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RESEARCH ARTICLE

The Experience of the European Court of Human Rights with the European Convention on Human Rights and Biomedicine

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Several papers have been written on the contribution of domestic courts to the interpretation of the Council of Europe's Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine, also known as the Oviedo Convention) and its Additional Protocols (the 'Oviedo Convention system') or to the development of new rules of international bio law. Nevertheless very few papers have thus far focused on the contribution of the European Court of Human Rights ('ECtHR') to the enforcement of the Oviedo Convention's provisions. This is notwithstanding the very close relationship of the European Convention on Human Rights (ECHR) with the Oviedo Convention and its Additional Protocols, namely the fact that the Oviedo Convention: "elaborates some of the principles enshrined in the ECHR" as elucidated by the Explanatory Report of the European Convention on Human Rights and Biomedicine (the 'Explanatory Report'). The purpose of this paper is to fill this major gap and to focus on the use of the Oviedo Convention when a specific biomedical issue is submitted to the ECtHR. The paper will briefly address, through some relevant examples, the ECtHR's main contributions to implementation of the bio-law rights encompassed in the Oviedo Convention's system. It also charts the evolution from the ECtHR's original position, which tended to apply the Oviedo Convention directly, to its later less radical position, adopted in some of its most recent judgments, in which the Oviedo Convention is implemented exclusively: a) when the content of its provisions coincide with rights explicitly protected in the ECHR and b) when it helps to elucidate or understand better the ECHR.

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Keywords: ECtHR; Biomedicine; Oviedo Convention

> «We will never praise enough the considerable achievement that the Oviedo Convention represents»
>
> J.P. Costa, President of the European Court of Human Rights

I. Introduction

The starting point of this work is the idea that the European Convention on Human Rights and Biomedicine[1] of 1997 (the Oviedo Convention)[2] represents a milestone in the protection of human rights in the bioethical and biomedical field on a regional scale,[3] and "the most elaborate and systematic attempt ever undertaken

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[1] For the definition of the term "biomedicine", we follow the definition by Roberto Andorno, namely "it is used here with a broad meaning, which encompasses all applications of biological and medical knowledge and technologies to human beings", Roberto Andorno, *Principles of International Biolaw: Seeking Common Ground at the Intersection of Bioethics and Human Rights* (Bruylant 2013) 15; See Brigitte Feuillet-Le Mintier, 'La Biomedicine, une Nouvelle Branche de Droit?' in Brigitte Feuillet-Le Mintier and Jean F Mattéi (eds), *Normativité et Biomédicine* (Economica 2003) 1 ff.

[2] Council of Europe, *Convention for the Protection of Human Rights and of the Human Being with regard to the Application of Biology and Medicine* (Convention on Human Rights and Biomedicine or the Oviedo Convention) (CETS n. 164), adopted in Oviedo on April 4, 1997 (entered into force on December 1, 1999).

[3] Accordingly, see for example Giuseppe Cataldi, 'La Convenzione sui Diritti Umani e la Biomedicina' in Laura Pineschi (ed), *La*

at a transnational level to address by means of legally binding instruments the challenges to human rights posed by biomedical research".[4]

The Oviedo Convention's innovative role in the protection of bio-rights is a direct consequence of its binding nature, which entails the adoption of specific measures by the States Parties that are called upon to integrate the principles enshrined in the Convention into effective national regulations.[5] The content of the Oviedo Convention may be supplemented by various Additional Protocols, as was already the case for human cloning (January 1998), organ transplantation (January 2002), biomedical research (January 2004) and genetic testing for health purposes (November 2008). This helps to keep pace with the constant evolution of bio-law issues and to provide an appropriate regulatory response when necessary.[6]

Notwithstanding the groundbreaking contribution of the Oviedo Convention on a regional level, the relationship with the European Convention on Human Rights (ECHR) has so far escaped attention from both a speculative and a practical point of view. Even though the scope of the Oviedo Convention is narrower,[7] both agreements share a basic set of accepted principles aimed at the defence of human beings and constitute a homogeneous *corpus iuris*. Paragraph 9 of the Explanatory Report to the European Convention on Human Rights and Biomedicine (the Explanatory Report) clarifies the strong relationship between the two instruments. They share the same underlying approach, since the Oviedo Convention "*elaborates some of the principles enshrined in the ECHR*".[8]

Given this close connection, and the fact that no specific jurisdictional or quasi-judicial body has been established with the purpose of hearing the cases dealing with violations of the Oviedo Convention,[9] the European Court of Human Rights (ECtHR) could be empowered to enforce it, in order to compensate for the lack of an effective remedy when States breach this treaty.

The point is whether, in what way and to what extent the ECHR system can serve as a monitoring and enforcing mechanism for the Oviedo Convention. Indeed, when dealing with biomedical issues, the ECtHR has already grappled with the problems arising from the reference *per se* to the provisions of the Oviedo Convention and its Additional Protocols which appear to be related to the clauses of the ECHR that enshrine

Tutela Internazionale dei Diritti Umani (Giuffré 2006) 589 ff. (stressing that this bioethics convention was adopted under a fairly complicated title: Convention for the Protection of Human Rights and the Dignity of the Human Being with Regard to the Application of Biology and Medicine …); Andorno (n.1) 16 ff.

[4] Andorno (n 1) 179. See for example Solomon E Salako, 'The Council of Europe Convention on Human Rights and Biomedicine: a New Look at International Biomedical Law and Ethics' (2007) 27 *Medicine and Law* 339 ff; Michael E Abrams, 'The European Convention on Human Rights and Biomedicine' in Linos-Alexandre Sicilianos and Maria Gavouneli (eds), *Scientific and Technological Development and Human Rights* (Sakkoulas 2001) 187 ff; Vera Lucia Raposo and Eduardo Osuna, 'The European Convention of Human Rights and Biomedicine' in Roy G Beran (ed), *Legal and Forensic Medicine* (Springer 2013) 1405 ff.

