



Post-traumatic stress disorder, human rights and access to healthcare: an analysis of judgments of the European Court of Human Rights from an ethical perspective

Marcin Orzechowski ^{a*}, Moritz E. Wigand ^{a,b*}, Marianne Nowak ^a, Thomas Becker^b and Florian Steger ^a

^aInstitute of the History, Philosophy and Ethics of Medicine, Ulm University, Ulm, Germany; ^bDepartment of Psychiatry II, Ulm University and BKH Günzburg, Günzburg, Germany

ABSTRACT

Background: Human rights violations such as torture are associated with a high risk of post-traumatic stress disorder (PTSD). The judgements of the *European Court of Human Rights* (ECtHR) include a normative perspective on PTSD and address central ethical questions.

Objective: To help bridge the gap between the psycho-medical and the legal discourse on human rights violations and to illustrate their medico-ethical implications by systematically assessing and categorizing all judgements by the ECtHR dealing with PTSD.

Method: The ECtHR database was searched for 'post-traumatic stress disorder'. A descriptive statistic was performed on the Articles of the *European Convention on Human Rights* involved and violations to these articles. In a qualitative analysis, the judgements were thematically grouped.

Results: The search yielded $n = 103$ judgements, of which $n = 90$ were included. There were mostly violations of Article 3 (prohibition of torture), Article 8 (Right to respect for private and family life) and Article 6 (Right to a fair trial). PTSD in these judgements is normatively discussed with regards to ethical, social and political themes such as inadequate access to healthcare, especially in prison, matters of asylum, expulsion and extradition, protection of minorities and minors, as well as rights and duties of traumatized witnesses.

Conclusion: PTSD plays a central role in a large number of ECtHR judgements. Our results show that PTSD as a medical diagnosis also encompasses legal, ethical, social, and political dimensions. This knowledge is essential for healthcare professionals working with traumatized persons, but can also be relevant for political decision-makers.

Trastorno por estrés postraumático, derechos humanos y acceso a la asistencia sanitaria: un análisis de las sentencias del Tribunal Europeo de Derechos Humanos desde una perspectiva ética

Antecedentes: las violaciones de derechos humanos como la tortura están asociadas con un alto riesgo de trastorno de estrés postraumático (TEPT). Las sentencias del Tribunal Europeo de Derechos Humanos (TEDH) incluyen una perspectiva normativa sobre el trastorno de estrés postraumático y abordan cuestiones éticas fundamentales.

Objetivo: ayudar a cerrar la brecha entre el discurso psico-médico y legal sobre las violaciones de los derechos humanos e ilustrar sus implicaciones médico-éticas evaluando y categorizando sistemáticamente todas las sentencias del TEDH relacionados con el trastorno de estrés postraumático.

Método: Se buscó en la base de datos del TEDH para 'trastorno por estrés postraumático'. Se realizó una estadística descriptiva sobre los artículos del Convenio Europeo de Derechos Humanos involucrados y las violaciones a estos artículos. En un análisis cualitativo, las sentencias se agruparon temáticamente.

Resultados: La búsqueda arrojó $n = 103$ sentencias, de las cuales se incluyeron $n = 90$. En su mayoría fueron violaciones del artículo 3 (prohibición de la tortura), artículo 8 (derecho al respeto de la vida privada y familiar) y artículo 6 (derecho a un juicio justo). El TEPT en estas sentencias se discute normativamente con respecto a temas éticos, sociales y políticos como el acceso inadecuado a la atención médica, especialmente en prisión, asuntos de asilo, expulsión y extradición, protección de minorías y menores, así como derechos y deberes de testigos traumatizados.

Conclusión: TEPT juega un papel central en un gran número de sentencias del TEDH. Nuestros resultados muestran que el TEPT como diagnóstico médico también abarca dimensiones legales, éticas, sociales y políticas. Este conocimiento es esencial para que los profesionales sanitarios trabajen con personas traumatizadas, pero también puede ser relevante para los responsables de la toma de decisiones políticas.

