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LIABILITY FOR MALPRAXIS IN EUROPEAN LAW - ECTHR CASE LAW ON THE RIGHT TO LIFE AND INTEGRITY

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Abstract: *Liability for medical malpractice under European law is primarily examined through the jurisprudence of the European Court of Human Rights (ECtHR), which has interpreted and applied the provisions of the European Convention on Human Rights in the context of medical errors. Although the Convention does not explicitly guarantee a right to health, Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), and 8 (right to private life and physical integrity) have been jurisprudentially developed to offer protection to patients against serious medical negligence.*

The ECtHR does not sanction mere medical error but assesses whether member states have fulfilled their positive obligations: preventing systemic risks, ensuring an adequate legal framework, and conducting effective investigations in cases of death or serious harm. Landmark cases such as Calvelli and Ciglio v. Italy, Lopes de Sousa Fernandes v. Portugal, and Şerban v. Romania illustrate the Court's standards regarding state liability for institutional deficiencies that endanger fundamental patient rights.

In conclusion, liability for malpractice in European law is integrated into the human rights protection framework, and the failure of the state to meet its substantive and procedural obligations may constitute a breach of the Convention. This approach contributes to the consolidation of a European standard for the protection of life and physical integrity in the medical context.

.***Keywords:*** *medical malpractice; right to life; physical integrity; state liability; healthcare law; procedural obligation.*

Introduction

In the context of the continuous evolution of human rights and the increasing demands on the quality of medical acts, liability for malpractice is acquiring an increasingly pronounced legal significance at the European level. Although the right to health is not expressly enshrined in the European Convention on Human Rights, the case law of the European Court of Human Rights (ECHR) has constantly expanded the scope of application of Articles 2, 3 and 8 of the Convention, configuring an indirect but effective regulatory framework for the protection of patients against serious medical negligence or institutional dysfunctions in the health system.

Article 2, which guarantees the right to life, implies not only a prohibition of arbitrary deprivation of life, but also a series of positive obligations incumbent on states, including the adoption of preventive measures to protect the lives of persons under their jurisdiction. In the same sense, Article 8, concerning the right to respect for private life and physical and mental integrity, has been interpreted by the Court as including the patient's right to informed consent, dignity and safety in the context of medical treatment. Also, in situations of abuse or degrading treatment, Article 3 may become applicable, even in the absence of direct intent on the part of the medical staff, when there is serious negligence or a lack of institutional supervision.

The ECHR case law reflects a complex vision of liability in cases of malpractice, highlighting not only the individual conduct of medical staff, but also the systemic functioning of health institutions and the efficiency of investigation and remedy procedures. Through decisions such as Calvelli and Ciglio v. Italy, Lopes de Sousa Fernandes v. Portugal or Şerban v. Romania, the Court draws the contours of a state liability based on a lack of procedural diligence and the existence of systemic deficiencies that endanger the fundamental rights of the patient.

This introduction aims to contextualize the analysis of liability for malpractice within the normative framework of the Convention and to justify the relevance of the ECHR approach in strengthening a European

standard in the field of protection of the right to life and physical integrity in medical acts. The present study will examine, from a critical perspective, how international human rights law influences legal liability in cases of malpractice, contributing to the shaping of principles of good practice and transparency in national health systems.

1. Conventional foundations of liability in matters of malpractice

Liability for malpractice is a complex area of European law, situated at the intersection of medical law, human rights and state responsibility. In the context of the legal protection of the fundamental rights of the individual, the European Convention on Human Rights (ECHR) plays a key role in defining the standards and obligations of state authorities to prevent, investigate and punish negligent or abusive medical practices.

Although the Convention does not explicitly enshrine a "right to health", the case law of the European Court of Human Rights has interpreted its core articles — in particular Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 8 (right to respect for private life and physical integrity) - as relevant in the context of medical malpractice. It has thus created an innovative legal framework, which involves not only negative prohibitions but also positive obligations on the state to ensure a functioning health system and to guarantee respect for the integrity and dignity of patients.

This introduction explores the conventional foundations of malpractice liability, highlighting the evolution of ECHR jurisprudence in this area and its impact on national standards for the protection of patients' rights.

