution, and Articles 3 and 8 of the European Convention of Human Rights (Convention), the rights to be free from torture or inhuman or degrading treatment or punishment and to respect for private and family life.
Issues and Holdings	Did the lower courts err in failing to consider all the relevant evidence related to Claimant's appeal against expulsion, including his tuberculosis? Yes.
Decisions and Reasoning	The Court held that, in the case of a refugee, Article 55 of the Code should be applied together in conjunction with Article 65 of the Asylum Act, allowing deportations only if the internal and external safety of the country were at risk. The Court noted that courts had a margin of appreciation when determining the penalty. The Court determined that Claimant's tuberculosis reinforced the pre-existing trauma he had suffered as a consequence of being tortured in his childhood. It held that the lower courts should have taken this psychiatric evidence into account when weighing Claimant's interest in remaining in the country against the government's security interest in deporting him. The Court held that this evidence indicated that Claimant had high chances for reintegration. It further held that the lower courts had not considered the likely impact of Claimant's deportation on his wife and child, but instead gave too much weight to Claimant's inability to work. The Court noted, in this regard, that Claimant could not work due to his personality and tuberculosis related lung disorder. The Court sent the case back to the lower court for review and amendment in line with its decision.

Case	*ATF 123 II 511*
Year	1997
Country	Switzerland
Court/Body	Supreme Court
Citation	ATF 123 II 511
Facts and Law	In 1996, Switzerland received a request from the Republic of Kazakhstan for the extradition of Claimant, a Kazakhstan national who was domiciled in Switzerland. Claimant was charged by the Republic of Kazakhstan of counterfeiting loan guarantees issued in the name of the National Bank of Kazakhstan. In its request, the Foreign Ministry Department of Kazakhstan committed to respect guaranties given by the European Convention on Human Rights (Convention) and confirmed that Claimant's situation would not be aggravated during his detention. Kazakhstan authorities argued that Claimant would neither sentenced to death nor subjected to any treatments that would prejudice his physical integrity. The authorities further claimed they would allow Swiss representatives to visit Claimant during his detention.

Case	*ATF 123 II 511 (continued)*
	The lower court allowed Claimant's extradition. Claimant appealed and brought the case to the Supreme Court. He argued that the extradition would violate his right to a fair trial under Article 6 of the Convention because he would be sentenced to the death penalty and/or subjected to treatments in violation of his fundamental human rights. Claimant further alleged that conditions in Kazakhstan prisons did not meet the minimum standards required under the Convention, because prisoners faced a heightened risk of contracting tuberculosis and HIV.
Issues and Holdings	Would Claimant's extradition to Kazakhstan have violated his right to a fair trial under Article 6 of the Convention, despite promises by Kazakhstan authorities guaranteeing his well-being? Yes.
Decisions and Reasoning	The Court held that Claimant was required to demonstrate evidence that extradition would create a concrete risk that his fundamental human rights would be violated. The Court found that conditions of detention in Kazakhstan, as well as Kazakhstan's previous guarantees to protect prisoners' human rights, had been criticized widely by the international community. The Court held that Kazakhstan's confirmation that the death penalty would not be applied to Claimant did not meet the minimum requirements set out in the Convention. In order for an extradition to be in line with the principles under Article 6 of the Convention, the requesting State must guarantee that the death penalty would not be requested or applied in the case. The Court thus held that Claimant's extradition to Kazakhstan would have violated his right to fair trial under Article 6 of the Convention, unless Kazakhstan could provide sufficient and express guarantees that Claimant's confinement and sentencing would be in strict accordance with the Convention.

Case	*Fung v. Canada (Minister of Employment & Immigration)*
Year	1986
Country	Canada
Court/Body	Federal Court, Trial Division
Citation	986 CarswellNat 219
Facts and Law	Applicant, Fung, was a resident of Hong Kong who had been diagnosed with tuberculosis. He was seeking permanent residence in Canada. Applicant alleged that after being diagnosed with tuberculosis he was informed by an agent of Respondent, the Hong Kong Minister of Employment and Immigration, that he was required to undergo treatment for one year. Despite this, he was requested to provide an additional chest x-ray at the time. His application for permanent residence in Canada was rejected immediately when he submitted the x-ray. Applicant alleged that Respondent failed to abide by the Canadian Immigration Act, S.C. 1976-77 and Regulations (Immigration Act) in refusing to take into account evidence it had a duty to consider. In particular, Applicant claimed that Respondent had erred and violated his rights under the Act by failing to allow the prescribed tuberculosis treatment to run its course and to give adequate consideration to the treatment results in assessing his application. Applicant applied for *certiorari* to squash the decision of Respondent refusing his application for permanent residence in Canada and a writ of mandamus directing Respondent to consider and process his application in accordance with the Immigration Act.
Issues and Holdings	Did Respondent err in his decision to reject Applicant's request for permanent residence in Canada when he failed to allow Applicant's prescribed tuberculosis treatment to run its course and to consider the treatment results? Yes.

Case	*Fung v. Canada (Minister of Employment & Immigration) (continued)*
Decisions and Reasoning	The Court found that Respondent had based his decision to reject Applicant's request for permanent residence in Canada on the basis of 3 out of 24 tests that had been conducted on Applicant's tuberculosis status. Respondent's decision also failed to take into account Applicant's health after the completion of his treatment for tuberculosis, which Respondent had required Applicant undergo. The Court found that "simple justice" required that Respondent consider Applicant's application for permanent residence in Canada in light of Applicant's test results following completion of his tuberculosis treatment. The Court thus held that Respondent erred in its decision to reject Applicant's request for permanent residence in Canada. The Court made an order of *certiorari* setting aside the decision and directed the Respondent to reconsider the application on the basis of an analysis of the results of Applicant's full course of tuberculosis treatment.


positive living
May
June
Negaloves

Right to Life

Case	*Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*
Year	2014
Country	Romania
Court/Body	European Court of Human Rights
Citation	Application No. 47848/08
Facts and Law	Petitioner, a Romanian non-governmental organization (NGO), the Centre for Legal Resources, brought this case on behalf of Valentin Câmpeanu, Applicant, in October 2008. Applicant was abandoned at birth in 1985 and spent his entire life in Romanian public institutions. In 1990, he was diagnosed with HIV. He was later diagnosed with "profound intellectual disability" and classified as part of the "severe" disability group. He later contracted pulmonary tuberculosis, pneumonia and chronic hepatitis. In March 1992, Applicant was transferred to the Craiova Centre for Disabled Children and then later to Craiova no. 7 Placement Center. When Applicant turned 18, he was not enrolled in any educational program. The Dolj County Child Protection Panel (Panel) ordered that he should no longer be cared for by the State. In February 2004, Applicant was placed in the Cetate-Dolj Medical and Social Care Center (Center), after he was denied admission to a number of social care and psychiatric establishments. The Panel disclosed only that Applicant was HIV-positive, failing to mention his intellectual disability. The Center failed to provide Applicant the appropriate anti-retroviral medication and information about his illness. Applicant had a violent outburst and was given phenobarbital and diazepam to sedate him. He was then taken to the nearest psychiatric establishment, the Poiana Mare Neuropsychiatric Hospital (PMH), where he was diagnosed as having a severe intellectual disability. On the same day, he was returned to the Center and provided anti-retroviral medicine, but his condition did not improve. The Center concluded it could no longer properly care for Applicant, due to its limited resources, but the Placement Center rejected the Center's request for transfer on jurisdictional grounds. Applicant was then transferred back to the PMH where he stopped eating and refused to take medication. His health worsened. Petitioner's staff visited Applicant and determined that he was isolated in a room that lacked heating and had a bed with no bedding, he had no pants, and he needed assistance to eat and use the toilet. PMH staff, however, refused to provide him assistance, fearing they would contract HIV. Petitioner's representatives claimed they asked for Applicant to be transferred to the Infectious Diseases Hospital in Craiova, but the PMH's manager refused, stating that Applicant was not an "emergency case, but a social case." Petitioner submitted an expert medical report that concluded: "[T]he risks of discontinued ARV treatment, the possibility of opportunistic infections and the [Applicant's] history of tuberculosis should have led to [his] being admitted to an infectious-disease department of a general hospital, and not to a psychiatric institution." Applicant died on February 20, 2004. In spite of legal provisions rendering an autopsy compulsory under the circumstances, no autopsy was performed by PMH. Petitioner brought suit and claimed that Romania had

Case	*Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania (continued)*
	violated Applicant's rights to life, to be free from torture, to liberty and security, to respect for private and family life, to an effective remedy, and to be free from discrimination under Articles 2, 3, 5, 8, 13 and 14 of the European Convention on Human Rights (Convention). Romania argued that the case should be dismissed on the ground that Petitioner lacked standing to bring the complaint on Applicant's behalf. Petitioner argued that the exceptional circumstances of the case demanded that it be granted standing. Petitioner noted that the European Court of Human Rights had previously departed from its strict standing requirements in the "interests of human rights."
Issues and Holdings	1. Did Petitioner, a NGO with neither direct victim status or next-of-kin relationship to Applicant, have standing to represent Applicant against the State of Romania? Yes. 2. Did the Center's treatment of Applicant, in failing to provide him with appropriate medication and information about his illness, and PHM's treatment of Applicant, in holding him in a room that lacked heating and bedding and not providing him adequate clothes or assistance to eat and use the toilet, violate Applicant's right to life under Article 2 of the Convention? Yes. 3. Did Romania violate Applicant's right to an effective remedy under Article 13 of the Convention, by not providing him an effective remedy in the Romanian legal system to address his flawed medical care? Yes.
Decisions and Reasoning	1. The Court found that Petitioner lacked any direct victim or next-of-kin status to Applicant. However, it held that a strict approach to standing requirements concerning people with disabilities would preclude their opportunity for redress when their human rights were violated. The Court found that this would be "counter to the fundamental aims of the Convention." The Court noted the European trend toward expanding standing when NGOs file on behalf of vulnerable groups. The Court found that Applicant was "extremely vulnerable" and lacked any next-of-kin, as he had been abandoned at birth. The Court held that denying Petitioner standing would be an injustice to Applicant and thus ruled that Petitioner had standing to bring suit on behalf of Applicant. 2. The Court found that the right to life under Article 2 of the Convention requires a State to both "refrain from the intentional and unlawful taking of life" and "to take appropriate steps to safeguard the lives of those within its jurisdiction." The Court applied a "beyond reasonable doubt" standard of review to the evidence. The Court found that the Center and PMH provided inadequate medical care during multiple stages of Applicant's treatment. The Court also found that the medical authorities involved in Applicant's treatment acted counter to the Mental Health Act because they did not obtain Applicant's consent prior to transferring him after he had turned 18. Moreover, the authorities wrongly based their transfer decisions on the willingness of the facility to take the Applicant, rather than Applicant's needs. The Court found that Applicant's transfer to the PMH, which lacked a staff psychiatrist, following his violent outburst supported Petitioner's claim that Applicant's right to life had been violated. The Court held that, given Applicant's conditions, placing him in the PMH unreasonably endangered his life. The Court also noted with significance the deficient investigation conducted after Applicant's death, including the failure to perform an autopsy. Specifically, the Court noted that Petitioner had obtained most of the evidence pertaining to Applicant's death independently of the State, while the State itself was reckless in handling its obligation to discover why Applicant had died. The Court thus held that Romania violated Applicant's right to life under Article 2 of the Convention.

Case	*Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania (continued)*
	3. The Court stated that the right to effective investigation and redress under Article 13 of the Convention requires both an investigation that can identify and punish responsible agents and an effective payment to remedy any wrongs. The Court found that Romania failed to implement an adequate legal framework that would have allowed examination of Applicant's harms under Article 2 of the Convention by an independent authority, rather than relying on an NGO to discover and investigate the issue. The Court thus held that Romania violated Applicant's rights under Article 13 of the Convention.