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HIGHLIGHTS

- This research bridges the gap between a psycho-medical, medico-ethical and legal discourse on human rights violations with regard to post-traumatic stress disorder (PTSD).
- Judgments by the European Court of Human Rights show social, ethical and legal implications of PTSD.

创伤后应激障碍, 人权和获得医疗保健: 从伦理角度对欧洲人权法院判决的分析

背景: 酷刑等侵犯人权行为与创伤后应激障碍 (PTSD) 的高风险相关。欧洲人权法院 (ECtHR) 的判决纳入了对PTSD规范性观点的考虑, 致力于核心伦理问题。

目的: 通过系统评估和分类所有ECtHR处理PTSD的判决, 帮助填补心理医学和侵犯人权行为法律语篇之间的空白, 并说明其医学伦理意义。

方法: 在ECtHR数据库中搜索‘创伤后应激障碍’。对涉及欧洲人权公约条款和违反这些条款的行为进行了描述性统计。在定性分析中, 将这些判决按主题进行分组。

结果: 搜索得出103个判决, 其中纳入90个。大多数违反了第三条 (禁止酷刑), 第八条 (尊重私人 and 家庭生活的权利) 和第六条 (享有公正审判的权利)。对这些判决中的PTSD进行了规范性的讨论, 涉及伦理, 社会和政治主题, 例如无法充分获得医疗保健 (尤其是在监狱中), 庇护事宜, 驱逐和引渡问题, 对少数民族和未成年人的保护以及遭受创伤的目击者的权利和义务。

结论: PTSD在大量ECtHR判决中起着核心作用。我们的结果表明, PTSD作为医学诊断也涵盖了法律, 伦理, 社会和政治方面。这些知识对于面对遭受创伤的人工作的医疗保健专业人员至关重要, 但也可能与政治决策者相关。

1. Introduction

The aim of this paper is to better understand psycho-medical, ethical and legal discourses on human rights violations by assessing and categorizing all judgements by the *European Court of Human Rights* (ECtHR) dealing with post-traumatic stress disorder (PTSD). Moreover, the judgements of the ECtHR are normative acts addressing central medico-ethical questions of human dignity, justice, equity in access to healthcare and patient autonomy. As such, their importance goes beyond the purely legal framework. Sveaass (2013) pointed out in this journal that in order to pursue justice for victims of human rights abuses, medical and legal professions need to remain in dialogue. Research on mental effects of human rights violations gained momentum in the 1970s (Steel, Steel, & Silove, 2009) and PTSD as a diagnosis was incorporated into the Diagnostic and Statistical Manual of Mental Disorders (DSM) version III in 1980 and has undergone changes in the subsequent versions of both DSM and the International Statistical Classification of Diseases and Related Health Problems (ICD). Since then, the human rights discourse has been linked with a medical discourse on trauma. PTSD can be said to be a marker of the psychological impact of human rights violations (Steel et al., 2009). However, this includes the risk of acknowledging human rights violations only if mental health sequelae can be found (Steel et al., 2009). Summerfield (1999) criticizes that a primarily medical outlook on the effects of war and other catastrophes can be regarded as a Western tendency to medicalize psychological reactions to these events without the consent of those affected. He even sees the ethical danger that those affected by human rights violations need to present themselves as traumatized to receive humanitarian help. Analysing the normative framework of ECtHR judgements involving PTSD can help to elucidate intersections between social, legal and medico-ethical aspects of this debate.

1.1. The European Court of Human Rights

The *European Court of Human Rights* (ECtHR) is a supranational court as foreseen by Article 19 of the *European Convention on Human Rights* (European Court of Human Rights, Council of Europe, 1950/2013, hereinafter ‘the Convention’). Its jurisdiction is acknowledged by all 47 member states of the *Council of Europe*. Applications claiming human rights violations can be filed only after domestic remedies have been exhausted. This means that cases brought before the ECtHR have usually already been ruled on by several courts and represent only the tip of an iceberg (Wigand, Orzechowski, Nowak, Becker, & Steger, 2020).

1.2. Aims

We have three research questions: (i) How many ECtHR judgements include PTSD and which articles of the Convention are involved? (ii) How can these judgements be thematically grouped? (iii) How can these thematic categories be discussed within the social, medical, ethical and legal discourse on human rights violations and PTSD?