[5] Article 1, paragraph 2 of the Oviedo Convention is explicit in this respect: 'Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention'. See also Article 23, which requires the Parties to provide appropriate judicial protection to prevent or to put a stop to an unlawful infringement of the rights and principles set forth in the Convention at short notice, and Article 25, requiring them to provide for appropriate sanctions in the event of infringement of the provisions contained in the Convention. Amplius Roberto Andorno, 'The Oviedo Convention: a European Legal Framework at the Intersection of Human Rights and Health Law' (2005) 2 *Journal of International Biotechnology Law* 135 ff; Elaine Gadd, 'The Global Significance of the Convention on Human Rights and Biomedicine' in Jan KMS Gevers, Ewoud H Hondius and Joep H Hubben (eds), *Health Law, Human Rights and the Biomedicine Convention. Essays in honour of Henriette Roscam Abbing* (Martinus Nijhoff Publishers 2005) 44 ff.

[6] See Xavier P Rafols, 'Biomedicina y Derecho Internacional: Nuevas Fronteras de la Ciencia, Nuevas Dimensiones de los Derechos Humanos' in Anna MB Martí and Antoni P Solé (eds), *Derecho Internacional y Comunitario ante los Retos de Nuestro Tiempo: Homenaje a Profesora Victoria Abellán Honrubia* (Pons 2009) 571 ff; Jessica de Alba Ulloa, 'Dificultades del Proceso de Negociacion de la Convencion para la Proteccion de los Derechos Humanos y la Dignidad del Ser Humano con Respecto a las Aplicaciones de la Biologia y la Medicina (y un llamando a su adhesion)' (2012) 148 *Gaceta Medica de Mexico* 307 ff. (analysing the background of the adoption of the Oviedo Convention and its Additional Protocols and offering a thorough overview and survey of the competing interests at stake).

[7] According to its Preamble, the scope of the Oviedo Convention is to protect human rights in the biomedical field or, more precisely, to ensure that individuals 'be shielded from any threat resulting from the improper use of scientific developments' (Explanatory Report, paragraph 14).

[8] See Emmanuel Roucounas, 'The Biomedicine Convention in relation to other international instruments' in Jan KMS Gevers, Ewoud H Hondius and Joep H Hubben (eds), *Health Law, Human Rights and Biomedicine Convention* (Martinus Nijhoff Publishers 2005) who, from the premise that the two instruments work synergistically within the European system for the protection of human rights (i.e. the Oviedo Convention consists in a *lex specialis*, operating together with the ECHR), concludes that the Oviedo Convention and its Additional Protocols should be interpreted and implemented in the light of the principles and the rules of human rights envisaged by the ECHR and consistently with the trends emerging from the ECtHR's case law.

[9] See also Christian Byk, 'La Convention Européenne sur la Biomédicine et les Droits de l'Homme et l'Ordre Juridique International' (2001) 128 *Journal du Droit International* 47–70 (stressing that though the Oviedo Convention has made no provision for a judicial body which can impose penalties on Contracting Parties that violate its provisions, this does not significantly hinder the protection of the rights in question since the Oviedo Convention is subsidiary to national law).

the right to life,[10] the prohibition of torture and the right to a private and family life.[11] It is necessary, therefore, to examine the way in which the Court referred to the treaty and whether such practice exceeds its mandate, by primarily focusing on the language used in its decisions.

The purpose of this paper is to assess the role and the implementation of the Oviedo Convention and its Additional Protocols in the European human rights system. In the Introduction, we describe the characteristics of the Oviedo Convention. Before dealing with the key points of ECtHR case law, section 2 describes the relationship between the Oviedo Convention and the ECHR. On this premise, in the following sections we assess whether – in spite of the differences between the Oviedo Convention and the ECHR system – the ECtHR may use the European Convention on Human Rights and Biomedicine as an interpretive support or even apply it. In particular, in section 4 we focus on the Court's main decisions on the matter, in order to suggest a possible evolutionary interpretation of the Oviedo Convention in the Final Remarks.

II. The ECHR and the Oviedo Convention: Synergism and Antagonism

The question of the relationship between the ECHR and the Oviedo Convention has been a complex issue since early on, as remarked by several legal scholars[12] and, from a historical perspective, the evolution of the debate has highlighted the difficulty of defining this relationship. From the early stages of the legal debate on the issue, two conflicting views were put forward. On the one hand, the "integrationist" conception stressed the complementarity of the two agreements, since the Oviedo Convention aims to protect human rights in the biomedical sector[13]. Furthermore, Article 29 of the Oviedo Convention[14] empowers the ECtHR to give advisory opinions on the interpretation of its provisions; this competence confirms the strong link between the two instruments.

On the other hand, the "separatist" approach has pointed out that the ECHR and the Oviedo Convention embody two different systems, and that their unification would be of little practical use for achieving a comprehensive protection of individuals' fundamental rights.[15] According to this view, the two instruments should not be combined because of the minimalist view of the Oviedo Convention, which is aimed at providing merely possible protection and not due protection to the rights it foresees.

Indeed, minimum standards only are set, and States Parties can increase the level of protection granted by adopting stricter safeguards, in compliance with Article 27. Furthermore, a number of ECHR provisions can apply to bio-rights – either directly or indirectly.[16] For example, the right to medical information is protected by both Article 10 of the Oviedo Convention and Article 8 ECHR and Article 10 ECHR; ECHR can also apply to discriminations concerning bio-rights, for instance those related to an individual's genetic heritage. Similarly, medically assisted procreation techniques cannot be used to choose a future child's sex, except for avoiding serious hereditary sex-related diseases (pursuant to Articles 11 and 14 of the Oviedo Convention, which are similar to Article 14 ECHR and Article 5 of Protocol No. 7 to the ECHR – though the last two provisions are couched in more specific terms). This confirms indirectly that several provisions of the ECHR can apply to bio-rights and their implications, although the Convention, similarly to many other international

[10] On this issue, see Judge Marcus-Helmond's partly dissenting opinion in the case *Cyprus v Turkey* ECHR 2001-IV 1 who, from the premise that: 'The right to life may … be interpreted in many different ways', concludes by stating that: "it includes freedom to seek to enjoy the best physically available medical treatment". For a comprehensive overview of the Court's case law on bio law issues see the ECtHR Research Publication *"Bioethics and the Case Law of the Court"* (2012), in particular Section II, p. 52.

[11] See *Vo v France* ECHR 2004-VIII 1 on the right to life; *V.C. v Slovakia* ECHR 2011-V 381 and *Evans v the United Kingdom* ECHR 2007-I 353, respectively dealing with the prohibition of torture and the right to family life. The Court also dealt with the intersection of the right to life and the ethical implications of assisted suicide in *Pretty v the United Kingdom* ECHR 2002-III 155; On the issue, see Claude Cahn, *Human Rights, State Sovereignty and Medical Ethics: Examining Struggle Around Coercive Sterilisation of Romani Women* (Martinus Nijhoff Publishers 2014) 179 ff. and 193 ff.