Case	*Paposhvili v. Belgium*
Year	2014
Country	Belgium
Court/Body	European Court of Human Rights
Citation	Application No. 41738/10
Facts and Law	Applicant, Paposhvili, and his wife and child arrived in Belgium from Georgia in 1998. In 1999 and 2000, Applicant and his wife were arrested on several occasions for theft. In 2001, Applicant was convicted of a number of offences including robbery and was sentenced to fourteen months in prison. In November 2005, Applicant was sentenced to three years' imprisonment for involvement with a criminal organization. Applicant's medical history was as follows. In 2000, he was diagnosed with active pulmonary tuberculosis. By an unspecified date preceding 2008, his tuberculosis was rendered inactive, but not successfully cured, through treatment. In 2006, while in prison, Applicant was also diagnosed with hepatitis C and leukemia. As his health deteriorated, he was sent to the Brudges prison hospital complex from 2007 to 2010. In 2008, Applicant's tuberculosis became active again. He was released from Brudges in 2010 and began treatment at St Pierre University Hospital in Brussels. Upon their arrival in Belgium, Applicant and his wife had lodged asylum applications. Those applications were denied. By 2010, Applicant's wife and three children had been granted indefinite leave to remain in Belgium. Applicant sought the same relief in the intervening years. He filed multiple requests for regularization on exceptional grounds. The Aliens Appeals Board denied his requests, citing his failure to assimilate and his numerous breaches of the public order. Applicant also made requests for regularization on medical grounds, relying on Article 3 and 8 of the European Convention on Human Rights (Convention). The Aliens Appeals Board dismissed these requests and expulsion proceedings were initiated to deport Applicant back to Georgia. Applicant contended that, though the treatment he needed for leukemia was available in Georgia, it was "inaccessible on account of its high cost." Applicant brought this case, claiming that if he were deported to Georgia he would be subjected to inhuman and degrading treatment in violation of Article 3 and premature death in breach of Article 2 of the Convention. In addition, Applicant claimed that separating him from his wife and three children, who were permitted to remain in Belgium, would violate his right to respect for private and family life under Article 8 of the Convention.
Issues and Holdings	1. Would Belgium's expulsion of Applicant to Georgia have violated his rights to life and to be free from torture or inhuman or degrading treatment or punishment under Articles 2 and 3 the Convention, on the basis that Applicant would not have been able to afford treatment in Georgia? No.

Case	*Paposhvili v. Belgium (continued)*
	2. Would Belgium's expulsion of Applicant to Georgia have violated his right to respect for private and family life under Article 8 of the Convention, on the basis that his wife and children were to remain in Belgium? No.
Decisions and Reasoning	1. The Court took note of Applicant's conditions, including his tuberculosis, and his longstanding attempts to stay in Belgium. The Court found that appropriate treatment for Applicant's illnesses were available in Georgia, and that Applicant would likely qualify for government sponsored treatment in the country. The Court held: "[T]he fact that Applicant's circumstances, including his life expectancy, would be significantly reduced if he were to be removed from the Contracting State is not sufficient in itself to give rise to a breach of Article 3" of the Convention. The Court further held that analysis of Applicant's complaints under Article 2 of the Convention did "not lead to a different conclusion." 2. The Court found that there was no indication that Applicant's wife could not independently raise their children. The Court also considered the seriousness of Applicant's multiple offences and the fact that his ties to Georgia had not been severed. The Court held that the Belgian authorities' refusal to regularize Applicant's residence status did not "attach disproportionate weight to the public interest" compared with Applicant's rights. The Court thus held that Belgium's expulsion order did not violate Applicant's right to respect for private and family life under Article 8 of the Convention.

Case	*SCP 0848/2014*
Year	2014
Country	Bolivia
Court/Body	Constitutional Court
Citation	05153-2013-11-AL
Facts and Law	Plaintiff, Bauer, was detained in San Pedro prison in pretrial detention. On August 16, 2013, he was diagnosed with tuberculosis and was advised to use a face mask, receive treatment for one year, avoid contact with others, and be placed in a suitable space with medication, diet and control of sputum. On September 3, the 9th Judge of the Criminal Circuit granted Plaintiff's request to end pretrial detention, instead imposing house arrest. On October 14, the 7th Judge of the Criminal Circuit ordered Plaintiff to establish the domicile where he would serve his time. On October 20, the public prosecutor filed a formal complaint against Plaintiff for fraud and various other crimes, requesting Plaintiff be put in pretrial detention. On that day, when Plaintiff stepped out of the prison, following his pretrial detention, he was arrested. The 8th Judge of the Criminal Circuit, Defendant, ordered Plaintiff detained and set a hearing for the next day. During the hearing, Plaintiff submitted a liberty action (equivalent to a writ of *habeas corpus*) alleging Defendant violated his rights to life and health under the Constitution of Bolivia. Plaintiff claimed that Defendant's order for pretrial detention was inappropriate, as the 5th Judge of the Criminal Circuit had judicial oversight of his case. Plaintiff also claimed that, prior to ordering pretrial detention, Defendant had not considered his medical condition, the risk of not receiving appropriate medical care, and the health risk to the prison population. Plaintiff also provided evidence demonstrating that he was not a flight risk. Defendant rejected Plaintiff's allegations and ordered Plaintiff back to prison. Defendant denied the significance of Plaintiff's condition, pointing to a health certificate from August 16 that Defendant asserted did not prove that Plaintiff's health would be in jeopardy at San Pedro prison. Defendant further noted that Plaintiff had remained in prison two months

Case	*SCP 0848/2014 (continued)*
	after receiving the medical certificate and had been able to continue his daily activities and obtain medical assistance. Defendant also rejected Plaintiff's liberty action, declaring that Plaintiff was required to exhaust ordinary remedies, i.e., an appeal, before turning to a liberty action. On October 23, the 1st Criminal Chamber of the Departmental Court held in favor of Plaintiff, granting his liberty action and ordering Defendant to issue a new resolution. The 1st Criminal Chamber considered Plaintiff's pretrial detention a risk to his right to life and the health of the prison population.
Issues and Holdings	1. Did the 1st Criminal Court err in granting Plaintiff's liberty action (equivalent to a writ of *habeas corpus*)? Yes. 2. Did pretrial detention jeopardize Plaintiff's right to life under the Constitution of Bolivia, due to his tuberculosis and the risk he might not receive treatment? No.
Decisions and Reasoning	1. The Court dismissed Plaintiff's liberty action because he had not exhausted ordinary remedies. The Court referenced the Constitutional Court case SCP 0482/2013, which states that the Court can only engage in the substance of a liberty action regarding pretrial detention when the petitioner has appealed the allegedly arbitrary detention using the ordinary appeal process. Because Plaintiff had not appealed his pretrial detention, but had instead immediately brought a liberty action, the Court held that it could review the substance of the claim that Defendant inappropriately ordered Plaintiff back to pretrial detention. 2. The Court held that there was no evidence that Plaintiff's life was at risk in pretrial detention. The Court reviewed the record of the Plaintiff's hearing and found that Plaintiff's lawyer had not mentioned Plaintiff's health or exhibited the medical certificate in the record. The Court noted that the certificate was evidence that Plaintiff had received medical care for tuberculosis while in prison. The Court noted that tuberculosis can be treated on an outpatient basis and decided that the prison was fully capable of treating Plaintiff's tuberculosis. The Court noted that precautions should be taken to protect the rest of the prison population from spread of the disease.

Case	*SCP 2024/2013*
Year	2013
Country	Bolivia
Court/Body	Constitutional Court
Citation	04176-2013-09-AL
Facts and Law	Plaintiffs filed a liberty action (equivalent to a writ of *habeas corpus*) against Defendants, top officers of the national criminal justice system, including the Deputy Minister of the Police and the Director General of Prisons, regarding six months of illegal detention and treatment. Plaintiffs were arrested in a case known as "The Extortion Ring." Plaintiffs claimed Defendants' actions during pretrial detention violated and threatened their constitutional rights. The actions included intimidation, illegal searches, threats to their safety and a proposed transfer to Montero Prison. In particular, Plaintiffs claimed the proposed transfer to Montero Prison threatened their right to life under the Constitution of Bolivia, because the prison was overcrowded, lacked basic conditions and would have exposed Plaintiffs to the risk of contracting tuberculosis and other illnesses Plaintiffs presented newspaper clippings showing the poor condition of Montero Prison. Plaintiffs requested court guardianship, prohibition of interference and

Case	*SCP 2024/2013 (continued)*
	harassment, and prohibition of their transfer to Montero Prison. Defendants denied the claims and contended that the authorities had followed regulations in their treatment of Plaintiffs during pretrial detention. The court of first instance denied Plaintiffs' requested protections. The court found the Plaintiffs had not produced evidence of illegal pressure or interference, and that their lives had not been endangered by a lethal illness. The court also held that Plaintiffs had not exhausted ordinary mechanisms, by not filing a petition with the criminal trial judge, regarding due process violations.
Issues and Holdings	Did Defendants' proposal to move Plaintiffs to Montero Prison endanger their right to life under the Constitution of Bolivia, due to the alleged overcrowding, lack of basic necessities, and likelihood of exposure to tuberculosis and other infectious diseases? No.
Decisions and Reasoning	The Court affirmed the lower court's dismissal of Plaintiffs' claims and held that prison authorities could transfer Plaintiffs to Montero Prison, if they chose to do so. The Court stated that the prison authorities had "watch[ed] over the security and integrity of Plaintiffs." They could therefore determine which prison was best suited for Plaintiffs, where Plaintiffs would receive dignified treatment. The Court further commented that Plaintiffs' stated threat to their lives was based on an assumption, as prison authorities had ultimately decided not to transfer them to Montero Prison.

Case	*Makharadze and Sikharulidze v. Georgia*
Year	2011
Country	Georgia
Court/Body	European Court of Human Rights
Citation	Application No. 35254/07
Facts and Law	In 2006, first Applicant, Makharadze, was arrested on account of his purported "connection with the criminal world and possession of drugs." He was detained in Ksani no. 7 prison, pending trial. He appealed the detention order on the basis that the pre-trial detention was "unjustifiably severe" due to the combination of poor conditions in the prison and his critical state of health. As evidence, he submitted medical documents showing his diagnosis with pulmonary fibro-cavernous tuberculosis and confirming he was a registered patient at a civil tuberculosis hospital in Georgia. The appellate court, in response, informed the prison authorities that first Applicant should be provided with sufficient care and detention conditions. His health, however, deteriorated rapidly during the following 11 days of detention. He experienced acute respiratory difficulties and painful swelling in his joints, and was unable to move without assistance. The Public Defender intervened, and first Applicant was transferred to the Medical Establishment of the Prison Department of the Ministry of Justice on March 25, 2006. After two days, he was transferred back to Ksani no. 7, where his health deteriorated further. On March 30, 2006, he was returned to the hospital and placed in the intensive care unit. Four months later, first Applicant was convicted of the offences he had been charged with and sentenced to seven years in prison. Several medical examinations conducted by the National Forensic Office of the Ministry of Justice indicated that first Applicant possessed an open form of multidrug-resistant fibro-cavernous (or disseminated) tuberculosis (MDR-TB), which signified that he should have been considered a gravely ill patient in need of special treatment in a tuberculosis hospital. First Applicant claimed that Georgia violated his rights to life and to be free from torture or inhuman or degrading treatment or punishment life under Articles 2 and 3 of the European

Case	*Makharadze and Sikharulidze v. Georgia (continued)*
	Convention on Human Rights (Convention) because he was not provided timely testing or effective treatment for MDR-TB in prison, which endangered his life. In 2009, following a period of poor treatment and hunger strikes in late 2008, first Applicant died. His wife, second Applicant, Sikharulidze, continued to pursue the proceedings in her own name, as well as on behalf of her late husband.
Issues and Holdings	Did Georgia's treatment of first Applicant, in failing to provide timely testing or effective treatment for MDR-TB in prison, violate his rights to life and to be free from torture or inhuman or degrading treatment or punishment under Articles 2 and 3 of the Convention? Yes, Georgia violated Article 2. The Court determined it unnecessary to decide the Article 3 issue.
Decisions and Reasoning	The Court held that Georgia's medical treatment of first Applicant was inadequate and untimely, resulting in his death. Though there was not an absence of medical care, the Court held that there was an insufficiency given the nature of first Applicant's tuberculosis. In particular, effective treatment of MDR-TB depended on the existence of at least three elements: (1) unrestricted access to bacteriological labs capable of providing early and accurate diagnosis, so that second-line drugs can be administered as soon as possible; (2) availability of all six classes of second-line drugs; and (3) clinicians in charge of administering those drugs who possess special proficiency in treating MDR-TB. With regard to the first element, the authorities took more than a year to arrange a test that should have been conducted immediately. As to the second element, first Applicant's prescribed treatment did not begin immediately, apparently due to a shortage of the necessary second-line drugs in Georgia. However, the Court held that the national shortage did not absolve the state from responsibility. With regard to the third element, the medical staff supervising first Applicant's treatment did not possess the requisite expertise. The Court also found that Georgia did not conduct an adequate inquiry into first Applicant's death. For these reasons, the Court held Georgia violated first Applicant's right to life under Article 2 of the Convention. The Court held that it was unnecessary to examine whether Georgia violated Article 3 because first Applicant had already succeeded on the basis of Article 2.

