



## Roche v. United Kingdom

Roche v. U.K., App. No. 32555/96, 42 Eur. H.R. Rep. 30 (2006).

**Country:** United Kingdom

**Region:** Europe

**Year:** 2005

**Court:**

**Health Topics:** Chronic and noncommunicable diseases, Health care and health services, Health information, Occupational health

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of expression, Right of access to information, Right to due process/fair trial, Right to health, Right to privacy, Right to property

### Facts

Applicant, a United Kingdom national who had served in the British Army, maintains that his health problems, which left him handicapped, were the result of his participation in mustard and nerve gas tests conducted while he served in the British Armed Forces at the Chemical and Biological Defense Establishment (CBDE) at Porton Down Barracks (England) in 1962 and 1963. His efforts to obtain records that would enable him to assess any risks he had been exposed to because of the tests failed. In fact, a tribunal concluded that there was "no evidence to link [the applicant's] exposure to either gas with his present condition." He brought then brought this application, alleging a violation of Article 8 (right to respect for his private life), among others, when he was denied access to his medical records.

### Decision and Reasoning

The Court held that U.K. violated applicant's Article 8 rights based on the evidence that the United Kingdom had not fulfilled its positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant and appropriate information which would allow him to assess any risk to which he had been exposed during his participation in the tests. The court held there were no other violations.

### Decision Excerpts

"166.... As to the 1998 Scheme, the Court recalled the difficulties experienced by the authorities, even in a judicial context before the PAT, in providing records under the Rule 6 order of the President of the PAT. Even taking into account only the period following the making of the Rule 6 order by the President in February 2001, the disclosure has been piecemeal and, over four years later, disclosure remained unfinished. Indeed, the PAT described as "disquieting" the difficulties experienced by the applicant in obtaining records. Those demonstrated difficulties in making comprehensive and structured disclosure to date undermined any suggestion that an individual's attendance at Porton Down to review records retained there could lead to the provision of all relevant and appropriate information to that person. It was undoubtedly the case that certain records were, given their age and nature, somewhat dispersed so that the location of all relevant records was, and could still be, difficult. However, it was equally the case that the absence of any obligation to disclose and inform facilitated this dispersal of records and undermined an individual's right to obtain the relevant and appropriate disclosure.

Finally, the Porton Down Volunteers Medical Assessment Programme involved only 111 participants and no control group, whereas 3000 service personnel had participated in nerve gas tests and 6000 in mustard gas tests, with some having been involved in both types of test. The full-scale epidemiological study did not begin until 2003 and had not yet been completed.

167. In such circumstances, the Court considered that the United Kingdom had not fulfilled its positive obligation to provide an effective and accessible procedure enabling the applicant to have access to all relevant and appropriate information which would allow him to assess any risk to which he had been exposed during his participation in the tests. There had therefore been a violation of Article 8." Page 52-53.