



Forcing a drink-driving suspect to have a urine test via a catheter was inhuman and degrading

In today's **Chamber judgment**¹ in the case of **R.S. v. Hungary** (application no. 65290/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights.

The case concerned the applicant being forced to take a urine test via a catheter on suspicion of his being under the influence of alcohol or drugs while driving.

The Court found that the authorities had subjected the applicant to a serious interference with his physical and mental integrity, against his will, without it even having been necessary seeing as a blood test had also been carried out to find out whether he had been intoxicated.

Principal facts

The applicant, R.S., is a Hungarian national who was born in 1980 and lives in Püspökladány (Hungary).

In March 2010 the applicant was involved in a fight outside a nightclub. When stopped later that night by the police in his car, he refused to take a breathalyser test and was arrested for questioning. He was taken to the hospital for blood and urine tests in order to determine whether he was under the influence of drink or drugs.

At the hospital the applicant told the doctor on duty that he could not urinate. Police officers therefore asked the doctor to carry out a catheterisation. The procedure was carried out, as was a blood test.

The applicant subsequently lodged complaints with the authorities about his treatment by the police. The investigating authorities questioned the applicant, the police officers, a driver on duty at the hospital and medical staff. While all witnesses agreed that the applicant had been intoxicated, two conflicting versions of events emerged.

On the one hand, the police alleged that the applicant had consented to having the catheter inserted, voluntarily removed his clothes, and did not protest until the procedure had started. His aggressive behaviour had then made it necessary to pin him down and handcuff him in order for the procedure to be completed.

The applicant, on the other hand, stated that he never consented to the catheter. Furthermore, he alleged that the police had used leg restraints during the incident.

The authorities dismissed his complaints, accepting the police officers' version of events that he had agreed to the catheterisation and had only been strapped down to prevent injuries.

The applicant brought judicial review proceedings, which were ultimately unsuccessful in July 2014.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In the meantime, in November 2011, he had been convicted of drink-driving and sentenced to a one year and nine months' suspended prison sentence.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 8 (right to respect for private life) of the European Convention on Human Rights, the applicant complained that the police's forcible taking of a urine sample from him had constituted inhuman and degrading treatment and a serious intrusion into his physical integrity.

The application was lodged with the European Court of Human Rights on 26 September 2014.

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

Ganna **Yudkivska** (Ukraine), *President*,
Paulo **Pinto de Albuquerque** (Portugal),
Egidijus **Kūris** (Lithuania),
Carlo **Ranzoni** (Liechtenstein),
Georges **Ravarani** (Luxembourg),
Marko **Bošnjak** (Slovenia),
Péter **Paczolay** (Hungary),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

First, the Court pointed out the domestic law and practice on the use of catheterisation to obtain evidence of involvement in an offence was neither clear nor consistent.

It then went on to decide that the applicant had not given his free and informed consent throughout the catheterisation. Although the authorities had looked into his allegations, they had decided to give preference to the police officers' version of events, without taking into account that the alleged consent had been given while under the influence of alcohol. Indeed, the Court doubted whether the applicant had in practice had any other choice but to accept the intervention, given that he had been in the complete control of police officers.

In any event, the applicant had had the right under domestic law to withdraw his initial consent at any time. He had clearly done so, as evidenced by the fact that he had resisted and had had to be pinned down by the police officers to complete the procedure.

Furthermore, there had been no medical reason for the procedure, which had been intended to retrieve evidence. That in turn had not even been necessary because the police officers had also taken a blood sample.

Nor was there anything to show that the police officers had paid any consideration to the risk the procedure could have entailed for the applicant.

The authorities had therefore subjected him to a serious interference with his physical and mental integrity, against his will. The manner in which it had been carried out had been liable to arouse in him feelings of insecurity, anguish and stress that had been capable of humiliating and debasing him.

He had therefore been caused both physical pain and mental suffering, which had amounted to inhuman and degrading treatment, in breach of Article 3.

Given that conclusion, the Court held that there was no need to examine separately the admissibility or merits of the complaint under Article 8 of the Convention.

Just satisfaction (Article 41)

The Court held that Hungary was to pay the applicant 9,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,080 in respect of costs and expenses.

The judgment is available only in English.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

Somi Nikol (tel: + 33 3 90 21 64 25)

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