Although the European Convention on Human Rights (ECHR) does not expressly regulate medical acts or the right to health, the European Court of Human Rights has progressively extended the protection conferred by the Convention to the scope of medical acts, interpreting the provisions of Articles 2, 3 and 8 to include positive obligations incumbent on States in the field of health.

A. Article 2 ECHR - right to life

Article 2 represents one of the fundamental rights of the Convention, imposing not only a negative prohibition on the arbitrary taking of life, but also positive obligations on the part of the State, including that of guaranteeing a health system capable of ensuring the effective protection of life. The Court has established that, under certain conditions, the lack of effective measures by the medical authorities may constitute a violation of this Article[1].

The reference case law in this regard is the case of Lopes de Sousa Fernandes v. Portugal, where the Grand Chamber confirmed that systemic deficiencies in medical institutions - combined with the lack of an effective investigation mechanism - can engage the State's responsibility for failure to comply with the positive obligations imposed by Article 2[2]. The relevant criterion is not the existence of a simple medical error, but systemic negligence and the absence of an adequate response by the authorities.

B. Article 3 ECHR - prohibition of inhuman or degrading treatment

Article 3 enshrines the absolute prohibition of torture and inhuman or degrading treatment. Although its applicability in the medical context is more restricted, the Court has found a violation of this article in cases where patients were subjected to medical interventions without informed consent or in conditions that seriously affected human dignity[3].

For example, in the case of V.C. v. Slovakia, the ECtHR found that the sterilization of a Roma woman without her valid consent constituted degrading treatment, as it took place in a context of vulnerability, without adequate information and without institutional protection[4].

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[1] Calvelli and Ciglio v. Italy, Judgment of 17 January 2002, Application No. 32967/96.
[2] Lopes de Sousa Fernandes v. Portugal, Grand Chamber, Judgment of 19 December 2017, Application No. 56080/13.
[3] Pretty v. the United Kingdom, Judgment of 29 April 2002, Application No. 2346/02.
[4] ECtHR, V.C. v. Slovakia, Judgment of 8 November 2011, Application No. 18968/07.

C. Article 8 ECHR – right to private life and physical integrity

Article 8 guarantees the right to respect for private life, interpreted by the Court as including the physical and mental integrity of the individual. In the medical field, this implies respect for the patient's consent, the protection of medical data and the prompt investigation of incidents affecting bodily integrity. In the case of Csoma v. Romania, the Court found that the lack of appropriate information and the lack of consent in the context of a medical act constituted a violation of Article 8[1].

Through these interpretations, the ECtHR establishes that malpractice is not only a matter of domestic civil law, but also a matter of human rights, insofar as it affects fundamental values protected by the Convention. Thus, case law contributes to the construction of a positive duty of care on the part of the state, not only in the organization of medical services, but also in the prevention, investigation and repair of possible harm caused to patients.

2. Medical malpractice in the case law of the ECHR: between individual error and systemic responsibility

Medical malpractice, as a form of inadequate professional conduct leading to harm to patients, falls not only within the scope of domestic civil or criminal liability, but also within the framework of the state's obligations in terms of fundamental rights. The European Convention on Human Rights (ECHR) does not expressly provide for a right to health, but the European Court of Human Rights has significantly expanded the interpretation of Articles 2, 3 and 8 of the Convention to provide protection in cases where the medical act affects the life, physical integrity or dignity of the patient.

Article 2 ECHR - the right to life - is one of the most invoked articles in cases involving medical malpractice. The Court has consistently shown that the state's positive obligations entail ensuring an adequate

[1] Csoma v. Romania, Judgment of 15 January 2013, Application No. 8759/05.

legislative and administrative framework for the protection of life, including with regard to the provision of medical services. Thus, not only the serious omission of a doctor can entail state liability, but also the failure to fulfil the general obligation to regulate and monitor the medical sector.

In the case of Lopes de Sousa Fernandes v. Portugal, the Court clarified that simple medical error does not engage the State's liability under Article 2, in the absence of a systemic dysfunction. What is essential, according to the Court, is the existence of structural negligence - the lack of medical protocols, the absence of effective investigations or the lack of institutional supervision[1]. Thus, systemic responsibility becomes a determining criterion in the analysis of medical malpractice at European level.