[12] On the debate on the issue see Ilija R Pavone, *La Convenzione Europea sulla Biomedicina* (Giuffré Editore 2009) 87 ff; Stefania Negri (ed), *Life, Death and Dignity. Regulating Advance Directives in National and International Law* (Brill Academic Publishers 2012) 58 ff.

[13] Bernd-Rüdiger Kern, 'Die Bioethik-Konvention des Europarates: Bioethik versus Arztrecht?' (1998) 11 *Medizinrecht* 485; Roucounas (n 8) 27 ff.

[14] Amplius Angelo Gitti, 'La Corte Europea dei Diritti Dell'uomo e la Convenzione sulla Biomedicina' (1998) 3 *Rivista Internazionale dei Diritti Dell'uomo* 721 (stressing that the link between the Strasbourg Court and the Convention on biomedicine are the sole example of this kind of cooperation in the system of the conventions of the Council of Europe).

[15] See Ida E Koch, *Human Rights as Indivisible Rights: The Protection of Socio-Economic Demands under the European Convention on Human Rights* (Martinus Nijhoff Publishers 2009) 59 ff. which clarifies how the ECHR can satisfy itself the demands connected to the right to health.

[16] See also Andorno (n 5) 133, who underscores that the essence of some principles enunciated by the Oviedo Convention was already framed in general terms in the previous human rights treaties. See also Andorno, 'Towards an International Bioethics Law' (2004) 2 *Journal of International Bioethics* 149 ff.

human rights treaties, is premised upon the need to prevent States' violations of fundamental rights in the public sphere.[17]

In practice, the ECtHR has so far adopted an interpretive approach aimed at specifying the scope of application of its provisions when hearing cases addressing bio-rights. In this perspective, Article 8 ECHR applies to physical and psychological integrity: any violation of the patient's will – for example administering medicine or performing a medical treatment arbitrarily – is, in principle, interference with the right to private life.[18] The scope of application of the fundamental prohibition of torture or inhuman or degrading treatment or punishment also encompasses the right to health of persons deprived of their liberty, according to the interpretation of Article 3 ECHR given by the Strasbourg Court[19]. Similarly, the right to life, enshrined in Article 2, has never interpretively allowed any exception when the safeguarding of prenatal life is at stake.[20]

The fact that both the ECHR and the Oviedo Convention[21] contemplate all these basic rights and a wider set of shared entitlements inherent in the dignity of human beings confirms the existence of an intimate connection between the two treaties. This is their *noyau dur*, worthy of generalized, broad-spectrum protection in all sectors of human activities according to a similar pattern. Moreover, both agreements address the common purpose of the defence of individuals when they are unable to protect themselves. The ECHR and the Oviedo Convention are two human rights treaties that have many points in common.

However, in many ways the treaties are dissimilar in their applicability and enforcement. The Oviedo Convention provides a basic set of flexible rules that simply ensure *possible protection* and not *due protection*[22] of human dignity and bio-rights, and States are expected and encouraged to raise the minimum standards they set for safeguarding their integrity. Instead, the ECHR has been able to extend its field of application and embrace different categories of rights directed at the fulfilment of human personality, as growing self-awareness has led individuals to demand a higher level of essential rights.

The field of application *ratione personae* differs too: when defining the subject of the protection granted by the Oviedo Convention, its drafters used simultaneously two different expressions, namely "everyone" (in French "*toute personne*") and "human being" (in French "*être humain*"), because no consensus emerged in their view on the legal status of the embryo and the beginning of personhood. However, they did not specify whether or not these concepts are synonymous.[23] Instead, no such uncertainties exist in the ECHR, whose language univocally refers to "everyone".

The treaties also differ as to the competent fora: while the ECHR established a specific control mechanism, tasked with investigating and taking decisions on violations of its provisions, the Oviedo Convention has no corresponding mechanism. This will be explained below.

Is the nature of the obligations arising from both systems affected by these differences? Treaties and customs are the binding sources of international law. In the absence of a specific agreement on a given subject,

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[17] See for example *Mouvement Raëlien Suisse v Switzerland* ECHR 2012-IV 293. See Dia Anagnostou and Evangelia Psychogiopoulou (eds), *The European Court of Human Rights and the Rights of Marginalised Individuals and Minorities in National Context* (Martinus Nijhoff Publishers 2010) 186.

[18] See Estelle Brosset, 'La Fin de la Vie et le Droit Européen' in Stefania Negri (ed), *Self-Determination, Dignity and End-of Life Care: Regulating Advance Directives in International and Comparative Perspective* (Martinus Nijhoff Publishers 2012) 87 ff; See also *Glass v the United Kingdom* ECHR 2004-II 25.

[19] See *Kudła v Poland* ECHR 2000-XI 197; Sławomir Musiał v Poland App no 28300/06 (ECtHR, 20 January 2009) and *G. v France* App no 27244/09 (ECtHR, 23 February 2012.

[20] See *Vo v France* (n 11); Amplius Grégor Puppinck, 'Abortion and the European Convention on Human Rights' (2013) 3(2) *Irish Journal of Legal Studies* 150.

[21] See Angela Di Stasi, 'Human Dignity: From Cornerstone in International Human Rights Law to Cornerstone in International Biolaw' in Stefania Negri (ed), *Self-Determination, Dignity and End-of Life Care: Regulating Advance Directives in International and Comparative Perspective* (Martinus Nijhoff Publishers 2012) 3 ff; Cristopher Mc Crudden, 'Human Dignity and Judicial Interpretation of Human rights' (2008) 19(4) *European Journal of International Law* 655 ff.

[22] The practical reasons for the approach taken by the Oviedo Convention are thoroughly set out by Andorno (n 5) 135. The Article deals with the heterogeneity characterizing the European bioethical scene and clarifies the skeptical attitude of the United Kingdom and Germany, two of most representative "absentees" among the Parties. In fact, on the one hand, the United Kingdom considered the standards sealed by the Oviedo Convention too restrictive, if compared to the levels of protection already achieved by domestic regulation. On the other hand, Germany's reluctance was due to its perception of the Oviedo Convention's level of guarantee as being too permissive. However, both States fail to consider that the recommended standards merely provide minimum levels of protection, which each Party may gauge and increase according to domestic regulation and to the purposes pursued consistently with the social and cultural framework.