Case	*Naisul Khatun v. State of Assam and Others*
Year	2010
Country	India
Court/Body	High Court of Gauhati
Citation	WP(C) No.1482 of 2008
Facts and Law	The mother of a 16-year old deceased juvenile who suffered from tuberculosis, Petitioner, filed this petition against the State of Assam and others. Petitioner sought compensation for the death of her son, which occurred while he was in the custody of the State. In 2007, Petitioner's son was arrested for burglary and sent to an Observation Home. His father attempted to free him on bail, but was denied by the Juvenile Justice Board (JJB). Two additional applications for bail were filed and also denied. Once the case reached the High Court, the judge ordered the juvenile's release contingent on the payment of Rs. 10,000 in bail. The juvenile's father submitted bail bonds pursuant to the High Court's order on multiple occasions, but these were also rejected because, according to the Principal Magistrate of the JJB, "the sureties were not suitable," so the payment was invalid. The father continued to apply to the Principal Magistrate, emphasizing that his son suffered from tuberculosis and "may die if his case was not disposed of quickly." In response, the Principal Magistrate ordered the investigating officer to submit a report. Before further action was taken, the juvenile died in January 2008.

Case	*Naisul Khatun v. State of Assam and Others (continued)*
	The doctor leading the post-mortem examination reported that the death was due to exhaustion and tuberculosis. Petitioner argued that her son's death was the result of intentional neglect in medical care and treatment while in the custody of the State, and from the failure to take the juvenile to a tuberculosis specialist, despite his deteriorating condition, in violation of the Juvenile Justice (Care of Protection of Children) Act of 2000.
Issues and Holdings	1. Did the State's detention of Petitioner's juvenile son, who died from tuberculosis in custody, despite a bail order in his favor, amount to a "patent and incontrovertible" violation of the deceased's rights to life and personal liberty under Article 21 of the Constitution of India? Yes. 2. Was the State's violation of the deceased juvenile's rights under Article 21 of the Constitution of India "gross and of a magnitude to shock the conscience of the Court"? Yes. 3. Did the State commit custodial torture resulting in the juvenile's death and was the torture supported by a medical report or visible marks, scars or disability? The Court determined this was not relevant.
Decisions and Reasoning	1. The Court declared that everyone has a right to live with dignity and to personal liberty under Article 21 of the Constitution of India. The Court noted that although the State's custody of the juvenile was originally unobjectionable and valid, his continued detainment was "constitutionally invalid because the juvenile remained incarcerated despite a bail order in his favor," due only to his family's inability to pay. Observing these features of the case, the Court held that the detention of the deceased amounted to a "patent and incontrovertible" violation of Article 21 of the Constitution. 2. The Court ruled that the custodial death of Petitioner's son was "gross" because the juvenile had only been accused of burglary, and "not of a heinous crime." The Court held the juvenile had died of "callous neglect." His tuberculosis was fully active, and the authorities were made aware of his condition through his father's final application for bail, yet the deceased did not receive appropriate treatment. The Court found that the father's application for bail clearly specified that the juvenile's risk of death from tuberculosis would be exacerbated by continued detainment, necessitating a prompt release. The Court noted that neither the police nor the authorities in the Observation Home took any "substantive steps" to provide the deceased treatment for tuberculosis. The Court held that the failure to provide treatment "ultimately cut short [the deceased's] life." The Court declared that the State's violation of the Petitioner's son's rights under Article 21 of the Constitution of India was "gross and of a magnitude to shock the conscience of the Court." 3. The Court held that the juvenile's "avoidable custody" was the cause of his death. The Court stated that it "was not relevant" to determine whether violence was the cause of death. Since the Court had held that Petitioner was owed compensation based on the unconstitutionality of her son's containment itself, it did not address the issue of custodial torture.

Case	*SCP 0001/2010-R*
Year	2010
Country	Bolivia
Court/Body	Constitutional Court
Citation	2007-16448-33-RHC

Case	*SCP 0001/2010-R (continued)*
Facts and Law	On July 12, 2007, patient, Mayta, was hospitalized at the Brazil Clinic where he was diagnosed with multiple organ failure, cholangitis, multiple epidermal necrolysis, dehydration and pulmonary tuberculosis, a prognosis due to Stevens-Johnson Syndrome, a rare disease caused by tuberculosis and pneumonia. He had a history of treatment for tuberculosis. The clinic charged his mother 19,809 Bolivians (approximately $2,800 USD), which she was unable to pay. Despite her promises to pay later, the hospital did not allow the patient to leave, even though he was meant to be transferred to a specialty chest hospital. The patient's mother enlisted Plaintiffs, lawyers, who filed a writ of *habeas corpus* against Defendant, owner of the Brazil Clinic, demanding Defendant release the patient to transfer him to the specialty chest hospital. On August 1, the patient died at the clinic. The clinic allegedly did not allow the patient's family to collect his body. Following the patient's death, Plaintiffs amended the writ to allege that the patient's death was due Defendant's refusal to allow him to be transferred to the specialty chest hospital. The writ also indicated that Defendant had not allowed the family to collect the patient's body. Defendant responded, claiming that he had not illegally detained the patient, that the clinic had provided care without an initial charge, and that the case could not continue under a writ of *habeas corpus* after the patient's death. On August 3, 2007, the court of first instance rejected Plaintiffs' writ and held the case as unfounded, because Plaintiffs could no longer legitimately represent the patient in a *habeas corpus* petition after his death. The court also noted that the facts presented were grounds for a criminal action, which Plaintiffs expressed has already been started. The case was received by the Constitutional Court on August 9, 2007, but due to a lack of magistrates, it could not be heard until after a common agreement of the Court on March 8, 2010. During that time, Bolivia promulgated a new constitution.
Issues and Holdings	1. Did the previous Constitution remain applicable in this case? No. 2. Did the lower court properly dismiss the writ of *habeas corpus* to release the patient from Defendant's clinic? Yes.
Decisions and Reasoning	1. The Court held that the new Constitution of Bolivia was operative, rather than the constitution in place at the time of filing. The Court explained that the constitution has unique characteristics, noting, in particular, that it was the basis of all laws. The Court elaborated that a legal change in the constitution is applied immediately, including to pending cases, even if institutions affected by the change could not adapt instantaneously. The Court explained that this principle also applies to new international treaties or human rights conventions that form part of the "constitutional block." 2. The Court affirmed the lower court's dismissal of Plaintiffs' *habeas corpus* petition. The Court quoted from Article 125 of the new Constitution of Bolivia: "Any person who considers that [he or she] ... is improperly prosecuted or deprived of personal liberty, may [petition a judge for] ... restitution of their right to freedom." The Court noted that the purpose of the writ is to protect the right to life when it is endangered. However, the Court held that in the present case, the patient had died from illness, rather than the clinic's detention. The Court concluded that, due to the patient's death, he was no longer a rights-bearer, thus voiding Plaintiffs' instrument of representation and negating the petition.

Employment Discrimination

Case	*Rajinder Kumar v. State of Haryana and Another*
Year	2015
Country	India
Court/Body	Supreme Court of India
Citation	Civil Appeal No. 8064 of 2015
Facts and Law	Appellant, Kumar, was a police constable working under Respondent, the State of Haryana. Disciplinary proceedings were initiated against Appellant on grounds that he was absent from his assigned duty on three occasions, amounting to 37 days. Appellant was found guilty of misconduct and dismissed from his position, at which he had worked for 15 years. Appellant explained that he had been absent in order to undergo treatment for tuberculosis in the District Chest Tuberculosis and Leprosy Centre. Respondent claimed that Appellant had been punished for other infractions unrelated to his tuberculosis treatment, including an earlier violation for drinking liquor on duty. On this basis, Respondent argued that Appellant was unfit for police service. Appellant was stripped of his pension because "dismissal from service entails forfeiture of past service." Appellant pleaded that his punishment was "extreme," and that a more lenient means of addressing his infractions would be appropriate.
Issues and Holding	Did Respondent improperly order Appellant's dismissal, due, in part, to his absences for tuberculosis treatment, thus depriving him of his pension? Yes.
Decisions and Reasoning	The Court found that dismissal was not the only option available to Respondent to address Appellant's infractions. The Court noted that dismissal deprived Appellant of his pension, not just his current occupation. Respondent should have considered other forms of punishment, in addition to dismissal. The Court determined that compulsory retirement, which allowed Appellant to keep his pension, was a more appropriate option. It ordered that Appellant be treated as compulsorily retired by Respondent.

Case	*Tan Xiaosong v. Hangzhou Dingjin Food Company*
Year	2014
Country	People's Republic of China
Court/Body	Hefei Intermediate Court, Anhui Province
Citation	(2014)合民一终字第00917号
Facts and Law	Claimant, Tan Xiaosong, was an employee of Respondent, Hangzhou Dingjin Food Company. Claimant was diagnosed with tuberculosis during the course of his employment. Under the Employment Contract Law, Claimant was eligible for six-month leave for medical treatment. After six months, Claimant's doctor prescribed an additional two-months of treatment. Respondent terminated Claimant's employment on the ground of that he had taken an extensive leave. Claimant brought suit against Respondent for medical expenses and damages. Baohe District Court heard the case and ordered Respondent to pay damages for its unlawful termination of Claimant's employment contract. The District Court denied Claimant's argument for medical expenses for two reasons. First, the Court found that

Case	*Tan Xiaosong v. Hangzhou Dingjin Food Company (continued)*
	Claimant had not filed an assessment with the Work Capacity Assessment Committee (as required by Employment Contract Law). Second, the Court found that claimant had not availed of Respondent's alternative employment options. The District Court concluded that Claimant was not entitled to compensation for medical expenses.
Issues and Holdings	Did Respondent violate Claimant's rights under Employment Contract Law and Labor Law, when Respondent terminated Claimant while he was still undergoing treatment for tuberculosis, even though the treatment exceeded the period allowed for under the law? Yes.
Decisions and Reasoning	The Court affirmed the District Court's holding that Respondent had violated Claimant's rights under Employment Contract Law and Labor Law by terminating Claimant on the basis that he was on extended medical leave. The Court overturned the District Court's decision denying Claimant compensation for his medical expenses. The Court found that, though Claimant did not file an assessment with the Assessment Committee, nor follow the alternative employment arrangement offered by Respondent, it was Respondent's obligation to arrange for a working ability assessment for Claimant and to make proper adjustments to Claimant's working position. The Court reversed the District Court's decision and held that Claimant was entitled to compensation for medical expenses.