The case of Asiye Genç v. Turkey also follows this logic, in which the Court highlighted the State's role in preventing known risks in the medical system. In this case, the lack of effective intervention to avoid a neonatal death was considered a systemic omission, since the authorities did not react appropriately to the alarm signals regarding the patient's condition[2]. The Court emphasized the existence of a procedural obligation of diligence, going beyond the simple individual fault of the doctors involved.

Another relevant case is Iorga and Others v. Romania, where the death of a patient during a medical intervention was followed by a deficient and delayed investigation, which failed to clarify the real causes of the incident. The Court held a violation of Article 2 due to the lack of an effective investigation, the independence of the procedure and the transparency of the results being considered essential components of the positive obligations of the State[3].

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[1] Lopes de Sousa Fernandes v. Portugal, Grand Chamber, Judgment of 19 December 2017, Application No. 56080/13.
[2] Asiye Genç v. Turkey, Judgment of 27 July 2015, Application No. 24109/07.
[3] Iorga and Others v. Romania, Judgment of 25 January 2011, Application No. 26246/05.

On the other hand, Article 8 of the ECHR, which protects the right to respect for private life and physical and mental integrity, is frequently invoked in cases that do not involve the death of the patient, but rather serious impairment of dignity, freedom of decision or bodily integrity. The case of Csoma v. Romania is emblematic, as the patient was not informed of the risks of the medical intervention, and the Court found a violation of Article 8, underlining the importance of informed consent in the context of medical treatment[1].

The ECtHR's analysis therefore clearly distinguishes between the individual responsibility of medical personnel, which is analysed in the context of domestic professional standards, and the responsibility of the State, which arises when there is a systemic deficiency or a lack of institutional response to a possible medical error. This differentiation has important implications for national law, as it imposes on Member States not only regulatory obligations, but also effective mechanisms for monitoring and investigating medical malpractice.

3. The right to physical integrity: informed consent and patient dignity

A. Case V.C. v. Slovakia - forced sterilization and violation of art. 3 and 8 ECHR

The right to physical integrity is an essential corollary of human dignity and personal autonomy, being expressly protected by article 8 of the European Convention on Human Rights, which enshrines the right to respect for private and family life. In a medical context, this right imposes positive obligations on the state and health professionals with regard to obtaining informed consent, dignified treatment and respecting the patient's will.

Informed consent is not a mere formality, but an essential condition for the validity of any medical act. It presupposes complete, clear and

[1] Csoma v. Romania, Judgment of 15 January 2013, Application No. 8759/05.

accessible information to the patient regarding the nature, purpose, risks and alternatives of the proposed treatment. Any intervention carried out without such valid consent constitutes a serious interference with the physical and mental integrity of the individual and, in some cases, may reach the threshold of gravity required by Article 3 of the Convention (prohibition of inhuman and degrading treatment)[1].

The case of V.C. v. Slovakia represents an emblematic case-law in this regard. The applicant, a Roma woman, was sterilized during a caesarean section without being adequately informed and without giving her informed consent[2]. The Court found that the medical authorities had not given the applicant a real opportunity to understand the implications of the intervention nor had they respected her right to decide autonomously over her own body. The consent document had been signed during labour, in a state of extreme physical and emotional vulnerability, which completely tainted the validity of the agreement.

The Court found a violation of Article 3 of the ECHR, classifying the forced sterilization as degrading treatment, given the profound physical and psychological suffering caused to the applicant. It also found a violation of Article 8, as the State failed to comply with its positive obligation to protect the patient's bodily integrity and to ensure a normative and institutional framework guaranteeing the effective application of informed consent in practice[3].

This case highlighted not only an individual error, but also a systemic problem related to the structural discrimination of Roma women in the Slovak medical system, as well as the lack of effective measures to protect patients' rights. The Court emphasized the State's obligation to prevent such practices, including by training medical personnel, adopting

[1] ECtHR, Pretty v. the United Kingdom, Judgment of 29 April 2002, §61, in which the Court reiterates that "physical integrity is an essential part of the private life protected by Article 8".
[2] ECtHR, V.C. v. Slovakia, Judgment of 8 November 2011, Application No. 18968/07.
[3] Idem.

clear procedures regarding consent and mechanisms for effective monitoring of their compliance.