[23] Andorno (n 5) 137 (also stressing that Mrs. Johanna Kits Nieuwenkamp, former member of the drafting committee, reminds us that it was decided "to tie up the notions of dignity and identity with the concept of 'human being', that is from conception, and the notion of integrity with the concept of 'everyone', i.e., born persons").

obligations can be imposed by customary law.[24] It follows that the provisions of the Oviedo Convention can be enforced only if a State ratified it, unless a similar duty arises from custom. What we assess in the following sections is whether – in spite of the differences between the Oviedo Convention and the ECHR system – the ECtHR may use the Oviedo Convention as an interpretive support, or even apply it. In particular, we assess whether such a practice is allowed irrespective of whether the respondent State is a Contracting Party to the Oviedo Convention.

III. The Oviedo Convention in the Experience of the European Human Rights System

In the second half of the 20th century, States created a growing number of judicial and non-judicial bodies – set in the framework of international organisations - devoted to human rights protection and mandated to investigate, conciliate and take decisions on alleged violations of fundamental rights. Before the adoption of the Oviedo Convention, neither specific instruments dealing with bio-rights nor *ad-hoc* bodies entrusted with their enforcement existed. Therefore, legal scholars debated on whether to draw up both binding and non-binding international instruments on the matter.

The assessment of States' compliance with these so-called 'fourth generation' human rights[25] is devolved to human rights monitoring mechanisms in order to compensate for the lack of *ad hoc* bodies entrusted with ruling on violations of bio-rights. As part of these mechanisms, regional systems play an essential role. The ECtHR is a permanent and independent organ of the Council of Europe, a supervisory body empowered to hear applications alleging that a State Party has breached the fundamental rights enshrined in the ECHR. The ECHR established the Court and, together with the Court's own Rules, defines its competence.

Human rights treaties which establish their own supervisory bodies also set the scope of competence of these bodies '*ratione materiarum*'; by doing so they define the scope of these bodies' competences and identify in advance which violations can be brought before them. In the following section we assess whether and in what way the infringements of the Oviedo Convention can be examined by the ECtHR, although the ECHR did not provide it explicitly with such a mandate.

IV. The European Court of Human Rights: From 'Applying' the Oviedo Convention to Using it as a Tool for Interpretation.

The basic criteria for the jurisdiction of the ECtHR are set by Article 32 of the ECHR, which provides that the Court can only examine violations of the ECHR itself.[26] Consequently, a breach of the rules enshrined in the Oviedo Convention can be analysed by the Strasbourg Judges exclusively when their content coincides with the applicative scope of the provisions of the ECHR. The rationale underlying Article 32 is that allowing the Court to examine complaints concerning international agreements other than those directly concerning the ECHR would fall outside the scope *'ratione materiarum'* of the ECHR itself. Moreover, it would be at odds with Article 34 of the 1969 Vienna Convention on the Law of Treaties (VCLT), which prohibits the imposition on States of duties that they have not expressly and voluntarily accepted.[27]

Notwithstanding this, in several judgments the ECtHR endeavoured to provide a justification for application of the Oviedo Convention and its Additional Protocols and of other treaties adopted in the framework of the Council of Europe, such as the European Social Charter (ESC). With the aim of granting tailored

[24] On the existence of customary norms of international law protecting human rights, see e.g., Arthur M Weisburd, 'The Effect on the Customary Law of Human Rights of Treaties and Other Formal International Acts' (1995–96) 25 *Georgia Journal of International and Comparative Law* 99 ff; Anthony D'Amato, 'Human Rights as Part of Customary International Law: A Plea for Change of Paradigms' (1996) 25 *Georgia Journal of International and Comparative Law* 47 ff <http://digitalcommons.law.uga.edu/gjicl/vol25/iss1/4> accessed 7 November 2014; Vojin Dimitrijevic, 'Customary Law as an Instrument for the Protection of Human Rights' <http://www.ispionline.it/it/ documents/wp_7_2006.pdf> accessed 22 October 2014.

[25] On the 'fourth generation' of human rights, see Richard P Claude and Burns H Weston (eds), *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press 2006) 26 ff (also stressing that biorights are included in this framework, as the response to the most recent breakthroughs, and help to shape the complex set of rights founded on the protection of primary values and principles, already enshrined in long-existing instruments of protection).

[26] Article 32 of the ECHR reads as follows: 'The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide'. For a commentary, see Sergio Bartole, Pasquale De Sena and Vladimiro Zagrebelsky, *Commentario Breve alla Convenzione Europea dei Diritti dell'Uomo* (Cedam 2012) 606 ff.

[27] Cesare Pitea, 'Interpreting the ECHR in the Light of "Other" International Instruments: Systemic Integration or Fragmentation of Rules on Treaty Interpretation?' in Nerina Boschiero, Tullio Scovazzi, Cesare Pitea and Chiara Ragni (eds), *International Courts and the Development of International Law. Essays in Honour of Tullio Treves* (T.M.C. Asser Press 2013).

protection to bio-rights, the Court attempted to lay the foundation for the application of the Oviedo Convention as a source of obligations for States Parties to the Oviedo Convention itself.

The recent ruling *Costa and Pavan v Italy* is probably one of the most emblematic examples of the Court's interpretative effort.[28] The applicants had claimed that the Italian Law concerning assisted reproduction techniques (ARTs) was illogical since, while banning predictive genetic tests on the embryo before implantation, at the same time it allowed the subsequent abortion of the fetus that was affected by the genetic disease that parents were healthy carriers of.[29] In this case, the Strasbourg Judges had to consider whether the respondent State, by enacting its law on ARTs, had breached Article 8 ECHR and Article 12 of the Oviedo Convention.

First, the ECtHR gave a combined reading of Article 12 and Paragraph 83 of the Explanatory Report to the Oviedo Convention – referred to as relevant international law – and concluded that it was indirectly applicable at paragraph 61 of the ruling. The Court applied a scrutiny of proportionality and considered that Article 12 of the Convention on Human Rights and Biomedicine allows predictive genetic tests only for health purposes and research activities. Paragraph 83 of the Explanatory Report conveys the rationale of the provision by specifying that "Article 12 as such does not imply any limitation of the right to carry out diagnostic interventions at the embryonic stage to find out whether an embryo carries hereditary traits that will lead to serious diseases in the future child."