Case	*Case No. 0410/2012*
Year	2012
Country	Bolivia
Court/Body	Constitutional Court
Citation	00688-2012-02-AAC
Facts and Law	Plaintiff, Viviani, worked as a chauffeur in the office of the Defendant, the Mayor. He contracted tuberculosis during a work trip to the countryside. Plaintiff notified Defendant of his health condition with a certificate of his incapacity. His condition allowed him a leave of absence, but he continued to work until December 2011 to provide for his newborn son. He did not work in January 2011 because his wife had just given birth and, by law, he enjoyed a period of employment security, until the child reached one year of age. On February 6, 2012, Defendant dismissed Plaintiff, because of Plaintiff's two-month absence from work. Plaintiff received no warning or disciplinary action prior to the dismissal. As part of the dismissal, Defendant compiled a report demonstrating a variety of Plaintiff's work irregularities from December 23, 2011 to February 6, 2012, including a complaint from the local department of factory workers. On March 12, Plaintiff requested to be reinstated. An administrative proceeding was opened on April 3, but was never resolved. Plaintiff filed an *amparo* (writ of protection of fundamental rights) against Defendant, claiming Defendant violated his right to work under the Constitution of Bolivia and his employment security. On April 11, 2012, a lower court rejected the *amparo,* because Plaintiff had not specified how his rights had been violated or provided evidence that he suffered from an illness in January. Plaintiff had provided a report from the Tuberculosis Program Director, stating that Plaintiff would need six months of medical treatment, including 40 minutes in the Tuberculosis Center every morning. The lower court held that this did not justify Plaintiff's absence for the entire month of January. Plaintiff also presented a health certificate indicating he had travelled to La Paz for treatment during January. However, the certificate was signed by a surgeon rather than the attending doctor; Plaintiff testified that the attending doctor advised him of the trip verbally, which the lower court also found

Case	*Case No. 0410/2012 (continued)*
	insufficient to justify an absence from work. The lower court noted Plaintiff's employment security, but held that it didn't protect him, as the law did not apply when the employee was the cause of his termination. Finally, the court held that Plaintiff was an "at will" employee and thus Defendant could dismiss Plaintiff without completing administrative removal proceedings.
Issues and Holdings	1. Was Plaintiff's *amparo* admissible, despite the fact that he had not exhausted administrative remedies? Yes. 2. Did Defendant violate Plaintiff's right to due process, by dismissing him without an administrative hearing? Yes. 3. Did Defendant violate Plaintiff's legal right to employment security, by dismissing him before his newborn child turned one year old? Yes.
Decisions and Reasoning	1. The Court held that the *amparo* was admissible, because Defendant had violated Plaintiff's constitutional rights. The Court noted that a plaintiff must typically exhaust administrative or judicial remedies before submitting an *amparo*, but that the requirement does not apply if the applicant would experience "irremediable and irreparable harm." 2. The Court held that Defendant's failure to provide Plaintiff an administrative hearing prior to dismissing him violated his right to due process under the Constitution of Bolivia. The Court stated that it was "evident" that not providing Plaintiff an opportunity to justify his absence constituted a violation. 3. The Court held that Defendant's dismissal of Plaintiff violated his legal right to employment security provided by law until his newborn turned one year of age. The Court cited multiple precedential cases that established a robust right to employment security stemming from a newborn child. In particular, the Court emphasized that the case law clearly prohibits dismissal of a woman until her child is one year of age. The Court extended that reasoning to the father to protect the rights of life, health and social security under the Constitution of Bolivia of both the mother and the newborn.

Case	*Mankayi v. AngloGold Ashanti Limited*
Year	2011
Country	South Africa
Court/Body	Constitutional Court
Citation	[2011] ZACC 3
Facts and Law	Applicant, Mankayi, instituted an action for damages against Respondent, mining company AngloGold Ashanti Limited, in 2006. He asserted that he worked for Respondent as an underground miner from 1979 to 1995. Applicant claimed that during his employment, the company "negligently exposed him to harmful dusts and gases." As a consequence of this exposure, Applicant contracted silicosis and tuberculosis, which rendered him unfit for further work in the mines or in any other occupation. He brought this action to recover past and future earnings losses, future medical expenses and general damages. Applicant claimed that Respondent had a legal duty, under both common law and statutory law, "to provide a safe and healthy environment for his work." The duty was breached, Applicant alleged, when Respondent neglected to control the dusts and gases in the mines, leading to Applicant's silicosis and tuberculosis. Applicant argued that he was not precluded from suing Respondent under common law,

Case	*Mankayi v. AngloGold Ashanti Limited (continued)*
	even though he had received compensation under the Occupational Diseases in Mines and Work Act (ODIMWA). Employee suits under common law designed to collect damages from an employer were barred by the Compensation for Occupational Injuries and Diseases Act (COIDA) for employees already being compensated under COIDA. This was meant to prevent doubled compensation for employees. Applicant argued that he was receiving compensation under ODIMWA, which did not have a parallel preclusion of employee-employer suits. Applicant therefore claimed that COIDA's common law bar did not apply to him. Respondent contended that because of its employee-employer relation with Applicant, COIDA presented a statutory bar to Applicant's common law claim, despite the fact that Applicant's compensation was under ODIMWA. The High Court and the Supreme Court of Appeal held that Applicant's common law claim against Respondent was barred by the clear reading of COIDA. Applicant appealed.
Issues and Holdings	1. Does the term "employee" in Section 35(1) of COIDA include employees covered by ODIMWA, barring those employees who receive compensation under ODIMWA, such as Applicant, from also claiming benefits under the common law? No. 2. Would abrogation of Applicant's common law right of action pursuant to Section 35(1) of COIDA deprive Applicant of a claim, leaving him without an effective remedy, infringing his rights to freedom and security of person and to an effective remedy under Sections 12 and 38 of the Constitution of South Africa? Yes.
Decisions and Reasoning	1. The Court found both ODIMWA and COIDA could apply for certain occupational diseases. To avoid double compensation for employees afflicted with one of these diseases, section 100(2) of ODIMWA does not allow claimants under that Act to also claim under COIDA. Applicant was collecting compensation under ODIMWA and was blocked from also claiming under COIDA under section 100(2) of ODIMWA. The Court agreed with Applicant and held that COIDA no longer applied to him, because the statute was meant only to apply to "employees who have the potential to benefit from COIDA." The Court determined that Applicant was removed from the mandates of COIDA. This included exclusion of Applicant from the category of employee limited by section 35(1) of COIDA, disallowing employee suits against employers under the common law. Being beyond the reach of section 35(1) of COIDA, Applicant was allowed to bring his common law claim against Respondent, despite also receiving compensation under ODIMWA. The Court resolved that allowing common law claims for employees covered under ODIMWA, but barring the same claims for employees covered by COIDA, was logically coherent, as employees compensated through COIDA were generally "in a much better position than the ones restricted to ODIMWA compensation." The Court held that there is special statutory treatment for mineworkers, and thus for workers with infectious diseases contracted in mines, favoring allowance of a claim like Applicant's. The Court further held that given the "singular risks of mining, and its unique historical role in our country's wealth, there is nothing irrational in preserving employees' common law claims against their employers in respect of ODIMWA-compensatable diseases." The Court set aside the Supreme Court of Appeal's decision and ruled in favor of Applicant. 2. The Court determined that the matter raised a constitutional issue and declared that, should Applicant's common law right to sue for negligence be proscribed by COIDA, it would implicate the right to freedom and security of person enshrined in Section 12 of the Constitution of South Africa. The Court found that Section 100(2) of ODIMWA precludes claims of compensation under COIDA. Thus, if Section 35(1) of COIDA removed a common law right to claim compensation for negligence, employees like

Case	*Mankayi v. AngloGold Ashanti Limited (continued)*
	Applicant—entitled only to paltry compensation under ODIMWA—would be left without an effective remedy, as required under Section 38 of the Constitution, to protect against violations of the right to security of person under Section 12.

Case	*Michon-Hamelin v. Attorney General of Canada*
Year	2007
Country	Canada
Court/Body	Federal Court of Canada
Citation	2007 FC 1258
Facts and Law	Applicant, Michon-Hamelin, contracted tuberculosis as a result of workplace exposure to the disease. She had difficulty accessing injury-on-duty and disability benefits through her employer. Appellant filed a human rights complaint, alleging employment discrimination on the basis of her disability, i.e., tuberculosis, in violation of Sections 7 and 10 of the Canadian Human Rights Act. In particular, Applicant alleged multiple instances of "adverse differential treatment." This included her employer's neglect to follow the Treasury Bond Injury on Duty Policy, which would have provided her salary protection for 130 days. Applicant also contended that the delay in processing in her claim for benefits, which forced her to take leave without pay, showed evidence of "adverse differential treatment." A Canadian Human Rights Commission Investigator (Commission Investigator) informed Applicant that he would recommend dismissal of her claim because the alleged discriminatory practice did "not appear to be linked to a prohibited ground of discrimination," and because Applicant was partially accommodated through the employer's grant of leave without pay. In response, Applicant submitted additional information in support of her complaint and argued that her department "did not believe" exposure to tuberculosis had caused her any damage or that she required accommodation. Applicant further alleged ongoing discrimination due to the "difficulty and embarrassment" her situation had caused management. The Commission Investigator nonetheless recommended that the Canadian Human Rights Commission (Commission) dismiss Applicant's claim. The Commission dismissed on the basis of this recommendation and Applicant brought suit for judicial review of the Commission's decision.
Issues and Holdings	Did the Commission err in summarily dismissing Applicant's complaint of employment discrimination under the Canadian Human Rights Act on the basis of her tuberculosis-derived disability? Yes.
Decisions and Reasoning	The Court noted that the Commission's decision was based on paragraph 41(1)(c) of the Canadian Human Rights Act, which permits a complaint to be summarily dismissed in plain and obvious cases. The Commission Investigator had reasoned that Plaintiff's complaint was beyond the Commission's jurisdiction because the employer's improper application of a proper nondiscriminatory policy was not a human rights violation. According to the Commission Investigator, for there to be a violation of human rights, the policy itself needed to be discriminatory, which he contended was not the case here. As a result, in the Commission Investigator's view, the matter became an administrative issue, rather than a human rights issue. The Court stated that the Commission must take the allegations in Plaintiff's complaint as true, including those related to her difficulty in accessing benefits claims. The Court declared "patently unreasonable" the Commission Investigator's findings that the alleged

Case	*Michon-Hamelin v. Attorney General of Canada (continued)*
	discriminatory practice was not linked to a prohibited ground of discrimination and that the allegations related to the difficulty in accessing benefits claims involved "poor management and administrative errors," rather than human rights violations. The Court further held that a "facially neutral policy" could be applied in a discriminatory way, amounting to a violation of human rights. The Court thus ruled in favor of Applicant, set aside the Commission's decision, and remitted the matter to the Commission for redetermination in line with its judgment.

