



## ZH v. The Commissioner of Police for the Metropolis

[2012] EWHC 604 (QB)

**Country:** United Kingdom

**Region:** Europe

**Year:** 2012

**Court:** Central London County Court

**Health Topics:** Disabilities, Mental health

**Human Rights:** Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Right to liberty and security of person, Right to privacy

### Facts

At the time of the events involved in the case, ZH was a sixteen-year-old boy who suffered from autism and epilepsy. ZH was taken on a pool visit where he became fixated by the water. His carers and the pool staff could not touch him because he would have reacted adversely. The pool manager called the police, who arrived at the pool. One officer touched ZH's back, and ZH reacted by jumping into the water immediately. Lifeguards lifted ZH out of the pool, where the police officers restrained him on the ground, handcuffed him, and brought him out of the pool in a police van, where he remained until released to his carers. ZH suffered psychological trauma and an exacerbation of his epileptic seizures as a result of the incident. Psychiatric evidence showed that he likely suffered psychological suffering and viewed the police restraint as an unwarranted attack on his person.

ZH made claims of assault and battery, false imprisonment, and unlawful disability discrimination under the Disability Discrimination Act 1995 (DDA). He also claimed breaches of Articles 3, 5 and 8 of the Human Rights Act and the European Convention of Human Rights (‘Convention’), which protect the right to be free from inhuman or degrading treatment, the right to liberty, and the right privacy, respectively.

### Decision and Reasoning

The Court held that ZH had been subjected to assault and battery and false imprisonment. The Court reasoned that, pursuant to the Mental Capacity Act, the police should have made a calm assessment of the situation by consulting with ZH's carers. There was no immediate risk of harm to ZH, and the police actions were not proportionate to the circumstances. Moreover, the officers had not considered whether it was possible to place ZH in one of the rooms available at the pool, rather than taking him to the police van.

The Court further held that ZH had suffered discrimination under the Disability Discrimination Act, which prohibited public authorities from discriminating against a disabled person when carrying out their functions. The Court reasoned that, under the Act, the police had a duty to take reasonable steps to change their policy of using force when such a policy could adversely affect a disabled person. The police could have taken reasonable steps to avoid harming ZH, including talking to ZH's carers to determine the best way of communicating with ZH, allowing the carers to communicate with ZH, or allowing ZH to move away from the pool at his own pace.

As to the Human Rights Act and the Convention, the Court held that there had been breached of Articles 3, 5, and 8 when the duration of the force and restraint, the injury sustained by ZH, and ZH's age, health, and vulnerability were taken into account. Article 3 was breached because, even if there was no intention to humiliate the disabled person, the treatment amounted to inhuman or degrading treatment when ZH was physically handled, handcuffed, and forced into a police van. Article 5 was breached because, even if the acts of the police were well intentioned, they involved the application of forcible restraint for a significant period of time of an autistic, epileptic young man, and such restraint was not lawful or justified. Regarding Article 8, the interference with ZH's private life was not deemed proportional in the circumstances.

### Decision Excerpts

‘When the duration of the force and restraint, injury sustained, and age, health and vulnerability of ZH are taken into account I am satisfied that there has been a breach of Article 3. The minimum level of severity has been attained when the whole period of restraint is taken into account. It is not just the application of

handcuffs and leg restraints which has to be considered but the whole time when restraint on the poolside and in the van occurred which has to be considered. It is clear that there was no intended humiliation in this case as there was in Archip but nevertheless the treatment of ZH amounts to inhuman or degrading treatment.â€• Para. 144.

â€œThe nature and duration of the restraint lead me to the conclusion that there was a deprivation of liberty, not merely a restriction on movement on the facts of this case. Furthermore, even though I am of the view that the purpose and intention of the police (namely at least in part to protect ZHâ€™s safety) is relevant to the consideration of the application of Article 5, I am nevertheless satisfied that even when that is taken into account, a deprivation of liberty has occurred. The actions of the police were in general well intentioned but they involved the application of forcible restraint for a significant period of time of an autistic epileptic young man when such restraint was in the circumstances hasty, ill-informed and damaging to ZH. I have found that the restraint was neither lawful nor justified. Even though the period may have been shorter than that in Gillan v United Kingdom 2010 APP No 4158/05, it was in my judgment sufficient in the circumstances to amount to a deprivation of liberty under Article 5.â€• Para. 145.

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