The next point was for the Court to justify the application of Article 12 of the Oviedo Convention without exceeding its mandate, in line with Article 32 ECHR. It therefore focused on Article 8 ECHR and gave a wider interpretation of its scope by stating that the right to family life foreseen therein encompasses 'the right of parents to give birth to a child who does not suffer from the disease they are the carriers of'. It is noteworthy that the ECtHR did not refer at all to Article 27 of the Oviedo Convention.[30]

On this premise, in paragraph 50 of its decision, the Court held that because 'the desire of the applicants to have a child who would not be a sufferer of the genetic defect that they carried and to resort to medically assisted procreation and PGD' is protected by the right to a private and family life in the ECHR and not only (indirectly) by Article 12 of the Oviedo Convention,[31] Article 8 of the ECHR might allow violations of the latter to be addressed by the ECtHR.[32] The text of Article 8 states that every individual is entitled to a private and family life, only subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society". Therefore, the ECtHR considered that the text implies an authorization to deal with any question of biolaw when violations of Article 8 of the ECHR are exposed. In order to assert this, the Court had to rule that, unlike what it is suggested by the language of Article 8 of the ECHR, the right to respect of private and family life engenders not only negative but also positive duties in the issues of procreation, and that to ensure the effective respect of this right (the 'right to a healthy child')[33] the Italian State must allow the applicants to access MAP and PGD. Thus, the *Costa and Pavan* judgment offers a clear example of the Court's increasing tendency to widen the scope of Article 8. According to this judgment, the purpose

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[28] *Costa and Pavan v Italy* App no 54270/10 (ECtHR, 28 August 2012). For a commentary see Céline Benos, 'The prohibition of Pre-implantation Genetic Diagnosis in the European Spotlight, Note under the European Court of Human Rights, 28 August 2012, *Costa and Pavan v Italy*' (2013) *Review of Health and Social Law* 67 ff; Caroline Picheral, 'Les Prudentes Avancées de la Cour EDH en Matière d'Accès au Diagnostic Préimplantatoire' (2012) 43 *Semaine juridique* 1148 ff.

[29] But see Grégor Puppinck, 'The Case of *Costa and Pavan v Italy* and the Convergence between Human Rights and Biotechnologies. Commentary on the ECHR Ruling in *Costa and Pavan v Italy*, No. 54270/10, 28th August 2012' (2012) *Quaderni di Diritto Mercato Tecnologia*, (stressing that the existence, as stated by the Court, of an alleged "inconsistency" of the Italian law should be relativized, since the founding principles of the different laws regarding MAP, PGD and abortion, far from contradicting one another, present a clear consistency: Article 1 of Law No. 40/2004 indicates that the law takes account of 'the rights of all the parties implicated in these techniques, including those of the unborn child', whilst Article 1 of Law No. 194/1978, reiterated by Law No. 194/2004 on maternity and abortion, recognizes 'the social value of maternity and of human life from its beginning'.)

[30] Article 27 of the Oviedo Convention states that: '… none of its provisions shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant a wider measure of protection with regard to the application of biology and medicine than is stipulated in this Convention'.

[31] Article 12 of the Oviedo Convention as such: "does not imply any limitation of the right to carry out diagnostic interventions at the embryonic stage to find out whether an embryo carries hereditary traits that will lead to serious diseases in the future child"; Frédéric Sudre, 'Droit de Recourir à la Procréation Médicalement Assistée aux Fins de Diagnostiquer une Maladie Génétique; CEDH, 28 août 2012, n° 54270/10, *Costa et Pavan c. Italie*' (2012) 39 *La Semaine Juridique* 1732 ff.

[32] See also para 50 of the same decision stating: 'this choice being a form of expression of their private and family life'.

[33] Amplius Grégor Puppinck, '*Costa and Pavan v Italy* and the Convergence between Human Rights and Biotechnologies' <http://www.dimt.it/2013/10/30/costa-and-pavan-v-italy-and-the-convergence-between-human-rights-and-biotechnologies/> accessed 21 November 2014; Stefano Biondi, 'Access to Medical-assisted Reproduction and PGD in Italian Law: A Deadly Blow to an Illiberal Statute? Commentary to the European Court of Human Rights' Decision *Costa and Pavan v Italy* (ECtHR, 28 August 2012, app. 54270/2010)' (2013) 21 *Medical Law Review* 474 ff.

of Article 8 is not merely to defend individuals against arbitrary actions of the State, but also to guarantee their personal autonomy, their right to "personal development" or even their right to self-determination.[34] However, at the same time, the ECtHR fails to consider whether the prohibitions on MAP and PGD were in themselves contrary to the provisions of the ECHR.[35]

The *Evans* case[36] is another significant example of the efforts of the ECtHR, which in this case dealt with the respect of free will related to the powers of the father over the life of the child. Even though the Court ruled against the applicant, free will was nonetheless protected, and the reference to Article 5[37] of the Oviedo Convention as relevant international law had the effect of enhancing the protection granted. Indeed the provision helped the Court to define more specifically the content of the right to informed consent.[38] In particular, Article 5 provides that any intervention in the health sector can be carried out only if (and after): 'the person concerned has given free and informed consent to it'. The same Article clarifies that: 'this person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks'. Moreover, 'this person may freely withdraw consent at any time'. By so doing, the Court referred to higher standards than it would have by only applying the provisions of the ECHR. The Court's approach thus clearly acknowledges and reflects the unwritten rule that reference should be made to the higher standards applicable to human health.

When different legal standards governing human health and dignity are provided by the ECHR and other international human rights conventions, the ECtHR is duty bound to give legal effect to the provisions that set the higher standards applicable to human health. In the *Evans* case, the higher standard was set by Article 5 of the Oviedo Convention, therefore the Court applied it. What the Court postulated here is that, when dealing with life and human health issues, the Oviedo Convention is to all intents and purposes a 'patient rights treaty',[39] whose clauses are more favourable to the individual. This is notwithstanding the fact that: *'la bioéthique apparaissait … en filigrane dans les grands instruments internationaux relative à les droits de l'homme'*[40], including the International Covenant on Civil and Political Rights (ICCPR)[41] and the ECHR.[42] In this sense, the term "apply" implies that any infringement of the Oviedo Convention can certainly be assessed by the ECHR system, even though Article 29 of the Oviedo Convention only empowers the ECtHR to give advisory opinions on the interpretation of its provisions.[43]

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[34] <http://eclj.org/pdf/costa-and-pavan-v-italy-human-rights-and-biotechnologies-puppinck-quaderni-di-diritto-mercato-tecnologia-n3-anno-III-settembre.pdf> accessed 21 November 2014.