In doctrine, the case of V.C. v. Slovakia is often cited as a benchmark in the protection of the right to physical integrity, being a clear expression of the need to correlate the positive obligations of the state with the standards of dignity and autonomy of the patient (Hodson, 2011, pp. 194–198). Moreover, this precedent paved the way for other similar cases (I.G. v. Slovakia, N.B. v. Slovakia) that consolidated the ECHR jurisprudence in favor of protecting vulnerable categories against abusive medical interventions.

B. Article 8 and patient autonomy

Article 8 of the European Convention on Human Rights enshrines the right of everyone to respect for their private and family life. This protection extends to the physical and mental integrity of the individual, establishing a sphere of personal autonomy that includes the right to decide freely about their own body and the medical treatment that is applied to them[1].

In a medical context, patient autonomy is essential and implicitly requires free, informed and valid consent before any intervention. Informed consent is not only an ethical or medical requirement, but has a strong legal basis in European human rights law. The ECtHR has established that the lack of informed consent in the case of a medical intervention constitutes an interference with the individual's private life and may engage the State's responsibility under Article 8 of the Convention[2].

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[1] ECtHR, Pretty v. United Kingdom, Judgment of 29 April 2002, §61: "Private life includes the physical and mental integrity of a person."

[2] ECtHR, Glass v. United Kingdom, Judgment of 9 March 2004, Application No. 61827/00, §70: medical intervention on a minor without the consent of the legal representative, in the absence of urgency, constitutes an interference within the meaning of Article 8.

The Court has stressed in numerous cases that respect for human dignity and the patient's decision-making autonomy must prevail even in situations of medical emergency. Thus, in the case of Tysiąc v. Poland, the Court found that the lack of a clear and effective legislative framework enabling a woman to decide in an informed manner on the termination of a pregnancy, in conditions of medical risk, constituted a violation of Article 8 of the ECHR[1]. Similarly, in the case of Jehová's Witnesses of Moscow v. Russia, the imposition of transfusion treatment against the patient's will, clearly expressed on religious grounds, was considered a violation of personal autonomy[2].

Informed consent requires compliance with several conditions: (a) the patient's information about the nature, purpose and risks of the procedure; (b) the existence of a reasonable period of reflection; (c) real freedom of choice, without direct or indirect constraints; and (d) the patient's mental capacity to make the decision (Hodson, 2011, p. 201-205). Any deviation from these requirements renders the consent invalid and, implicitly, may lead to a finding of unjustified interference within the meaning of Article 8.

In addition to the negative dimension (prohibition of unauthorized interventions), Article 8 also imposes positive obligations on the state: to ensure a coherent regulatory framework, to train medical personnel in the field of ethics and medical communication, as well as to establish control and remedial mechanisms for situations in which consent is not respected (Palmer, 2007, p. 145). Failure to meet these obligations may incur state liability, even if the actual interference comes from a private actor (e.g. a clinic or a doctor in a public hospital).

Therefore, the patient's right to decide on his own person is a fundamental expression of human dignity, and his protection must be guaranteed not only formally, but also in practice. This requires a paradigm shift in the doctor-patient relationship: from a paternalistic approach, in

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[1] ECtHR, Tysiąc v. Poland, Judgment of 20 March 2007, Application No. 5410/03.

[2] ECtHR, Jehová's Witnesses of Moscow v. Russia, Judgment of 10 June 2010, Application No. 302/02.

which the doctor "knows what's best", to a partnership approach, in which the patient is recognized as the full holder of his or her personal rights.

4. The standard of proof and the demarcation from no-fault medical error

In civil law and in medical malpractice litigation, establishing liability involves, among other things, proving the existence of an unlawful act, damage and the causal link between them. A central element of this approach is the applicable standard of proof, namely the level and quality of evidence required to hold the doctor or medical facility liable. At the same time, a clear distinction between culpable medical error (which entails liability) and non-culpable error (acceptable in the context of the complexity of the medical act) is essential.