To our knowledge, we are the first to systematically analyse ECtHR judgements involving PTSD, using quantitative and qualitative methods. The judgements constitute a normative framework relevant for healthcare professionals and political decision-makers. Mental healthcare professionals, when dealing with sequels of human rights violations, should be aware of the various social, ethical and legal implications of a diagnosis of PTSD.

2. Methods

The ECtHR’s case-law is available through the database HUDOC, accessible under <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER%22,%22CHAMBER%22%5D%7D>. Judgements were retrieved on 23 September 2020, using the search term

‘post-traumatic stress disorder’, which yielded $n = 103$ results. Of these, $n = 90$ judgements were included in the analysis (see Figure 1).

2.1. Descriptive statistics

Descriptive statistics were performed on Articles on Rights and Freedoms (Section 1, Articles 1–18) and Protocols of the Convention which were involved in these $n = 90$ judgements. All articles which the ECtHR ruled on as well as violations of these articles were counted. For matters of clarity, a violation of an article was counted as such if at least one violation of one of its aspects or sub-paragraphs was found by the ECtHR. This means that if the ECtHR found a violation of the substantive aspect of Article 3 but not of the procedural aspect of the same article, this was counted as a violation of Article 3.

2.2. Thematic analysis

In an inductive process similar to that described in Wigand et al. (2020), a thematic analysis was performed (Vaismoradi, Turunen, & Bondas, 2013). This is a qualitative approach to identify, analyse and report common patterns or themes in narratives or text material. In this part of the analysis, ECtHR judgements were searched for themes pertaining to human rights and PTSD. Categories were formed and critically discussed in the multi-professional team of authors. These categories do not represent legal views or Articles of the Convention, they are rather intended to alert the reader to important features of the cases, which are highlighted by case reports. As categories are not mutually exclusive, some cases have been grouped into several categories.

3. Results

3.1. Articles of the European Convention on Human Rights

More than half of judgements involved Article 3 (prohibition of torture, $n = 52$; 57,8%), which was found violated in $n = 38$ cases (42,2%). Moreover, Article 8 (Right to respect for private and family life) and Article 6 (Right to a fair trial) played an important role. Table 1 gives an overview of the frequencies of the Articles involved.

3.2. Categories

3.2.1. Cases involving inadequate access to healthcare

Inadequate access to healthcare played a role in $n = 29$ cases. In several cases, general issues regarding access to healthcare were the central topic (i). Other cases discussed the specific issues of access to healthcare in relation to categories such as prison/detention (ii) or expulsion (iii).

Example of (i): The case *Vilnes and others v. Norway* (52806/09; 22703/10) deals with deep-sea dives for oil companies in the 1960s. Knowledge of medical problems resulting from these dives was still scarce. Many divers suffered from long-term physical and mental disorders including PTSD triggered by traumatic experiences such as diving accidents. Furthermore, the divers reported that they had not been informed about the health risks and that there were usually no medical personnel on the boats. ‘Treatment’ had to be provided by other divers. In the ECtHR’s opinion, the Norwegian State failed to provide substantial information with which the divers could have evaluated health risks. The ECtHR saw a violation of Article 8.

Example of (ii): The applicant in *Buhaniuc v. The Republic of Moldova* (56074/10) had allegedly been