[35] Amplius Grégor Puppinck, 'Commentary on the ECHR decision *Costa and Pavan v Italy*, No. 54270/10, 28 August 2012' <file:///C:/Users/utente/Downloads/SSRN-id2348142.pdf> accessed 21 November 2014.

[36] *Evans v the United Kingdom* (n 11).

[37] Article 5 of the Oviedo Convention provides that: 'An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks. The person concerned may freely withdraw consent at any time'.

[38] See also the ECtHR's decision on the *Özalp case – Özalp v Turkey* App no 74300/01 (ECtHR, 11 October 2007) -, also referring to Article 5 of the Oviedo Convention; Alessandra Viviani, 'Fecondazione in Vitro e Diritti dei Genitori Degli Embrioni: Il Caso *Evans* di Fronte alla Corte Europea dei Diritti Umani' (2008) 2(1) *Diritti Umani e Diritto Internazionale* 160 ff; Nicole Gallus, 'La Procréation Médicalement Assistée et les Droits de l'Homme: Cour Européenne des Droits de L'Homme (Grande Chambre), *Evans c. Royame-Uni*, 10 avril 2007, et *Dickson c. Royame-Uni*, 4 décembre 2007' (2008) 75 *Revue Trimestrielle des Droits de l'Homme* 879 ff.

[39] For this definition, see Herman Nys, 'The European Convention on Human Rights and Biomedicine: A European Patient Rights Instrument' <http://www.coe.int/t/dg3/healthbioethic/Activities/10th_Anniversary/ Herman%20Nys.pdf> accessed 4 November 2014, who, after stressing that the Oviedo Convention encompasses rights of key importance for the patients such as the right of the patient to receive compensation for undue damage (Article 24: 'The person who has suffered undue damage resulting from an intervention is entitled to fair compensation according to the conditions and procedures prescribed by law'), remarked that: 'The Convention not only contains individual patient rights but also the social right to health care: "Parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality" (Article 3)'. See also Peteris V Zilgalvis, 'Ethics Committees: The European Convention on Human Rights and Biomedicine, and Ethical Review of Biomedical Research' (2006) 13(1) *Acta Medica Lituanica* 2 ff.

[40] See Michelle Lenoir, 'Le Droit International Penal de la Bioéthique' in Hervé Ascensio, Emmanuel Decaux and Alain Pellet (eds), *Droit International Penal* (Pedone 2000) 405–415. In the same sense, Andorno (n 5) 133, points out that some principles enshrined in the Oviedo Convention were already framed in general terms in previous human rights treaties; See also Andorno (n 1) 39 ff.

[41] Article 7 of the ICCPR preserves self-determination of the patient by affirming the right to informed consent.

[42] Incidentally, it is worth recalling that the right to life and the safeguard of physical and mental integrity, as connected to the right to health, were already protected by the ECHR, most notably in Articles 2, 3, 5 and 8, aiming to protect these values from the misuse of biology and medicine. Amplius, Thérèse Murphy and Gearoid O Cuinn, 'Works in progress: New Technologies and the European Court of Human Rights' (2010) 10(4) *Human Rights Law Review* 601 ff. <http://hrlr.oxfordjournals.org/content/10/4.toc> accessed 7 November 2014.

[43] According to Article 29 of the Oviedo Convention, the ECtHR may, without direct reference to any specific proceedings pending in a court, give advisory opinions on legal questions concerning the interpretation of the Convention at the request of the Govern-

In the *Evans* case, the Court dealt with this contrast and pointed out that the reference made to the Oviedo Convention in order to establish a State's responsibility did not impose new international duties on the State but simply strengthened its obligations arising from the ECHR. Indeed, Article 5 of the Oviedo Convention requires States, by and large to comply with obligations already imposed by the ECHR. Finally, in the same judgment the Court also made an important reference to Article 29 of the Oviedo Convention.

It seems certain that all these arguments based upon the ECHR and the Oviedo Convention, as a whole, are quite compelling from a legal point of view. Article 29 of the Oviedo Convention, for example, refers to the competence of the ECtHR to refer to some of its articles to support interpretatively the ECtHR's decisions (e.g., extending the content of the principle of non-discrimination to include cases of discrimination on the basis of genetic features) and not to apply any provision of the Convention on biomedicine directly. In other words, it is not possible to give the ECtHR compulsory jurisdiction in the Oviedo Convention system, not even by using Article 29, which provides that interpretation of the Convention is a task for the Court of Strasburg.

Certainly, the Court can take due notice and, when appropriate, give legal effect to the applicable rules of the Oviedo Convention, regardless of the fact that the ECHR does not expressly enable it to make reference to other international legal instruments – either binding or non-binding. However, at least since the 1990s, the ECtHR has acknowledged that public international law rules can be used as supportive evidence in order to extend the applicability of the ECHR's articles (*Gustafsson v Sweden*).[44] Since the Oviedo Convention lays down the more favourable rule, it should be considered, albeit not separately but together with the relevant ECHR provisions.

The Court's main views and logical reasoning in the *Evans* judgment are also present in its case law, besides being found in other landmark decisions that come to similar conclusions. For example, in the long-awaited judgment in the case of *V.C. v Slovakia*,[45] the ECtHR quoted Article 5 of the Oviedo Convention on 'informed consent' and explained that close examination of Slovakia's respect of this rule was made possible by the incorporation of this treaty on biomedicine in domestic legislation. Since both the ECHR and the Oviedo Convention contain a number of common precepts dealing with the protection of individuals' health and right to medical information, the ECtHR could conclude that both treaties had to be observed, for Article 5 of the Oviedo Convention and Article 8 of the ECHR guarantee these rights and the Court should *apply* both treaties.