A. Standard of proof in malpractice cases

The standard of proof in civil matters is usually that of the "preponderance of the evidence", unlike in criminal law, where proof beyond any reasonable doubt is required (Beleiu, 2012, p. 401). Thus, the plaintiff must demonstrate that it is more likely than not that the imputed medical act caused the damage suffered. This standard allows for a balance between protecting patients and avoiding excessive liability of medical personnel, given the uncertainties inherent in medical practice.

The European Court of Human Rights (ECHR) has accepted this approach in multiple cases, showing that national courts must assess evidence in a way that ensures procedural fairness, without imposing burdens of proof that are impossible for patients to meet[1]. In the case of Šilih v. Slovenia, the Court noted that, in the context of systemic deficiencies in the medical sector, the burden of proof must not become an insurmountable barrier to effective access to justice[2].

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[1] ECHR, Mehmet Şentürk and Bekir Şentürk v. Turkey, Judgment of 9 April 2013, Application no. 13423/09, § 100.

[2] ECHR, Šilih v. Slovenia, Grand Chamber, Judgment of 9 April 2009, Application no. 71463/01, § 196.

B. Non-culpable medical error: definition and applicability

In doctrine and case law, a distinction has been drawn between culpable error (which arises from negligence, imprudence or incompetence) and non-culpable error (which occurs despite compliance with professional protocols and standards). The latter is considered inherent to the medical act, since medicine is not an exact science, but a probabilistic practice, in which decisions are often made under conditions of uncertainty (Cornel, 2020, p. 179).

Courts, including those in Romania, have accepted that the doctor cannot be held liable for an undesirable outcome if he has complied with the applicable therapeutic protocol, acted with the required diligence and informed the patient appropriately. In this regard, the French Court of Cassation has ruled that "there is no fault when the doctor applied the treatment according to the medical knowledge admitted at the time of the intervention"[1].

C. Criteria for delimiting between culpable and non-culpable error

To determine whether an error is culpable or not, the courts resort to forensic expertise and the analysis of the following factors:

- Compliance with the medical protocols in force at the time of the intervention;
- The degree of predictability of the risk produced;
- The quality of informed consent (including whether the specific risks have been explained to the patient);
- The degree of urgency of the intervention and the specific conditions of its implementation;
- The level of experience and professional qualification of the doctor involved[2].

It should be emphasized that professional responsibility does not imply a guarantee of the success of the medical act, but only an obligation of means, not of result, with the exception of standardized procedures with

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[1] Cass. civ. 1re, 14 Nov. 2006, Bull. civ. I, no. 509.

[2] See also Civil Decision no. 1157/2019 of the Bucharest Court of Appeal (portal.just.ro).

minimal risks. Thus, a therapeutic failure does not automatically imply malpractice.

D. The role of expertise and evidentiary burden

In judicial practice, medical expertise is the main means of proof in malpractice cases. However, the transformation of the expert into a "technical judge" must be avoided, since the legal analysis of medical negligence remains the prerogative of the court. In this regard, the Council of Europe emphasized in a 2021 report that member states must ensure real procedural fairness, including through fair access to expertise and by avoiding disproportion between the parties[1].

5. Liability in Romanian law - harmonization with the case law of the ECHR

Legal liability for malpractice in Romanian law is an area that is constantly evolving, amid the pressures generated by the international obligations assumed by Romania as a member state of the Council of Europe. Thus, the national system regulating tortious civil liability and professional liability in the medical field must be interpreted and applied in accordance with the case law of the European Court of Human Rights (ECHR), in particular with regard to Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life).

A. The domestic regulatory framework regarding civil liability in cases of malpractice

Law no. 95/2006 on the healthcare reform, together with the Romanian Civil Code, regulates the civil liability of medical personnel, healthcare units and other actors involved in the medical act. According to art. 653 para. (1) of Law no. 95/2006, malpractice is "professional error

[1] Council of Europe, Resolution CM/Res(2021)1 on patient-centred care and person-centred health care, Strasbourg, 2021.

committed in the exercise of a medical or medical-pharmaceutical act, generating damage to the patient"[1]. This regulation aligns with the classic doctrine of tortious civil liability, based on the existence of the following elements: unlawful act, damage, fault and causal link (Pop, 2015, p. 165).

However, the exclusively internal approach to these elements is insufficient when the state's obligation to respect and effectively guarantee the fundamental rights enshrined in the European Convention on Human Rights intervenes.

