



European Court endorses decisions by the UK courts in Charlie Gard case

In its decision in the case of **Gard and Others v. the United Kingdom** (application no. 39793/17) today the European Court of Human Rights has by a majority endorsed in substance the approach by the domestic courts and thus declared the application inadmissible. The decision is final. Consequently, the Court also considered that it was appropriate to lift the interim measure under Rule 39 of its Rules of Court.

The case concerned Charlie Gard, a baby suffering from a rare and fatal genetic disease. In February 2017, the treating hospital sought a declaration from the domestic courts as to whether it would be lawful to withdraw artificial ventilation and provide Charlie with palliative care. Charlie's parents also asked the courts to consider whether it would be in the best interests of their son to undergo experimental treatment in the U.S.A.. The domestic courts concluded that it would be lawful for the hospital to withdraw life sustaining treatment because it was likely that Charlie would suffer significant harm if his present suffering was prolonged without any realistic prospect of improvement, and the experimental therapy would be of no effective benefit.

In the proceedings before the European Court, Charlie's parents argued – on their own behalf and that of their son – under Article 2 (right to life) that the hospital has blocked access to life sustaining treatment (in the U.S.A.) for Charlie and under Article 5 (right to liberty and security) that, as a result, he is unlawfully deprived of his liberty. They further alleged under Articles 6 (right to a fair trial) and 8 (right to respect for private and family life) that the domestic court decisions amounted to an unfair and disproportionate interference in their parental rights.

The Court bore in mind the considerable room for manoeuvre (“wide margin of appreciation”) left to the authorities in the sphere concerning access to experimental medication for the terminally ill and in cases raising sensitive moral and ethical issues, reiterating that it was not for the Court to substitute itself for the competent domestic authorities. From this perspective, the Court gave weight to the fact that a domestic legal framework – compatible with the Convention – was available governing both access to experimental medication as well as withdrawal of life sustaining treatment. Furthermore, the domestic court decisions had been meticulous, thorough and reviewed at three levels of jurisdiction with clear and extensive reasoning giving relevant and sufficient support for their conclusions; the domestic courts had direct contact with all those concerned (notably, they had heard from all the medical experts involved in the treatment as well as experts instructed by the applicants, from Charlie's parents themselves and from an independent professional appointed as the child's guardian, had received expert reports from other doctors of international standing in the field and had visited the hospital); it was appropriate for the hospital to approach the courts in the UK in the event of doubts as to the best decision to take; and, lastly, the domestic courts had concluded, on the basis of extensive, high-quality expert evidence, that it was most likely Charlie was being exposed to continued pain, suffering and distress and that undergoing experimental treatment with no prospects of success would offer no benefit, and continue to cause him significant harm.

The full text of this decision will be available tomorrow on the Court's website.

Procedure and composition of the Court

On 6 June 2017, in light of the UK High Court order permitting the withdrawal of Charlie Gard's artificial ventilation and in anticipation of the UK Supreme Court's decision to reject their appeal,

Charlie Gard's parents filed a request for an urgent interim measure (under Rule 39 of the Rules of Court) with the European Court.

On 9 June 2017 a duty Judge granted an initial interim measure in the application in order to allow a Chamber formation of seven judges to examine the request (see [press release](#)). Under this interim measure, the UK Government has been requested to provide Charlie Gard with such treatment and nursing care as may be appropriate to ensure that he suffers the least distress and retains the greatest dignity consistent, insofar as possible, with maintaining life.

On 13 June 2017 the interim measure was continued subject to a substantive application being submitted (see [press release](#)).

On 19 June 2017 the European Court received a substantive application from the applicants ([see press release](#)). On the same day the Court decided to maintain the interim measure until it makes its decision on the substantive application.

The decision was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre Sicilianos (Greece), *President*,
Kristina Pardalos (San Marino),
Aleš Pejchal (the Czech Republic),
Krzysztof Wojtyczek (Poland),
Armen Harutyunyan (Armenia),
Tim Eicke (the United Kingdom),
Jovan Ilievski ("the former Yugoslav Republic of Macedonia"),

and also Abel Campos, *Section Registrar*.

The decision will be available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.