As in the *Evans* case, the 'application' of Article 5 of the Oviedo Convention should not be intended as imposing further duties on the respondent State, because the rule expressed by this clause was already contemplated by the ECHR. Thus, no additional obligations arise when the Oviedo Convention is applied to a State Party to the ECHR. Again, the Court relativized and "softened" the application of the Convention on Human Rights and Biomedicine pointing out that this did not place any additional burdens on Slovakia, which implies that justification for recourse to the rules of the Oviedo Convention lies in the overlapping of their content with the ECHR's provisions referred to in the treaty. On this basis, the ECtHR could consider that not only the ECHR had been breached in its content, but so also had the Oviedo provision on the right to informed consent.

In 2004, the ECtHR delivered its decision on the *Glass* case[46] on similar grounds. When examining the responsibility of the United Kingdom for the violation of several articles of the ECHR as a result of a medical treatment being given to a critically ill child incapable of self-determination notwithstanding parental opposition, the Court used a similar pattern of reasoning and finally asserted that the United Kingdom had also violated Article 6 of the Oviedo Convention, even though it had neither signed nor ratified the Convention.[47]

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ment of a Party, after having informed the other Parties, and at the request of the CDBI. So far, this procedure has not been applied. Amplius Nys (n 35); Herman Nys, 'Patient Rights in EU Member States after the Ratification of the Convention on Human Rights and Biomedicine' (2007) 83 *Health Policy* 223–235; Tom Goffin, Pascal Borry, Kris Dierickx and Herman Nys, 'Why Eight EU Member States Signed, but Have Not Yet Ratified the Convention for Human Rights and Biomedicine' (2008) 86 *Health Policy* 222–233.

[44] *Gustafsson v Sweden* ECHR 1996-II 655.

[45] *V.C. v Slovakia* (n 11).

[46] *Glass v the United Kingdom* (n 16).

[47] For a similar approach, see the ECtHR's decision on the *Ada Rossi* case – *Ada Rossi a.o. v Italy* App nos 55185/08, 55483/08, 55516/08, 55519/08, 56010/08, 56278/08, 58420/08 and 58424/08 (ECtHR, 16 December 2008) – stating that the Oviedo Convention had to be taken into account in the case regardless of the fact that Italy had not ratified, but only signed the Convention; Zilgalvis (n 39), (the Author stresses the parental role in the protection of the child's free will, pointing out that 'it is important to note, in the case of parents that they have responsibility for a child, not power over a child'); Phil Fennel, 'The Right of a Treatment Proxy to Challenge a Decision to Administer Diamorphine to a Patient: *David and Carol Glass v. United Kingdom*' (2004) 12(3) *Medical Law Review* 317 ff.; Marc E Trigilio, 'The Convention on Human Rights and Biomedicine: Allowing Medical Treatment and

Once again, the language of the Court is significant when considered with reference to its jurisdiction as laid down in Article 32 ECHR: in this sense, through the verb "violate", the passage suggests that the Oviedo Convention ought to be independently and additionally applied to the situation and that therefore, apart from strict examination of the articles of the ECHR which had been violated, the State was also considered responsible for the separate breach of the content of Article 6 of the Oviedo Convention. Interestingly enough, the ECtHR continued to use the verb "violate" and similar terms to designate the failure of States to observe the core principles and rules of the Oviedo Convention. By so doing, it reinforced the idea that the international responsibility of States could be unquestionably stated in the European system of human rights protection beyond the traditional violation of the articles of the ECHR.

However, a slight change in this general position was to follow. In the *Vo* decision[48], the ECtHR concluded, for instance, that France *breached neither* the right to life enshrined in Article 2 of the ECHR*, nor* the principles acknowledged in the Oviedo Convention. Moreover, in *Mouvement Raëlien Suisse v Switzerland*[49] the Court similarly maintained that Switzerland *was not responsible for the violation* of the right to freedom of expression pursuant to Article 10 of the ECHR *and* the Additional Protocol to the Oviedo Convention of 12 January 1998 on human cloning.

The syntax of these expressions is quite significant. In *Mouvement Raëlien Suisse*, the object of the alleged violation is directly related to a specific provision of the Additional Protocol to the Oviedo Convention on human cloning, similarly to the *Glass* case. In *Vo*, however, the Court made reference not only to the infringement of concrete rules of the Oviedo Convention but also (and more significantly) to the violation of a specific right contained in the ECHR and to some *principles* which are merely acknowledged in the Oviedo Convention system.[50] The provisions of the Oviedo Convention and its Additional Protocols are, in the latter example, not directly included in the assessment of France's responsibility; they are mediated through the inclusion of the reference to 'principles'. In this case, the infringement does not concern specific rules of the Oviedo Convention but only some basic principles that treaty happens to translate.

By this subtle use of language, the Court seems to be taking a more moderate approach than in its previous decisions. What is more, the use of the expressions 'together with' and 'in conjunction with' enabled the Court to place the Oviedo Convention alongside the ECHR instead of considering its rules as autonomously attributable to the State. *Prima facie*, at least, the ECtHR appears to have moved from an initial position tending to apply directly the Oviedo Convention to a less radical position in which the Oviedo Convention seems to be enforced exclusively in two cases. The first example is when the content of the provisions of the Oviedo Convention coincides with rights expressly protected by the ECHR,[51] for instance in the case of the right to life. The second instance is that the Oviedo Convention may help to elucidate or to better understand the ECHR, though the Court has denied that any direct reference to the rules of the Oviedo Convention can be made in the regional system. However, an examination of the Court's decisions reveals some uncertainties.

V. Final Remarks

As stated in the Introduction, the purpose of this paper was to carry out a critical assessment of the role and the implementation of the Oviedo Convention and its Additional Protocols in the European human rights system. More in detail, we aimed to analyse the settled position of the ECtHR on the issue, in order to suggest a possible evolutionary interpretation of the Oviedo Convention.

In short, the two systems resting respectively on the ECHR and on the Oviedo Convention can be said to be closely connected to each other within the wider area of public international law by their common purpose of protecting individuals through the imposition of fundamental obligations. However, despite their common aim – embodied in their shared core set of rights and duties – the two conventions ultimately remain two distinct legal instruments and, consequently, their rules cannot be confused or blended in their articulation.

Research without Consent on Persons Unable to Give Informed Consent' (1999) 22(2) *Suffolk Transnational Law Review* 641 ff.; Roberto Andorno, 'Regulating Advanced Directives at the Council of Europe' in Stefania Negri (ed), *Life, Death and Dignity. Regulating Advance Directives in National and International Law* (Brill Academic Publishers 2012) 73 ff.

[48] *Vo v France* (n 11).

[49] *Mouvement Raëlien Suisse v Switzerland* (n 17).