B. ECHR requirements: negative and positive obligations of the state

The ECHR has consistently ruled that states parties to the Convention have negative obligations not to infringe fundamental rights, but also positive obligations to take measures to effectively protect these rights. In the case of a medical act, this implies ensuring a clear, efficient and accessible legal framework for investigating and sanctioning cases of malpractice (Abdelgawad, 2008, p. 32).

Thus, in the case of Calvelli and Ciglio v. Italy, the Court reaffirmed that, in the event of a death occurring during a medical intervention, the State must ensure an effective investigation that allows for the establishment of responsibilities, without being limited to civil liability[2]. Similarly, in Mehmet Şentürk and Bekir Şentürk v. Turkey, the failure to ensure the patient's access to urgent medical care was considered a breach of the State's obligation to protect life[3].

C. Harmonization of Romanian case law with ECHR standards

In Romania, courts are obliged, under art. 20 para. (2) of the Constitution, to give priority to international human rights regulations in the event of a conflict with domestic legislation. Specifically, this provision requires courts to interpret domestic rules on liability in the light of ECHR case law.

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[1] Law no. 95/2006, art. 653 para. (1).
[2] ECtHR, Calvelli and Ciglio v. Italy, Judgment of 17 January 2002, §49.
[3] ECtHR, Mehmet Şentürk and Bekir Şentürk v. Turkey, Judgment of 9 April 2013, §100.

Recent national jurisprudence indicates a trend of convergence, especially with regard to:

- The need for an effective mechanism for investigating cases of malpractice (not only civil, but also disciplinary and, sometimes, criminal)[1];
- The recognition of informed consent as an essential element for the validity of the medical act, in line with the ECHR jurisprudence on Article 8[2];
- The interpretation of the doctor's duty of care not only in terms of professional standards, but also in the context of the patient's fundamental rights (e.g. the right to life or dignity) (Dincă, 2017, pp. 25-40).

However, difficulties persist in the effective application of these principles, especially with regard to the independence of forensic examinations and the effective access of patients to justice, in cases where the evidence is complex and asymmetric.

D. Recommendations for strengthening harmonisation

For full harmonisation with the ECHR jurisprudence, Romanian civil and administrative liability law in case of malpractice should include:

- Independent and efficient procedures for investigating cases of malpractice, even in the absence of a criminal complaint;
- Clear regulations on the state's obligation to prevent systemic risks in the healthcare system (e.g. lack of facilities, underqualified staff, bureaucracy);
- Strengthening the professional training of healthcare professionals in the field of patient rights.

Reviewing the procedures regarding evidence and the burden of proof in malpractice litigation, so that they are not excessively burdensome for patients.

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[1] Decision no. 792/2022, Bucharest Court of Appeal, 6th Civil Section.

[2] ECtHR, V.C. v. Slovakia, Judgment of 8 November 2011, Application No. 18968/07.

Conclusions

The analysis of liability for malpractice from the perspective of European law, especially through the case law of the European Court of Human Rights (ECHR), highlights a significant expansion of the guarantees granted to patients in relation to the medical act, in a framework that goes beyond the traditional limits of national civil law. The right to life (art. 2 ECHR) and the right to physical and mental integrity (art. 8 ECHR) can no longer be analyzed exclusively from the perspective of the negative obligations of the state, but increasingly imply positive obligations of regulation, prevention, investigation and sanction.

The case law of the ECHR imposes an integrated vision of liability for malpractice, in which the individual responsibility of the medical professional overlaps with the systemic responsibility of the state for administrative, institutional and legislative deficiencies that can seriously affect the fundamental rights of patients. Thus, the state is called upon not only to be held accountable for errors committed within the healthcare system, but also to adopt effective measures to prevent such violations and to provide adequate remedies.

In conclusion, in the context of convergence between domestic and European law, the standards established by the ECHR must become interpretative benchmarks for national authorities, including in medical malpractice litigation. This requires not only a formal application of the provisions of the Convention, but a structural adaptation of domestic legal norms and practices in order to effectively guarantee patients' rights, while protecting the fair balance between the public interest and individual rights in such a complex area as healthcare.

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