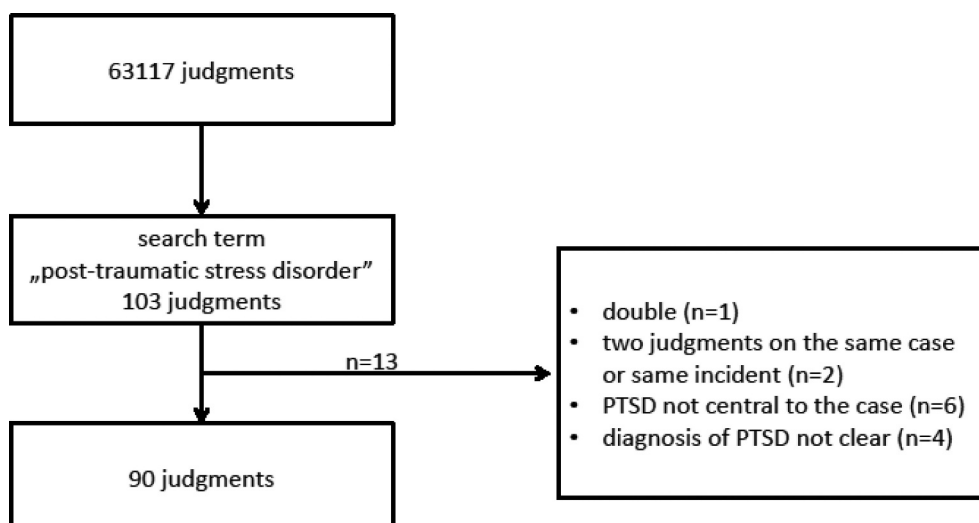


Figure 1. Flow chart of search.

Table 1. Frequencies of articles on rights and freedoms (Section 1, Articles 1–18) and protocols of the European Convention on Human Rights involved in the $n = 90$ judgements included into this analysis.

Articles of the European Convention on Human Rights	Judgements involving this article	Judgements in which at least one violation of this article was found
Art 2 (including sub-paragraphs)	$n = 11$ (12,2%)	$n = 8$ (8,9%)
Art 3	$n = 52$ (plus hypothetical $n = 4$) (57,8% plus 4,4%)	$n = 38$ (plus hypothetical $n = 3$) (42,2% plus 3,3%)
Art 4	$n = 2$ (2,2%)	$n = 2$ (2,2%)
Art 5 (including sub-paragraphs)	$n = 11$ (12,2%)	$n = 10/11$ (1,1%)
Art 6 (including sub-paragraphs)	$n = 17$ (18,9%)	$n = 11$ (12,2%)
Art 8 (including sub-paragraphs)	$n = 27$ (30%)	$n = 14$ (15,6%)
Art 9 (including sub-paragraphs)	$n = 1$ (1,1%)	$n = 1$ (1,1%)
Art 10 (including sub-paragraphs)	$n = 1$ (1,1%)	$n = 0$ (0%)
Art 13	$n = 13$ (14,4%)	$n = 11$ (12,2%)
Art 14	$n = 4$ (4,4%)	$n = 4$ (4,4%)
Art 1 of Protocol No 1	$n = 4$ (4,4%)	$n = 2$ (2,2%)
Art 4 of Protocol No 4	$n = 1$ (1,1%)	$n = 1$ (1,1%)
Art 1 of Protocol No 6	$n = 2$ (2,2%)	$n = 2$ (2,2%)

Hypothetical violations refer to cases in which the expulsion/extradition to another country would constitute a violation. One case has been struck out of the list by the ECtHR because of a friendly settlement.

arrested and tortured in police custody, including psychological ill-treatment. He claimed to have had no access to medical care during detention and that a medical examination reporting his injuries and PTSD was only carried out afterwards by a non-governmental organization. The ECtHR found a violation of Article 3. This case represents a group of cases in which lack of medical care during imprisonment is alleged. There is a recurring theme of inadequate examination or treatment because doctors were supposedly not objective and independent.

Example of (iii): Inadequate provision of psychiatric treatment in a country of origin can be considered in a judgement on expulsion, as exemplified in *I. K. v. Austria* (2964/12). The applicant's PTSD allegedly resulted from ill-treatment by Russian soldiers and witnessing the killing of his father. The possibility of deterioration of his mental health was presented as a reason speaking against expulsion. In this particular case, the ECtHR did not consider these grounds as sufficient for rejecting the State's decision for expulsion. Rather, the ECtHR found a violation under Article 3 stating that extradition was connected with a high risk of traumatic sequelae.

3.2.2. Cases involving prison and detention

We identified $n = 34$ cases involving prisons or detention centres, which can be divided into three sub-categories: (i) cases involving torture in prison; (ii) cases involving detention during anti-terrorism operations; and (iii) cases involving other effects of detention.