[50] Rick Lawson, 'Dwelling on the Threshold: On the Interaction between the European Convention on Human Rights and the Biomedicine Convention' in André Den Exter (ed), *Human Rights and Biomedicine* (Maklu 2009) 32; Magdalena MM Martinez, 'El Convenio Relativo a los Derechos Humanos y la Biomedicina: Algunas Reflexiones en Torno a su Eficacia y Aplicacion' (2003) *RAM Red para el Desarrollo de los Adultos Mayores* <http://www.redadultosmayores.com.ar/buscador/files/JURID005.pdf> accessed 11 November 2014.

[51] Explanatory Report, para. 165.

The experience of the ECtHR with the Oviedo Convention and its Additional Protocols has proved to be fruitful for understanding some general issues related to the nature of its rules when used by a human rights control mechanism. In this regard, it must be concluded that the ECtHR is not allowed to address separately the violations of the Oviedo Convention – which are built over the ECHR and its Additional Protocols, whose provisions established the Court and defined its competence.

The ECtHR is indeed tasked only with ascertaining States' responsibility for the infringements of the ECHR: any different conclusion would be at odds with the political will of States, exclusively bound to comply with obligations they have expressly accepted – as arising from the negotiated texts of treaties – or which derive from custom. Only if the ECHR had entrusted its own monitoring body with examining violations of the Oviedo Convention would such scrutiny be possible. Therefore, the contrary position emerging from some judgments of the ECtHR has no legal justification, despite its estimable and noteworthy purpose to lay the foundation for increasing the degree of protection granted to health rights.

Analysis of the words used in the ECtHR's decisions when addressing the Convention on Human Rights and Biomedicine and its Protocol seems to show that neither the verb 'apply' nor the verb 'violate' describe appropriately the reference made to the rules enshrined in the Oviedo Convention system in the cases examined by the Court. It seems therefore advisable, for the future, to refer to the Oviedo Convention by defining it as a support to interpretation of the ECHR, rather than by using misleading expressions such as "joint application" or "overlapping", which inappropriately suggest that the two systems are equally applicable. For example, the Court might develop and generalize, when appropriate, its position in the *Evans* case, where the definition of the right to informed consent enshrined in Article 5 of the Oviedo Convention helped to widen the scope of Article 8 ECHR to the point of encompassing the protection of self-determination in the right to private and family life. In this sense, the Oviedo Convention might be used interpretatively to specify and expand the scope of the provisions of ECHR, consistently with the unwritten rule that reference should be made to the source that provides the higher standards of protection of human health. It would be advisable to generalize its reference and its incorporation in the line of reasoning of the Court when dealing with bio-rights, as was also the case in the *V.C. v Slovakia* ruling. In this way, the ECtHR could fruitfully avail itself of the principles and the provision of the Oviedo Convention for raising the threshold of protection granted by the ECHR and widening its scope without finding itself in contradiction with its own remit and in line with Article 29 of the Oviedo Convention. These criteria might also constitute an interesting example for other international human rights bodies, such as those of the United Nations.

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Appendix 1

Relevant ECHR provisions and the correlative Oviedo Convention provisions mentioned in the paper:

- Article 2: **Right to Life**
  The correlative *principles* acknowledged in the Oviedo Convention system that deal with prenatal life.

- Article 3: **Prohibition of Torture**
  Applicable to prisoners' right to health.

- Article 8: **Right to Respect for Private and Family Life**
  Applicable to informed consent and to 'the right of parents to give birth to a child who does not suffer from the disease they are the carriers of'.

  Correlative provisions of the *Oviedo Convention:*

  - **Article 5** ("General rule" on consent);
  - **Article 6** ("Protection of persons not able to consent");
  - **Article 10** ("Private life and right to information");
  - **Article 12** ("Predictive genetic tests").

- Article 10: **Freedom of Expression**

  Correlative provision of the *Oviedo Convention*:

  - **Article 10** ("Private life and right to information").

- Article 14: **Prohibition of Discrimination**
  Applicable to discriminations concerning bio-rights, for instance those related to an individual's genetic heritage.

  Correlative provisions of the *Oviedo Convention*:

  - **Article 11** ("Non-discrimination");
  - **Article 14** ("Non-selection of sex").

- Article 5 of Protocol No. 7 to the ECHR: **Equality between Spouses**

  Correlative provisions of the *Oviedo Convention*:

  - **Article 11** ("Non-discrimination");
  - **Article 14** ("Non-selection of sex").

The competence of the ECtHR:

- **Article 32 of the ECHR**;
- **Article 29 of the Oviedo Convention** (advisory competence only).

Appendix 2
ECtHR cases that the paper mentions.

- ***Costa and Pavan v Italy*** App no 54270/10 (ECtHR, 28 August 2012)
  The ECtHR used Article 12 of the Oviedo Convention as a support to interpretation of Article 8 of the ECHR.
- ***Evans v the United Kingdom*** ECHR 2007-I 353
  The ECtHR used Article 5 of the Oviedo Convention as a support to interpretation of Article 8 of the ECHR and applied it because it set the higher standard applicable to human health.
- ***V.C. v Slovakia*** ECHR 2011-V 381
  The ECtHR applied both Article 8 of the ECHR and Article 5 of the Oviedo Convention.
- ***Glass v the United Kingdom*** ECHR 2004-II 25
  The ECtHR applied both Article 8 of the ECHR and Article 6 of the Oviedo Convention.
- ***Vo v France*** ECHR 2004-VIII 1
  The ECtHR concluded that France breached neither the right to life enshrined in Article 2 of the ECHR nor the principles acknowledged in the Oviedo Convention.

  The provisions of the Oviedo Convention ad its Additional Protocols are not directly included in the assessment of France's responsibility, but they are mediated through the inclusion of the reference to 'principles'. In this case, the infringement does not concern specific rules of the Oviedo Convention but only some basic principles that the treaty happens to translate.

- ***Mouvement Raëlien Suisse v Switzerland*** ECHR 2012-IV 293
  In this decision, the object of the alleged violation is directly related to a specific provision of the Additional Protocol to the Oviedo Convention on Human Cloning.

  The ECtHR concluded that Switzerland was not responsible for the violation of the right to freedom of expression pursuant to Article 10 of the ECHR and the Additional Protocol to the Oviedo Convention of 12 January 1998 on human cloning.

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