Case	*School Board of Nassau County v. Arline*
Year	1987
Country	United States of America
Court/Body	Supreme Court
Citation	480 U.S. 273
Facts and Law	Plaintiff, Arline, was an elementary school teacher. She taught for thirteen years until terminated by Defendant, the School Board of Nassau County, after her third relapse of tuberculosis in two years. She brought suit against Defendant, alleging that the school violated her right to be free of discrimination on the basis of her handicap under Section 504 of the Rehabilitation Act of 1973. Plaintiff claimed she was protected by Section 504 as a "handicapped individual" and that the school discriminated against her on the basis of her handicap when it terminated her. The Rehabilitation Act. defined "handicapped individual" as a person who "(i) has a physical ... impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." Plaintiff alleged that her tuberculosis qualified her as a "handicapped" person protected under the Rehabilitation Act. The District Court ruled in favor of Defendant and held that the Rehabilitation Act's term "handicap" did not include contagious illnesses, such as tuberculosis. Plaintiff appealed and the 11th Circuit Court of Appeals reversed the District Court's decision. The Court of Appeals held that Plaintiff was protected under the Rehabilitation Act as a "handicapped individual" and remanded the matter to assess whether she was "otherwise qualified" to teach, except for her illness. The School Board appealed and the Supreme Court granted *certiorari*.
Issues and Holdings	1. Did Plaintiff qualify as a "handicapped individual" under the protections of the Rehabilitation Act on the basis of her tuberculosis? Yes. 2. Did the fact that tuberculosis was a contagious disease bar Plaintiff from protection against discrimination under the Rehabilitation Act? No. 3. Could a person handicapped with a contagious disease be "otherwise qualified" for employment under the Rehabilitation Act? Yes.
Decisions and Reasoning	1. The Court noted that the Rehabilitation Act included two terms, "physical impairment" and "major life activities," that required guidance. The Court stated that Department of Health and Human Services (DHHS) regulations provided an "important source of guidance" for the meaning of Section 504 of the Rehabilitation Act. DHHS regulations included any "physical disorder or condition" of the respiratory system within the definition "physical impairment." The Court determined that tuberculosis affected Plaintiff's system and thus constituted a "physical impairment." DHSS regulations also provided guidance on what constituted a "major life activity" under the Rehabilitation Act: "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." The Court found that Plaintiff's history of

Case	*School Board of Nassau County v. Arline (continued)*
	hospitalizations provided "more than sufficient" proof that "one or more" of her major life activities were "substantially limited" by tuberculosis. The Court held that Plaintiff qualified as a "handicapped individual" protected against employment discrimination under Section 504 of the Rehabilitation Act on the basis of her tuberculosis. 2. The Court held that the fact that tuberculosis was a contagious disease did not bar Plaintiff from protection against employment discrimination under Section 504 of the Rehabilitation Act. The Court determined that allowing discrimination based on the "contagious effects of a physical impairment" would be contrary to the legislative history and basic purpose of the Rehabilitation Act. 3. The Court held that a person handicapped with a contagious disease could be "otherwise qualified" for employment under the Rehabilitation Act. The Court agreed with an *amicus* brief submitted by the American Medical Association and held that the following criteria must be considered, based on "reasonable medical judgments," in determining whether a handicapped person with a contagious disease was "otherwise qualified" for employment: "(a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm." The next step in the inquiry is "to evaluate, in light of these medical findings, whether the employer could reasonably accommodate the employee under the established standards for that inquiry." The Court found that the District Court failed to appropriately investigate whether Plaintiff was "otherwise qualified" for her job as an elementary school teacher. In particular, the District Court "made no findings" as to the duration and severity of Plaintiff's condition, nor as to "the probability that she would transmit the disease." The District Court also failed to determine whether Plaintiff was contagious at the time she was terminated. The Court remanded the case to the District Court to determine whether Respondent was "otherwise qualified" for her position based on the criteria established in this decision.

Causation

Case	*O. T. G. v. Provincia ART S.A., regarding an accident*
Year	2016
Country	Argentina
Court/Body	National Appellate Labor Court
Citation	O. T. G. C/ Provincia ART S.A. s/ Accidente – Accion Civil, Case No: CNT 45370/2012
Facts and Law	Plaintiff worked at a hospital near Buenos Aires starting in 2009. She had her first child in May 2011. In September 2011, she received medical care for pneumonia. However, a biopsy done in December revealed that she had tuberculosis. When the Defendant, her hospital employer, was notified, it did not consider itself liable for the disease and challenged Plaintiff for lacking standing, as her employment contract had already been terminated. Defendant also claimed that Plaintiff could not have been exposed to tuberculosis at work, because she worked in the dispute settlement department. Plaintiff responded that, prior to working in the dispute settlement department, she had worked in the pediatrics department and the medical clinic, where she was exposed to patients with tuberculosis. A medical examination report indicated that Plaintiff suffered from symptoms compatible with emphysema that were likely caused by tuberculosis. The symptoms caused her a degree of physical and mental incapacity. The report also noted that tuberculosis can remain latent for a few years until the host suffers from immunosuppression, such as from pregnancy. The examination concluded that it was highly likely that Plaintiff's work environment caused her infection and resulting incapacities. Defendant challenged the conclusions of the medical examination, but only in regard to the mental incapacity.
Issues and Holdings	Was the conclusion of Plaintiff's medical examination—that it was highly likely she had contracted tuberculosis at her work site—sufficient to find Defendant liable for Plaintiff's incapacities? Yes.
Decisions and Reasoning	The Court held that Defendant was liable for Plaintiff's active tuberculosis infection. The Court noted that Defendant had not challenged Plaintiff's claim that she had worked in the medical clinic, where she was exposed to tuberculosis patients, nor conclusion of her medical examination regarding her physical incapacity. The Court highlighted the completeness of Plaintiff's medical examination and found no reason to deviate from its medical and legal conclusions. The Court also indicated that tuberculosis was included in the group of diseases that can be contracted under professional services. The Court held that Defendant had committed no civil law violations, due to a lack of evidence of specific negligent activity, but was still liable to Plaintiff for her incapacities related to tuberculosis. The Court awarded Plaintiff "sufficient, accessible and automatic" damages.

Case	*Dudley Lee v. Minister for Correctional Services*
Year	2012
Country	South Africa
Court/Body	Constitutional Court
Citation	2012 ZACC 30

Case	*Dudley Lee v. Minister for Correctional Services (continued)*
Facts and Law	Applicant, Lee, was incarcerated at the maximum security prison at Pollsmoor from 1999 to 2004. Applicant underwent regular sputum tests for tuberculosis. He tested negative the first three years, but was later diagnosed with tuberculosis while still imprisoned. After his release in 2004, Applicant brought suit against Respondent, the Minister for Correctional Services, for failing to adequately protect him from the risk of contracting tuberculosis and for failing to provide adequate medical treatment after infection. Applicant argued that prison authorities were aware of the risk inmates faced of contracting tuberculosis, because of overcrowded and insufficiently ventilated conditions, but they failed to adequately reduce the risk of the contagion. According to Applicant, the prison authorities' plan, which relied primarily on self-reporting by inmates and attempts to isolate infectious patients, was insufficient. Applicant alleged these failures on the part of the prison authorities constituted violations of their constitutional and statutory duties to protect his rights. Applicant's claims were affirmed by the High Court, which held Respondent liable for delictual damages suffered by Applicant as a result of contracting tuberculosis in detention and the suffering he experienced as a result. The High Court applied a reasonableness test, by which they determined liability where the prison authorities reasonably could have foreseen the danger of tuberculosis transmission, given the prison conditions, and also had reasonable, but unutilized, means to reduce the risk. Respondent appealed and the Supreme Court of Appeal overturned the High Court's holding of liability. Though the Supreme Court of Appeal found negligence on the part of Respondent, it agreed with Respondent's defense that Applicant failed to establish a causal link between his contraction of tuberculosis and Respondent's negligent conduct. The Supreme Court of Appeal applied a "but for" causal test, instead of the High Court's reasonableness test. In doing so, it held that Applicant failed to show that, but for the prison conditions, he would not have contracted tuberculosis. Applicant appealed to the Constitutional Court, arguing principally that the Supreme Court of Appeal had reached the wrong conclusion by improperly requiring Applicant to prove "but for" causality.
Issues and Holdings	Did Applicant need to prove that, but for Respondent's negligent management of tuberculosis in the prison at Pollsmoor, he would not have contracted tuberculosis? No.
Decisions and Reasoning	The Court held that Applicant did not need to prove that, but for Respondent's negligent management of tuberculosis and the unhygienic conditions in prison, he would not have contracted the disease. A "but for" causal test was too rigid and, instead, a more flexible conception of causation should be applied. The proper inquiry was whether the prison's handling of the tuberculosis contagion heightened Applicant's risk of infection. The Court held the question of causation should be approached "simply by asking whether the factual conditions of [Applicant's] incarceration were a more probable cause of his tuberculosis than that which would have been the case had he not been incarcerated in those conditions." Applicant also did not need to show the specific route of transmission or name the individual from whom he contracted the disease. In particular, the relevant analysis was to consider, hypothetically, what the authorities could have done to prevent a tuberculosis infection, and whether such hypothetical action had a better chance of preventing the infection than those conditions that Applicant actually encountered. The practical difficulty of fully eliminating tuberculosis in a prison did not relieve the prison authorities' obligation to employ reasonable measures to curb the risk of infection.

Case	*Jaipur Golden Gas Victims v. Union of India and Others*
Year	2009
Country	India
Court/Body	High Court of Delhi
Citation	W.P.(C) 6415/2006
Facts and Law	Petitioner, Jaipur Golden Gas Victims Association, was an association of victims and next-of-kin of those who died during the "Jaipur Golden fire," which occurred on April 4, 2004. Petitioner filed a writ petition in public interest directing Respondents, Union of India and others, to pay the victims of the fire appropriate compensation. The Municipal Corporation of Delhi (MCD), the principal respondent addressed by the Court, had stored rodent killing pesticides containing aluminum phosphate and zinc phosphate in a godown in Delhi where the fire occurred. When water was poured over the fire, it mixed with the chemicals and released highly poisonous phosphine gas that continued to emit for three days after the fire. Thirty-five people in the neighborhood had to be hospitalized. Victim Babu Lal died on January 8, 2007. Petitioner claimed that Babu Lal was suffering from early-stage tuberculosis and his condition deteriorated, leading to his death, due to exposure to the gases. Another victim, Ved Prakash, was admitted to the hospital due to chemical exposure on April 13, 2007. He was discharged the next day, but died on April 14, 2007. Prakash's mother filed an affidavit stating that his pulmonary tuberculosis was aggravated "to a great extent" by the inhalation of the gases. Petitioner alleged that Respondent MCD was negligent and responsible for the fire because it failed to take necessary precautions related to the pesticides and lacked mandatory statutory permission to use the premises as a godown. Petitioner contended that victims and next-of-kin of those who died during the fire were entitled to pecuniary and non-pecuniary damages in varying amounts. Respondent MCD argued that the deaths of the victims suffering from tuberculosis at the time were not due to inhalation of the gases from the fire. Respondent claimed that since Babu Lal and Ved Prakash were already suffering from tuberculosis, the "but for" cause of their deaths could not be proved. In response, Petitioner submitted medical testimony to confirm their deaths were caused by inhalation of the gases.
Issues and Holdings	1. Could the claim by Petitioner, an association of victims and victims' next-of-kin, be maintained under Article 226 of the Constitution of India, despite the fact that the claim was against a private company? Yes. 2. Was Respondent MCD negligent in its maintenance of the godown, resulting in liability for damage caused by the fire? Yes. 3. Was Respondent MCD negligent in failing to protect the fundamental rights to health and a pollution-free environment of those affected by the fire? Yes. 4. Did the "egg-shell skull" rule apply to the deaths of Babu Lal and Ved Prakash, rendering Respondent MCD fully liable for their damages? Yes.
Decisions and Reasoning	1. The Court held that Article 226 of the Constitution of India makes no distinction between a public or private function. When any citizen or person is wronged, a High Court has the authority to intervene, regardless of whether the wrong was due to fault of the State, an instrumentality of the State, a private company or cooperative society, an association or body of individuals, incorporated or not, or an individual. 2. The Court examined several testimonies and pieces of evidence that demonstrated negligence on the part of Respondent MCD. Several doctors supplied opinions confirming that victims died due to respiratory distress caused by phosphide poisoning. The Court cited approvingly the 1868 decision of the United Kingdom House of Lords in *Rylands v. Fletcher*, which established that an actor is liable for an

Case	*Jaipur Golden Gas Victims v. Union of India and Others (continued)*
	inherently dangerous or hazardous activity when the consequences of such activity escape the bounds of safety. The Court held that the storage of chemical pesticides was inherently dangerous and/or hazardous. Inspired by the strict liability rule in *Rylands*, the Court concluded that liability fell upon Respondent MCD under a "material contributor" rather than a "but for" test. The Court also applied the holdings of *M.C. Mehta v. Union of India*, in which the Supreme Court of India established that if an enterprise is permitted to carry on a hazardous and/or inherently dangerous activity for profit, the law must presume that permission for its continued operation is conditional on the enterprise absorbing the cost of accidents. The Court thus held that Respondent MCD was negligent in its maintenance of the godown and liable for the damage caused by the fire. 3. The Court held that Respondent MCD was also negligent in discharging its obligation to ensure protection of citizens' fundamental rights to health and a pollution-free environment. In this regard, the Court noted that the present case was not the first incident of a gas leak or fire in Delhi that occurred due to storage of hazardous materials, yet Respondent had failed to take the necessary precautions or remedial measures. 4. The Court held that the "egg-shell skull" Plaintiff rule, which holds that one must take his victims as he finds them," applied in respect to the deaths of Babu Lal and Ved Prakash, both of whom suffered from tuberculosis at the time of the fire. The Court found that their inhalation of phosphine gas emitted from the fire aggravated their pulmonary tuberculosis, resulting in their death "at a premature age." The Court held that both victims were owed the same, full compensation provided to the other deceased victims of the fire.