(i) Torture in prison

In *Kopylov v. Russia* (3933/04), the applicant was arrested and detained for several months under the suspicion of having killed a policeman. He reported having repeatedly been ill-treated to force a confession. Tortures included physical violence such as beatings,

electric shocks, asphyxiation and mental abuse such as threats and intimidations. After four months, the charges were dropped. According to the legal documents, his ill-treatment resulted in severe mental and physical suffering including chronic PTSD, which required in-patient treatment. Despite treatment, the applicant's mental condition deteriorated.

The ECtHR reiterated that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being. The use of force in prison is only justified to ensure prison security or to maintain order. Unnecessary physical force diminishes human dignity and is an infringement of the prohibition of torture. The ECtHR thus saw a violation of Article 3.

(ii) Anti-terrorism operations

In *El-Masri v. the former Yugoslav Republic of Macedonia* (39630/09), the applicant was arrested by Macedonian security officers without any specific accusation. He reported to have been kept incommunicado in a hotel room for 23 days and having been subjected to interrogations and threats, before being transported to a secret operations site in Afghanistan by CIA agents. According to the applicant, the transfer to the site and the stay were connected with physical and mental abuse and sophisticated interrogation procedures. To protest against his mistreatment, he resorted to hunger strikes and was force-fed. After several months, he was secretly transported back. A psychiatric evaluation conducted several years later confirmed PTSD and depression, most likely caused by captivity and maltreatment.

The ECtHR stated that unlike most of the substantive clauses of the Convention, Article 3 makes no provision for exceptions. Even events of public emergency, fight against terrorism or organized crime do

not allow torture and inhuman or degrading treatment or punishment. The ECtHR saw a violation of Article 3.

(iii) Other effects of detention

Conditions of detention can have a detrimental effect on mental health if they exceed a level of severity compatible with respect for human dignity. In such cases, PTSD may result from inhuman or degrading treatment. In *Lecomte v. Germany* (80442/12), however, the ECtHR did not come to the conclusion that this level of severity was reached during several days of preventive detention.

3.2.3. Cases involving matters of asylum, expulsion or extradition

We found $n = 18$ cases in which matters of asylum, expulsion or extradition played a major role. These can be subdivided into (i) cases in which migrants are hindered from entering the EU, (ii) cases in which applicants try to prevent their expulsion, and (iii) cases in which applicants try to circumvent being extradited to a country where they would be tried for an alleged crime.

- (i) In the case of *M.K. and Others v. Poland* (40503/17;42902/17;43643/17) thirteen Russian nationals including eight children presented themselves at Polish-Belarusian border checkpoints to apply for asylum. Several of them presented documents confirming PTSD after alleged torture in the Chechen Republic. Nonetheless, the border guards refused to receive their asylum applications, which according to the ECtHR posed a risk of expulsion to Chechnya and a risk of ill-treatment there. The ECtHR saw a breach of Article 3 of the Convention and Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) as well as Article 13.
- (ii) The case of *Cruz Varas and others v. Sweden* (15576/89) exemplifies the difficulty of establishing in some cases the facts of persons who have allegedly been tortured. To prevent expulsion, the applicant claimed to have been tortured and raped during the Pinochet regime in Chile. He provided psychiatric opinions that his accounts of torture are credible and might have led to PTSD. However, assessing all available evidence and the human rights situation in Chile after the election of 1989, the ECtHR decided that the applicant's expulsion did not constitute a violation of Articles 3 and 8.
- (iii) PTSD may be a reason for contention of extradition, as for example in *Babar Ahmad and others v. The UK* (24027/07;11949/08;36742/08;66911/09;67354/09). According to the legal documents, one of the applicants had been

diagnosed with PTSD, which had worsened in detention. The co-applicants manifested other forms of mental illness. As assessed by the ECtHR, the level of access to healthcare following extradition, in this case in a US prison with the highest security standard, can be an important factor in refusing extradition.

3.2.4. Cases involving the rights and duties of witnesses

We identified $n = 2$ judgements involving PTSD in connection with the rights and duties of witnesses. They illustrate situations in which PTSD can be an indirect reason for limiting rights guaranteed by the Convention, in particular the 'Right to a fair trial', which includes the right of defendants to examine witnesses. In the case of *Gani v. Spain* (61800/08), the applicant was prosecuted and sentenced for criminal offences against his wife, including abduction and rape. During the trial, the victim was not able to repeat her statement due to asserted PTSD caused by the crime, which impaired her memory and her capacity to express herself. The applicant argued that he had not been given a proper opportunity to challenge and question the victim. The ECtHR stressed that fairness of judicial proceedings involves balancing of interests, which include the interests of the defendant and of victims and witnesses. In case of the risk of reliving the traumatic situation, it is acceptable not to directly examine a witness, if the defendant has a possibility to challenge the testimony through other means. The ECtHR found no violation of the applicant's rights in this case.

3.2.5. Cases involving minors, domestic violence and abuse (DVA)

We found $n = 25$ cases involving minors and/or DVA. In *A. v. Russia* (37735/09) the applicant stated that at the age of nine she had witnessed how her father was arrested and ill-treated by police officers and that she had developed several medical conditions including PTSD. Criminal proceedings against the officers, who denied the use of violence, were not instituted despite several appeals. According to a medical report ten years later, the applicant was again diagnosed with PTSD, a high level of anxiety and phobic disorders due to witnessing her father's brutal arrest and subsequent interrogation. The ECtHR emphasized that children are particularly vulnerable and underlined the State's responsibility to protect them against acts of violence. The Court found a violation of Article 3 and thus recognized the impact of being a witness of violence. In *A. v. Croatia* (55164/08), the applicant argued that she and her children were repeatedly objects of physical and verbal abuse by her former husband. As a result of detention and torture in a concentration camp during the Croatian War of Independence (1991–1995), the husband had allegedly developed a severe form of PTSD. According to the ECtHR, states have an obligation to protect private and

family life (Article 8), even adopting measures reaching into the sphere of the relations within the family. Reasonable measures for protection should be implemented without any discrimination.

3.2.6. Cases involving medical malpractice

We identified two cases involving PTSD caused by medical malpractice. In *G.B. and R.B. v. The Republic of Moldova* (16761/09), the first applicant underwent a caesarean section in a state-owned hospital. During the procedure, the attending doctor unnecessarily removed her ovaries and Fallopian tubes and did not inform the applicant and her husband of the removal until ten days after the procedure. As a result, the applicant suffered early menopause and became sterilized. She claimed that this caused long-term damage to her physical and mental health, including PTSD, requiring medical treatment.

The ECtHR observed that this unnecessary procedure constituted a case of medical negligence that had caused severe damage to the health and bodily integrity of the victim and had a devastating effect on her life from having lost her reproductive capacity and from ensuing health problems. This led to a violation of the provisions of Article 8.

3.2.7. Other cases

In addition, we found 16 cases related to PTSD that cannot be ascribed to any of the categories above. These include various topics such as forcible eviction from an apartment and unlawful arrest (*Khalikova v. Azerbaijan*, 42883/11), the shooting of a civilian near the inner-Cypriot border resulting among others in loss of a kidney and PTSD (*Andreou v. Turkey*, 45653/99) or a racially motivated attack on a man belonging to the Roma minority (*Šečić v. Croatia*, 40116/02). The case of *Mockutė v. Lithuania* (66490/09) revolves around the issue of protection of people with mental disorders, concerning an unlawful compulsory admission. There were also cases in which persons with PTSD allegedly committed violent acts. However, the influence of this diagnosis on their violent behaviour cannot be established by the legal documents.

4. Discussion

In this paper, we analyse all ECtHR judgements pertaining to PTSD. The relationship between PTSD and human rights is complex and touches on many medical, ethical and normative aspects, such as the question of equal access to healthcare, the right to an effective remedy for persons who suffer from PTSD due to human rights violations, the risk of re-traumatization during legal proceedings and in prisons, and the discrimination of minorities. The judgements of the ECtHR constitute normative texts that are relevant with respect to medico-ethical issues such as justice in

healthcare, instances of torture, or self-determination of patients in therapeutic relationships. In our research, we defined six partially overlapping categories of judgements to alert readers to important aspects of the cases. In the following, we discuss the findings of the main categories and then give an overall conclusion.