Case	*Cringles v. Clyde Alloy Steel Company Limited*
Year	1961
Country	United Kingdom
Court/Body	Outer House
Citation	1961 S.L.T. (Notes) 74
Facts and Law	Applicant, Cringles, was a steel dresser with pulmonary tuberculosis. He brought this action against Respondent mining company, his employer, claiming he contracted pneumoconiosis as a consequence of Respondent's failure to take precautions to protect him in the workplace. The evidence showed that Applicant had been examined for pneumoconiosis in 1952 and 1953 but was found not to be suffering from the disease. The 1953 examination did, however, reveal that Applicant was suffering from tuberculosis. In 1957, an examination of Applicant revealed both tuberculosis and pneumoconiosis. Applicant claimed that the pneumoconiosis had so reduced his lung resistance that he was rendered more susceptible to tuberculosis and thus, contracted tuberculosis as a result of the poor working conditions under Respondent. Applicant argued that Respondent was therefore liable for his incapacitation. Respondent did not dispute that Applicant suffered from pneumoconiosis and tuberculosis and was incapacitated. However, Respondent claimed Applicant's tuberculosis was unconnected with the pneumoconiosis Applicant had contracted during his employment. Respondent argued that this relieved it of the indirect liability for Applicant's tuberculosis and consequent incapacitation. Respondent contended that because Applicant's tuberculosis was present in 1953, but pneumoconiosis did not appear until 1957, Applicant's tuberculosis preceded the pneumoconiosis and was thus not caused by it. Respondent argued that it

Case	*Cringles v. Clyde Alloy Steel Company Limited (continued)*
	could only be liable for Applicant's tuberculosis and required to pay damages if the disease was the result of pneumoconiosis caused by the conditions of Respondent's mines.
Issues and Holdings	Was Respondent liable for Applicant's damages resulting from his contraction of pneumoconiosis, which lead to tuberculosis, due to poor working conditions in Respondent's mines? Yes.
Decisions and Reasoning	The Court found that the evidence indicated that Applicant's tuberculosis was contracted as a result of his pneumoconiosis, which had lowered Applicant's lung resistance and rendered him more susceptible to the disease. The Court found that the pneumoconiosis likely preceded Applicant's tuberculosis, even though the doctors did not notice it in prior examinations. The Court decided that the fact that doctors had failed to find Applicant's pneumoconiosis in its earliest stages, and therefore did not make the proper diagnosis before Applicant was diagnosed with tuberculosis, was not a dispositive factor in deciding Respondent's liability. The Court thus ruled in favor of Applicant, finding Respondent liable for damages caused by his tuberculosis.

Right to Fair Trial and Effective Remedies

Case	*Nkala v. Harmony Gold Mining Company Limited*
Year	2016
Country	South Africa
Court/Body	High Court of South Africa, Gauteng Local Division
Citation	48226/12
Facts and Law	Applicants were approximately 17,000 to 500,000 current and former mineworkers who contracted silicosis or tuberculosis due to the inhalation of silica particles in the gold mines of South Africa. They included workers who died from the illnesses. More individuals were afflicted with silicosis than tuberculosis. Applicants brought suit against Respondents, Harmony Gold Mining Company Limited and other mining companies, who collectively represented almost the entirety of South Africa's gold mining industry. Applicants sought a court order for certification of a consolidated class action comprised of two separate sub-classes, one for silicosis and one for tuberculosis. They advocated for a bifurcated process, with a first stage deciding issues common to both sub-classes and a second stage to litigate individual issues. Applicants argued that Respondents failed to prevent the infusion of silica dust into their breathing air in the mines, failed to provide suitable respiratory equipment or other preventative measures, as required by Respondents' duty of care, and "acted in concert" in electing to breach their duty through the Chamber of Mines. Applicants supplied affidavits in support of their claims, detailing the conditions in which they had worked. For example, one petitioner claimed that the mineworkers were told to wear their protective masks only when safety representatives were nearby. Respondent argued that the silica dust in the mines did not cause tuberculosis. Applicants asserted that continuous exposure to silica dust heightens a body's susceptibility to tuberculosis. Two Respondents also argued that membership to the classes should require a formal medical diagnosis of either silicosis or tuberculosis, otherwise membership in either sub-class would, unacceptably, be based on the mineworkers' subjective belief about their own illnesses. Applicants alleged that Respondents had violated their rights against unfair discrimination by private persons, to human dignity, to life, to bodily integrity, and to an environment that is not harmful to the health and wellbeing of an individual under Sections 9, 10, 11, 12 and 24 of the Constitution of South Africa.
Issues and Holdings	1. Were Applicants required to provide a formal medical diagnosis in order to be accepted to either sub-class—for silicosis or tuberculosis—for the purpose of the first phase of the class action, to decide issues common to the consolidated class? No. 2. Did Applicants meet the requirements to be certified as a class in order to pursue their claims alleging Respondents' responsibility for silicosis and tuberculosis contracted by gold mineworkers in South Africa? Yes. 3. Could a court find Respondents liable for tuberculosis contracted by members of Applicants' class, acknowledging that silica dust does not directly cause tuberculosis, but rather increases the risk of contracting the disease? Yes.

Case	*Nkala v. Harmony Gold Mining Company Limited (continued)*
Decisions and Reasoning	1. The Court rejected Respondents' argument for a prerequisite medical diagnosis. The Court decided that there was no concern of improper inclusion of mineworkers without silicosis or tuberculosis, because "actual membership would have to be proven." Applicants had opted for a bifurcated process, wherein mineworkers or their dependents without silicosis or tuberculosis who failed to opt out of the first phase (deciding issues common to the class) would be detected and excluded in the second phase, during which the mineworker or dependent would have to provide "cogent evidence" of silicosis or tuberculosis. The Court thus held that it was not necessary to determine whether a member of the class had silicosis or tuberculosis during the first phase of the class litigation. 2. The Court held that "the only way justice [could] prevail in the cases of the individual mineworkers or their dependents [was] if they [were] afforded an opportunity to pursue their claims by at least having significant parts of it determined through a class action." The Court held that Petitioners had demonstrated that they fulfilled the requirements of a "class." The Court noted that the approval of the class action did not imply the view that Respondents were necessarily liable for the harm suffered by Petitioners. Instead, all determinations of liability were left entirely to the trial court. Second, the Court noted that certification of the class did not imply that all Respondent mining companies jointly shared liability for each individual mineworker. 3. The Court acknowledged that tuberculosis is caused by a mycobacterium and not directly by silica dust, unlike silicosis. However, the Court found that causation could be proved by the mineworkers in a class action context, asserting that they had "more than a fair chance of discharging their onus." The Court held that the District Court could decide the issue of causation commonly for the class, thus preserving Applicant's claims as a class action.

Case	*Chen Yuxiang v. Haizhou District Court, et al.*
Year	2015
Country	People's Republic of China
Court/Body	Supreme People's Court
Citation	(2015) 赔监字第153号
Facts and Law	Claimant, Chen Yuxiang, was charged with intentional assault in 1993 and was sentenced to five years in prison by the Haizhou District Court. On appeal, the Fuxin Intermediate Court remanded the case. Claimant was out on bail when the prosecutor decided it was only a slight injury case and thus withdrew the prosecution. Claimant filed a petition for compensation to the State Compensation Committee of Liaoning High Court, claiming that he had been infected with tuberculosis during his detention. The petition was denied by the Liaoning High Court. Claimant appealed to the Supreme People's Court against Respondents, the Haizhou District Court, Haizhou District Prosecution and Haizhou Public Security Bureau.
Issues and Holdings	Was the Supreme People's Court authorized to hear and decide the issue of Claimant's right to state compensation, based on his alleged contraction of tuberculosis during detention? No.
Decisions and Reasoning	The Court found that under the People's Republic of China State Compensation Law a claimant must file a petition to the relevant governmental offices prior to initiating a suit. Respondent organization will then investigate to determine whether state compensation should be granted, on the basis of Article 15 and 16 of the State Compensation Law. The Court held that a claimant could bring a law suit against the respondent organization only after the organization had denied the claimant's petition. In this case, the Court found that

Case	*Chen Yuxiang v. Haizhou District Court, et al. (continued)*
	Claimant had not filed such a petition with Respondent organizations. Respondents therefore were not given opportunity to investigate or determine Claimant's petition for compensation. The Court thus held it was not authorized to hear the case at the time.

Case	*Alonso, Rolando Roberto Omar, regarding a complaint appeal*
Year	2004
Country	Argentina
Court/Body	Supreme Court
Citation	Alonso, Rolando Roberto Omar s/ recurso de queja A. 627. XXXIX.
Facts and Law	Alonso was a prisoner living with HIV/AIDS housed in a prison hospital. He also suffered from multidrug-resistant tuberculosis (MDR-TB) and paraplegia of his lower limbs. In December 2002, the criminal prosecutor filed a claim on his behalf, requesting that he be moved to house arrest, because of his health problems. The lower court did not respond, so Alonso appealed *in pauperis* to the court, complaining of the judicial delay. In June 2004, after delay of a year and a half, the lower court issued a resolution, granting Alonso's residential detention based on the findings of a medical committee. Although Alonso was ultimately transferred to his residence, the Supreme Court nonetheless took the case because it did not want to risk leaving important constitutional questions unanswered.
Issues and Holdings	Did the lower court violate its obligation to issue a timely decision on the criminal prosecutor's request to transfer Alonso from the prison hospital to his residence, due to his HIV/AIDS and MDR-TB? Yes.
Decisions and Reasoning	The Court held that the lower court was required to address the criminal prosecutor's claim without undue delay, particularly considering Alonso's severe health conditions, including HIV/AIDS and MDR-TB. The Court held that prisoners have rights and are entitled to protection of the law. The Court explained that this included the right to obtain a resolution "without undue delay," under Article 7 of the American Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights. The Court acknowledged that criminal enforcement courts handle a large number of cases, but ruled that the heavy case load does not negate an applicant's right to a timely judicial response.