4.1. Cases involving inadequate access to healthcare

Questions of equal access to healthcare are a central issue from the point of view of Public Health Ethics and play an important role among judgements of the ECtHR. There exist a multitude of barriers to access to healthcare, including mental healthcare, for traumatized persons. Following a traumatizing event, healthcare can include the important aspect of documenting sequelae of human rights violations for use in legal proceedings as laid down in the Istanbul Protocol (United Nations, 2004).

Mental healthcare is needed to alleviate the sequelae of traumatizing human rights violations, e.g. PTSD, depression or anxiety disorders. Healthcare is not always available due to the process of migration but also due to several structural and cultural barriers in the host country (Byrow, Pajak, McMahan, Rajouria, & Nickerson, 2019). Mental healthcare should be seen in the broader context of humanitarian issues (Steel et al., 2009; Summerfield, 1999).

The judgements show that in regions with systematic human rights violations involving the authorities, it can be difficult to obtain an independent medical examination, especially in prisons. Although Article 3 does not place an obligation on the State to alleviate disparities in the population through the provision of free and unlimited healthcare, it puts an obligation for access to healthcare for vulnerable groups such as detainees. While the ECtHR reserves sufficient flexibility in defining the required standard of healthcare, e.g. in prisons, it stresses that the standard must be compatible with human dignity.

4.2. Cases involving prison and detention

A relevant number of judgements considers cases in which PTSD resulted from detention or involuntary confinement, often combined with torture. Especially in the period of 'war on terrorism', torture against suspected terrorists intensified, involved incommunicado detention and a shift towards the involvement of psychological professional participation both in the planning and conducting interrogations. Exposure to physical and psychological torture can lead to PTSD as well as depression, anxiety, and somatic complaints (Ghaddar, Elsouri, & Abboud, 2016; Ibrahim & Hassan, 2017; Punamäki, Qouta, & El Sarraj, 2010; Rathke, Poulsen, Carlsson, & Palic, 2020). The judgements of the ECtHR are compatible with the view of

Article 5 of the UN Universal Declaration of Human Rights and the Geneva Convention, which consider mental pain during interrogations as torture that can never be justified. This stands in opposition to the view of the US government, which after 2001 redefined acts such as waterboarding, sleep deprivation, and prolonged isolation as safe, legal, ethical, and effective techniques of ‘enhanced interrogation’ (Iacopino & Xenakis, 2011). This view has significant implications for medical professionals regarding professional ethics.

In its judgements the ECtHR asserts that States must ensure that a person is detained in conditions that are compatible with respect for human dignity, is not subjected to undue distress or hardship, and that the conditions of detention do not exceed the unavoidable demands of imprisonment. Whether the conditions of detainment attain the minimum level of severity to be considered as torture depends on the particular circumstances of the case.

4.3. Cases involving matters of asylum, expulsion or extradition

According to the UN, the number of international migrants is growing and reached approximately 272 million in 2019 (United Nations, n.d.-b), among them a high number of forcibly displaced persons and refugees (United Nations, n.d.-a). Many refugees flee war and a high number report having been tortured, which leads, together with the stressful experiences of migration itself and post-migration factors, to a high rate of PTSD and other mental illnesses in this population (Abu Suhaiban, Grasser, & Javanbakht, 2019; Hynie, 2017). For refugees seeking asylum, PTSD can play a role in their asylum processes (McVane, 2020). In these cases, the ECtHR tries to establish the pre-migration facts and weighs the risks of becoming again a victim of human rights violations in the case of expulsion or extradition.

4.4. Cases involving the rights and duties of witnesses

Interaction with the justice system may be beneficial for victims and witnesses of violent crimes through cathartic reminiscence. However, in many cases, it can add to the trauma of the original crime (Parsons & Bergin, 2010). Facing the perpetrator, recalling details of the crime, and being subjected to exhaustive questioning can contribute to re-experiencing the traumatic event and adverse short- and long-term outcomes, such as PTSD (Randell, Seymour, Henderson, & Blackwell, 2018). The ECtHR balances the rights of the defendant with the protection of the witnesses’ mental health.