Sharps
BIN
LATEX EXAMINATION GLOVES
MIDAS

Negligence

Case	*Smt. Premshila Devi, Wife of Late Sunil Kumar v. State of Bihar*
Year	2011
Country	India
Court/Body	High Court of Patna
Citation	CWJC No.383 of 2006
Facts and Law	Petitioner was the wife of Sunil Kumar, an individual who was taken into custody for a criminal offence and died while in custody at age 25. Petitioner alleged that Respondent, State of Bihar, was negligent in its treatment of Kumar and she requested compensation for her loss. Kumar had been in custody for more than three years. He suffered from tuberculosis during his detention, but his health was fine prior to admission to jail. Petitioner claimed that Kumar was never visited by a jail doctor or provided any form of tuberculosis treatment during his detention, despite the fact that he clearly suffered from the disease. Respondent contended that the jail doctor did visit Kumar and found him weak, coughing and addicted to drugs. Kumar was reexamined a few days later, when his condition failed to improve, and was directed to undergo an x-ray at Patna Medical College Hospital. Though the transfer to the hospital was approved, Kumar died before he could be transferred because a police escort "was not made available." A post-mortem report and accompanying letter from the jail indicated that Kumar had died a natural death from lung disease. Respondent argued that the "mere death of a person" in custody does not entitle a dependent to compensation, unless it can be established that death was "caused on account of gross negligence, connivance and act of the functionary of the State."
Issues and Holdings	Was Respondent negligent and liable for compensation to Petitioner for Respondent's failure to provide Petitioner's husband testing and treatment for tuberculosis, resulting in his death in custody? Yes.
Decisions and Reasoning	The Court found Respondent negligent for the jail's failure to diagnose and treat Kumar's tuberculosis. The Court determined that the Prisons Act of 1894 and the Bihar Jail Manual required the periodical medical examination of every prisoner during custody. According to the Court, if Respondent had complied with this requirement and provided Kumar regular medical examinations, his tuberculosis would have been diagnosed earlier and his death could have been prevented. The Court reasoned that a young person with lung disease, who had recently been prescribed medicine for tuberculosis, was not likely to die within two weeks. The Court also found the jail administration negligent for failing to provide the necessary police escort to transfer Kumar to the hospital for improved treatment. The Court ordered Respondent to compensate Petitioner in the amount of Rs. 2,50,000.

Case	*Muhammad Aslam v. Dr. Imtiaz Ali Mughal and Others*
Year	2009
Country	Pakistan
Court/Body	High Court of Sindh Karachi
Citation	Criminal Acquittal Appeal No. 2 of 2007

Case	*Muhammad Aslam v. Dr. Imtiaz Ali Mughal and Others (continued)*
Facts and Law	In 2004, the wife of Appellant, Aslam, was admitted to Civil Hospital in Sukkur suffering from the terminal stages of abdominal tuberculosis. She passed away in the hospital 11 days later. Appellant made a departmental complaint against Respondents, several doctors from the Civil Hospital, to the Government of Sindh Department of Health, and initiated criminal proceedings against them. Appellant claimed that his wife's death resulted from Respondents' negligence. The Governmental inquiry and police investigation found no negligence on the part of Respondents. The trial court found in favor of Respondents and dismissed the case. Appellant appealed to the High Court of Sindh Karachi. Appellant claimed that Respondents were negligent in two ways. First, he alleged that, despite repeated requests, doctors refused to allow him to personally purchase and provide medicines for his wife. Second, Appellant alleged that at the time of his wife's death, she was receiving oxygen, but the oxygen cylinder was found to be empty.
Issues and Holdings	1. Did the trial court err in acquitting Respondents at such an early stage of the proceedings? No. 2. Did the trial court err in its finding that Respondents were not negligent? No.
Decisions and Reasoning	1. The Court held that courts have the power to acquit accused individuals at any stage of proceedings, on an application under Section 265-K of the Code of Criminal Procedure. Acquittal under Section 265-K can be premature where the prosecutorial record is not well developed. The Court, however, found that the prosecutorial record in this case was well developed and that acquittal was not premature. The Court thus held that the trial court did not err in its acquittal of Respondents at an early stage in the proceedings. 2. The Court held that Appellant had the burden to show that Respondents were negligent to the point of "recklessness" or "gross negligence." The Court found that the six witnesses testifying on behalf of Appellant were simply "well-wishers" who were not actually present throughout the 11 days during which his wife was hospitalized. These witnesses were therefore not credible sources. The Court found that the Doctors' refusal to allow Appellant to procure and provide his own sources of medicine for his wife did not amount to negligence on the part of Respondents. The Court applied precedent set by a 2005 Supreme Court decision, *Jacob Matthew*, to Appellant's second claim concerning the empty oxygen cylinder. Based on this precedent, the Court held that, if the deceased suffered from a "terminal disease," Respondents could not be found negligent for the empty oxygen cylinder used for Appellant's wife. The Court found that Appellant's wife's abdominal tuberculosis constituted a terminal disease, rendering it nearly impossible for Respondents to have improved her condition. The Court thus held that Respondents were not negligent, in line with the trial court's findings, and dismissed Appellant's claims.

Case	*Sam v. Wilson*
Year	2007
Country	Canada
Court/Body	Court of Appeal for British Columbia
Citation	2007 BCCA 622
Facts and Law	In April 1995, Plaintiff, Sam was exposed to tuberculosis while receiving alcohol counseling at the Comox Valley Recovery Center. Plaintiff tested positive for latent tuberculosis in May of 1995. His family physician, Defendant, Dr. Wilson, received a letter from the Health Unit

Case	*Sam v. Wilson (continued)*
	Physician of Tuberculosis Control, recommending isoniazid (INH), otherwise known as chemoprophylaxis, to treat Plaintiff's latent tuberculosis. Due to the potentially severe or fatal liver side effects, the letter provided that liver function tests should be done prior to therapy and periodically thereafter. The monitoring of Plaintiff's liver health could be done at the Health Unit or by Defendant, according to the latter's choice. Defendant accepted responsibility for monitoring Plaintiff's liver health. Plaintiff's liver was functioning normally in June 1995, according to a baseline blood test administered by Defendant. Defendant, however, did not perform any tests, monitor, or inform the Health Unit of his procedures. In April 1996, Plaintiff was taken to an emergency ward. A liver functioning test was ordered after he became jaundiced. In May 1996, Plaintiff was taken to the hospital where he was diagnosed with fulminant liver failure. He required a liver transplant, bile drainage for five months and a hernia operation, and would require anti-rejection drugs for the remainder of his life. The trial judge held that the Health Unit and Tuberculosis Control (for which the Province was responsible) and Defendant were negligent and jointly and severally liable for Plaintiff's damages, amounting to $150,000 in general damages, $70,000 in past lost wages, and $10,000 in past and future expenses.
Issues and Holding	Did the trial court err in holding Defendant and the Health Unit and Tuberculosis Control jointly and severally liable for Plaintiff's liver failure, hernia operation, bile drainage, and life-long prescription of anti-rejection drugs? No.
Decisions and Reasoning	The Court determined that the Health Unit should have followed protocol and ordered liver function tests and the Tuberculosis Control should not have renewed Plaintiff's prescription for INH therapy, when the re-order forms did not contain information on liver testing. The Court also found that Defendant should have known that liver tests were not being conducted by the Health Unit. The Court further noted that it was not clear whether Defendant informed Plaintiff that he should refrain from consuming alcohol, which was a contributory cause of his liver damage. The Court thus concluded that the damages awarded by the trial judge were correct.


ITPC
TB IS NOT A CRIM
PROMOTE ADHEREN
ITPC
TB IS NOT A CRIME
PROMOTE ADHEREN

Social Determinants of Health

Case	*Case T-043/15*
Year	2014
Country	Colombia
Court/Body	Constitutional Court
Citation	Case T-043/15
Facts and Law	Plaintiff, Loaiza, had been homeless and without income. The city certified her as indigent. She had been regularly treated at a hospital for issues of heart failure, aggression, social abandonment and withdrawal symptoms from the use of marijuana and *basuco*, a drug similar to crack-cocaine. During one visit, when she was being treated for foot pain, ulceration in the right heel and edema of the vagina, the hospital diagnosed her with HIV and tuberculosis. After a week of treatment in the hospital, she wanted to leave and was subsequently discharged. Two months later, Oscar Mauricio Toro Valencia, the Municipal Clerk of the City, filed a *tutela* (writ of protection of fundamental rights) as an unofficial agent for the protection of Plaintiff. Valencia had previously requested the City to provide her space in a shelter, but had been denied. Valencia petitioned the lower court to grant Plaintiff accommodation, so that she could recover from her illnesses and live a dignified life. The lower court held the *tutela* was inadmissible with regard to the request for shelter, but accepted the petition in terms of the right to health. The City responded to the petition by contending that, by law, it need only to provide shelter to children, elderly and the forcibly displaced. The City noted that while the State has a duty to everyone, that cannot mean "local authorities have the obligation to provide shelter to anyone who is homeless or has [voluntarily] left their family." The lower court agreed with the City, but determined that the right to health and minimum subsistence applied and ordered the city to expand the food subsidy program for those living on the streets. The lower court included several parties in the matter, including the Ministry of Health, and invited academic experts in anthropology, psychiatry and medicine to comment on the law on street dwellers, Law 1641 of 2013. The law provides general guidelines for developing policies that guarantee the rights of people living on the streets. The parties generally agreed that there had been little progress in the implementation of Law 1641 of 2013.
Issues and Holdings	1. Did the City violate Plaintiff's right to health and a dignified life under the Constitution of Colombia, by denying her shelter despite her poor health, including HIV and tuberculosis? No, but the Court ordered the City to provide Plaintiff comprehensive medical services. 2. Did the delay in implementation of the law on street dwellers, Law 1641 of 2013, result in violations of fundamental rights, particularly regarding local authorities that refused to create policies until the Ministry of Health passed regulations on the law? Yes.
Decisions and Reasoning	1. The Court held that Plaintiff was not entitled to shelter, but that in order to uphold her right to health the City was required to provide Plaintiff comprehensive medical services. The Court noted how street living can result in a "non-human existence" and that street dwellers have historically been persecuted by social institutions. The Court viewed their treatment as a yardstick for the country's commitment to the respect for human dignity. The Court noted with approval that begging had been decriminalized

Case	*Case T-043/15 (continued)*
	and that poverty was recognized as a multidimensional phenomenon that "no one chooses as a way of life." The Court further highlighted that case law involving the right to health had expanded to address concerns beyond "mere biological survival" to include the optimal levels of health necessary for a person to be a member of society. It emphasized that one of these necessities is combating drug addiction, which represents a severe public health problem. The Court determined that anyone who suffers from drug addiction deserves special state protection, which may go beyond the benefits provided in the national health plan. The Court clarified that any policy for drug-dependent people must adopt a rights-based perspective, respect autonomy and consent, employ a multidisciplinary approach, and attempt integration before using isolation. Ultimately, the Court affirmed the lower court's order to expand the City's food subsidy program. The Court also ordered the City to create an interdisciplinary team in order to assess Plaintiff and create a comprehensive program for her. Finally, the Court ordered that regional health institutions be notified of its decision, so they did not deny Plaintiff treatment. 2. The Court held that local authorities had a duty to act immediately to address ongoing infringements on the rights of people living on the streets. It noted the urgency of the situation and declared that the state owed these individuals special protection. The Court ordered the City to develop a pilot program in line with the principles and guidelines of Law 1641 of 2013 and urged the Ministry of Health to finalize its regulations for the law.