4.5. Cases involving minors, domestic violence and abuse (DVA)

A significant number of judgements concern cases in which minors were involved, either as witnesses of violence or objects of abuse. Adolescence is a vulnerable period associated with a high risk of exposure to traumatic events, which can lead to individual and societal costs and has been associated with symptoms of PTSD as well as structural and functional brain alterations especially in frontolimbic circuits (Herrington, 2017; McLaughlin et al., 2013). DVA is a complex phenomenon often but not solely directed against women, which can encompass psychological, economic and physical or sexual elements (Ferrari et al., 2018). One common form is intimate partner violence and there are overlaps with child mistreatment and child sexual abuse (World Health Organisation, 2013).

In several instances, the ECtHR recognizes that children and adolescents are particularly vulnerable and stresses the states’ obligation to protect them, which also includes the aspect of legal proceedings. The ECtHR also stresses the state’s obligation to protect individuals against all forms of ill-treatment, including ill-treatment administered by private individuals. This might include measures reaching into the sphere of the relations within the family.

4.6. Cases involving medical malpractice

Both cases of medical malpractice associated with subsequent PTSD involved surgical procedures. One systematic review found clinically relevant PTSD symptoms in a median of 22% survivors of general intensive care units (Davydow, Gifford, Desai, Needham, & Bienvenu, 2008). PTSD is also observed following traumatic birth experiences (El-Gabalawy et al., 2019).

In its judgements relating cases in this category, the ECtHR argues that the concept of ‘private life’ covered by Article 8 also incorporates the physical and psychological integrity of a person. Administering medical treatment contrary to the wishes of a patient violates the provisions of this article.

4.7. Limitations

These $n = 90$ cases are not representative of all cases in which human rights violations lead to PTSD. For the diagnosis of PTSD, we had to rely on legal documents. As the diagnosis was made in different cultural contexts and at different times, there is some variation in the underlying concepts. However, this is not a major shortfall for our goal of presenting the general outline of the social, legal and medico-ethical discourse on PTSD.

5. Conclusion

In this study, we showed that cases involving very different aspects of PTSD reach the ECtHR. Several authors warn that PTSD should not form the basis of deciding whether a human rights violation has occurred (Steel et al., 2009; Summerfield, 1999). Our analysis reveals that ECtHR rulings, taking medical aspects into account, reflect a balanced view by differentiating human rights violation aspects and PTSD-related issues. Thus, if the argument of ‘medicalization’ is raised (Summerfield, 1999), ECtHR practice appears to reflect a balanced view, by integrating both medical and non-medical perspectives.

However, PTSD can have an impact on legal remedy, on planned expulsion or extradition, and on the status as a witness because it has a double role as (i) a medical diagnosis and (ii) a tool to document the sequels of human rights violations. For healthcare professionals working with victims of human rights violations, it is helpful to bear in mind the full range of social, ethical and legal implications of PTSD. This is especially the case as PTSD is a relatively young medical concept (Steel et al., 2009), and there are other ways of describing human suffering and resilience after adverse events (Benner, Halpern, Gordon, Popell, & Kelley, 2018; Summerfield, 1999). While PTSD is one important concept to document and induce alleviation of psychological sequels of human rights violations, other aspects such as human dignity, justice, equity in access to healthcare and patient autonomy should not be forgotten. ECtHR judgements referring to PTSD may help political decision-makers to highlight the ethical consequences of political and administrative decisions.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Data availability statement

Data for this research is publicly available through the database HUDOC of the European Court of Human Rights, accessible under <https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22%3A%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%5D%7D>.

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ORCID

Marcin Orzechowski  <http://orcid.org/0000-0003-4244-7989>

Moritz E. Wigand  <http://orcid.org/0000-0001-5491-5925>

Marianne Nowak  <http://orcid.org/0000-0001-5452-2814>

Florian Steger  <http://orcid.org/0000-0001-8108-1591>

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