Case	*National Ombudsman v. The Nation and Another (Province of Chaco), regarding the process of knowledge*
Year	2007
Country	Argentina
Court/Body	Supreme Court of Justice
Citation	Defensor del Pueblo de la Nacion s/ Estado Nacional y otra (Provincia del Chaco) D. 587. XLIII
Facts and Law	The National Ombudsman (*Señor Defensor del Pueblo de la Nación*) brought a claim against the province of Chaco and the national government to address the living conditions of inhabitants of the southeast part of the Güemes region and the northwest part of the San Martin region. The inhabitants mostly belonged to the Toba ethnic group. The Ombudsman argued that the Toba were in a state of emergency. He contended that their basic needs were not met, resulting in a very low quality of life. He came to this conclusion based on a survey conducted by his office, reports from the Institute of Aboriginal People from Chaco, the national human rights office and the media. He argued that the Toba's living environment did not allow them to exercise their rights to life, health, medical and social assistance, food, clean water, education, housing, general welfare, work, and social inclusion. As a result, the majority of the population suffered from endemic diseases produced by extreme poverty, including malnutrition and tuberculosis. The Ombudsman noted that there were 11 deaths in the region due to the health and food crisis in the month prior to his petition. The Ombudsman argued that the state must guarantee the basic rights of its inhabitants. The sources of the obligation included human rights treaties, the national and provincial constitutions, and Law 23,302 and its statutory decree 155/1989, stating the government

Case	*National Ombudsman v. The Nation and Another (Province of Chaco), regarding the process of knowledge (continued)*
	was responsible for the effective enforcement of the rights of indigenous peoples through the National Institute of Indigenous Affairs. The Ombudsman also requested, as a precautionary measure, that the national government and province of Chaco provide basic necessities to the indigenous populations, including medical personnel, medicine, food, drinking water, blankets and equipment for fumigation.
Issues and Holdings	Did the national government and the province of Chaco violate the rights of its indigenous inhabitants, by failing to provide basic health care, food, water, education and general well-being programs and provisions? Undecided, but the Court required the governments to take precautionary measures.
Decisions and Reasoning	The Court did not make any legal holding, but it ordered the national government and the province of Chaco to provide the basic necessities requested by the National Ombudsman to the indigenous groups located in the southeast part of the Güemes region and the northwest part of the San Martin region. The Court further required the governments to respond within 30 days regarding: "(1) The populations within the territory, (2) A budget for attending to these indigenous matters and where the resources will go as fixed by the respective laws, (3) Their progress on the execution of health, food and sanitation programs, (4) Their progress on drinking water, fumigation, and disinfection programs; (5) Their progress on education programs, and (6) Their progress on housing programs." The Court also ordered the province of Chaco to supply drinking water and food to the relevant parts of the province and appropriate means of transportation, so members of the indigenous groups could reach the health posts in the region.

Case	*Yanomami Indigenous Community v. Brazil*
Year	1985
Country	Brazil
Court/Body	Inter-American Commission on Human Rights
Citation	Resolution No. 12/85, Case No. 7615
Facts and Law	In the 1960s, the Government of Brazil approved a plan to exploit the natural resources in the Amazon region. A large population of indigenous Yanomami Indians (10,000 to 12,000 people) lived in the State of Amazonas and Territory of Roraima at the time. In 1973, a highway was developed through the Yanomami Indians territory, forcing them to abandon their lands and find shelter elsewhere. Additional mineral resources were later discovered in the Yanomami territory, causing further displacement and exacerbating problems in their contact with non-Indians. In 1982, after extensive protests on behalf of the Yanomami, the Government established a reservation of a large portion of their territory, instructing the National Indian Foundation to develop infrastructure and protect the Indians. In 1980, Petitioners, various non-governmental organizations, filed a petition in the Inter-American Commission on Human Rights against the Government. They claimed the government's encroachment caused massive displacement, poverty and prostitution among the Yanomami. They further alleged that the penetration of outsiders into Yanomami territory had devastating physical and psychological consequences for the population, including rising rates of tuberculosis. Petitioners claimed that the Government had violated the human rights of the Yanomami Indians guaranteed by the American Declaration of the Rights and Duties of Man (Declaration). They further alleged that the Government had a responsibility to protect Yanomami Indians and had failed to implement effective remedial measures or programs.

Case	*Yanomami Indigenous Community v. Brazil (continued)*
	In particular, Petitioners contended that the Government had violated the rights of the Yanomami under various articles of the Declaration: Article I (right to life, liberty, and personal security); Article II (right to equality before the law); Article III (right to religious freedom and worship); Article VIII (right to residence and movement); Article XI (right to the preservation of health and to well-being); Article XII (right to education); Article XVII (right to recognition of juridical personality and of civil rights); and Article XXIII (right to property).
Issues and Holdings	1. Did the Government's treatment and displacement of the Yanomami Indians, including construction of a highway and subsequent encroachments inside Yanomami territory related to mineral extraction, cause harm to the Yanomami Indians that required legal remedy? Yes. 2. Did the Government's treatment and displacement of the Yanomami Indians, including construction of a highway and subsequent encroachments inside Yanomami territory related to mineral extraction, violate their human rights under the Declaration? Yes.
Decisions and Reasoning	1. The Commission held that the Government's displacement of the Yanomami and its failure to institute remedial measures caused harm to the Yanomami that required legal remedy. The Commission found that the Government facilitated encroachment onto Yanomami lands occurred without adequate protection for the Yanomami's health and safety. The Commission further determined that the Government had failed to take necessary precautionary or remedial steps to protect the Yanomami, including from the spread of tuberculosis. Among other things, the Commission directed the Government to "take preventative and curative health measures to protect the lives and health of Indians exposed to infectious or contagious diseases," and to define the boundaries of a "Yanomami Park" for their protection. 2. The Commission held that the Government's failure to anticipate or respond effectively to the epidemics afflicting the Yanomami Indians, including tuberculosis, violated their rights to life, liberty and personal security, residence and movement, and to preservation of health and well-being under Articles I, VIII and XI of the Declaration.

Right to Privacy

Case	*ARE 855.179 AgR/RJ, Reporting Justice Luiz Fux*
Year	2015
Country	Brazil
Court/Body	Supreme Federal Court
Citation	ARE 855.179 AgR/RJ
Facts and Law	Claimant, Moreira, an underage individual represented by his legal representative, filed suit against Respondent, Fundacao Universo, requesting compensation for the undue publication of his picture. In January 2006, Claimant gave Respondent authorization to publish news about his life story, particularly his abusive relationship with his biological father. However, Respondent published Claimant's image in a publication issued on March 2007 titled: "More than 14 thousand individuals suffered with the disease in 2006" (referring to tuberculosis). Claimant argued that Respondent unduly used his image without his authorization in the story about tuberculosis, and thus publicly implied Claimant had the disease. Respondent, in turn, argued that no compensation should be awarded because: (1) the publication was of public interest and was based on World Health Organization data; (2) no journalistic opinion about Claimant was ever expressed; (3) the photograph used was manipulated to ensure that Claimant was not recognizable; and (4) there was no express reference to Claimant in the publication. The lower court judge denied Claimant's request. The State Court of Rio de Janeiro reversed judgement and awarded Claimant damages.
Issues and Holdings	Did Respondent violate Claimant's right to privacy under Article 5 of the Federal Constitution of Brazil by publishing Claimant's picture and thereby erroneously implying Claimant had tuberculosis? Yes.
Decisions and Reasoning	The Supreme Federal Court decided that the dispute did not involve constitutional issues of "general repercussion" and concluded the case should not be reviewed. The ruling of the State Court of Rio de Janeiro was thus final on the matter. The State Court determined that the case involved extracontractual (tort) subjective liability, meaning Respondent could only be held liable if he was negligent or intended to inflict harm. In this regard, the State Court concluded that the journalistic content of the news report did not necessarily exempt Respondent form liability. The State Court found that Claimant had never agreed to participate in Respondent's publication on tuberculosis. The State Court held that Respondent was negligent and did not seek Claimant's consent prior to using his image, and had published a news report erroneously indicating that Claimant had tuberculosis. The State Court held that Respondent's conduct violated Claimant's rights to privacy and to protect his own image and honor under Article 5 of the Federal Constitution of Brazil. The State Court also held that the right to freedom of speech under Articles 5, 6 and 220 of the Federal Constitution of Brazil is not an absolute right. The State Court declared that the right to free speech, when exerted abusively or with excess, should not prevail over the right to human dignity, honor and image. The State Court found that though the press

Case	*ARE 855.179 AgR/RJ, Reporting Justice Luiz Fux (continued)*
	has a duty to inform, it also has the responsibility to confirm the accuracy of the information given to the public, particularly in instances when such information could impact an individual's rights to honor and image. The State Court found that Respondent's actions resulted in moral harm to Claimant. It awarded Claimant compensation in the amount of BRL 10,000.

Case	*Speaker v. U.S. Dept. of Health and Human Services Centers for Disease Control and Prevention*
Year	2010
Country	United States of America
Court/Body	11th Circuit Court of Appeals
Citation	623 F.3d 1371
Facts and Law	Plaintiff, Speaker, was a personal injury attorney in Atlanta, Georgia. He brought suit against Defendant, U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC), alleging that Defendant had violated his rights under the Privacy Act (Act), by disclosing his identity and confidential medical information relating to his tuberculosis diagnosis and treatment. The Act contains a catch-all provision (§ 552a(g)(1)(D)) that allows an individual to bring a civil suit when a government agency "fails to comply" with the Act "in such a way as to have an adverse effect on an individual." Plaintiff alleged that he suffered adverse effects, such as loss of income and marital separation, due to Defendant's disclosure of information about his tuberculosis diagnosis and treatment. The District Court dismissed the case for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Plaintiff appealed. The Court considered the District Court's decision to dismiss *de novo*.
Issues and Holdings	1. Did Plaintiff's amended complaint allege the requisite elements required to show a claim that Defendant had violated his rights under the Act by disclosing information about Plaintiff's tuberculosis diagnosis and treatment? Yes. 2. Did Plaintiff's amended complaint provide sufficient factual specificity to render his claims "plausible," as required to survive Defendant's motion for dismissal on the basis of summary judgement? Yes.
Decisions and Reasoning	1. The Court considered the four elements identified by the Supreme Court as necessary to bring a claim under § 552a(g)(1)(D) of the Act. The Court noted that to state a claim Plaintiff must do more than allege that Defendant did not fulfill its "record-keeping obligation"; Plaintiff must allege the specific nature of the "record-keeping obligation" that Defendant had failed to satisfy. The Court held that Plaintiff's complaint alleged the requisite elements under the Act. Specifically, the Court held that Plaintiff's allegation that Defendant had disclosed an "item, collection, or grouping of information" regarding Plaintiff's tuberculosis, successfully stated a claim related to Defendant's "record-keeping obligation." In particular, Plaintiff's claim that Defendant disclosed his confidential medical history related to his tuberculosis diagnosis qualified as one of the expressly enumerated items listed in the Act's definition of "record." 2. The Court considered the standards for stating a claim under 12(b)(6) in light of *Bell Atlantic Corporation v. Twombly* and *Ashcroft v. Iqbal*. The Court found that a plaintiff must provide "enough facts to state a claim to relief that is plausible on its face." For a

Case	*Speaker v. U.S. Dept. of Health and Human Services Centers for Disease Control and Prevention (continued)*
	claim to be "plausible on its face," a plaintiff must plead factual content that would allow a court to draw the "reasonable inference" that the defendant is liable for the misconduct alleged. The Court stated that Plaintiff's amended complaint "must merely provide enough factual material to raise a reasonable inference, and thus a plausible claim, that the CDC was the source of the disclosures at issue." The Court held that Plaintiff had provided sufficient factual specificity to render his claims plausible enough to survive summary judgment. The Court noted that Plaintiff's complaint had alleged a short and specific time frame "suggestive of a causal nexus between the CDC's press interaction and the exposure of Speaker's identity." The Court reversed the District Court's dismissal of Plaintiff's complaint and remanded the case for further proceedings.

This compendium was developed and written by the
International Human Rights Clinic at the University of Chicago Law School

6020 South University Avenue
Chicago, IL 60640
United States of America