



## Elberte v. Latvia

ECHR 005 (2015)

**Country:** Latvia

**Region:** Europe

**Year:** 2015

**Court:** The European Court of Human Rights

**Health Topics:** Health care and health services, Health information, Hospitals, Informed consent, Medical malpractice

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to family life, Right to privacy

### Facts

The applicant's husband died in a car accident. She saw her husband's body when he was transported from the Forensic department. His legs were tied and he was buried like that. After two years, criminal inquiry into illegal removal of organs and tissues were ensued by the Police. The applicant was told that her husband was a victim of this illegal act and the Forensic Centre experts had removed tissues from his husband's body and was sent to a pharmaceutical company to be modified into bio implants. After three years, the Public Prosecutor decided to discontinue the inquiry and stated that the Latvian system had a provision of presumed consent as opposed to informed consent. Later that year, superior prosecuting authorities stated that the inquiry should not have been suspended and established that the Forensic department had violated lawful provisions. During the second inquiry, it was established that tissue was removed from more than 150 people in exchange of equipment, instruments and computer systems. The inquiry was dropped again and it was stated that the forensic experts were not under any obligation to inform anyone.

The applicant alleged that there had been a violation Article 3 (prohibition of inhuman and degrading treatment), Article 8 (right to respect for private and family life) and Article 13 (right to an effective remedy) as the tissue had been removed from her husband's body without her consent. Further the tying up of the body caused her grave emotional suffering. She further stated that the domestic law could have several interpretations, which affect her right under the convention.

### Decision and Reasoning

The Court held that there had been violation of Article 8 of the Convention as the Latvian law was not drafted with precision, lacked clarity and did not provide safeguards against arbitrariness.

The Court further stated that there had been a violation of Article 3 as the tissues were removed without the consent of the applicant and it was only much later that she found out about the same. The Court also considered the fact that she was made to bury her husband's body with his legs ties up caused her great emotional suffering. The Court stated that all the facts led to a suffering, which went beyond the trauma that one suffers due to a loss of a close relation. The Court stated that even after the death of a person, the body has to be treated with respect.

The Court did not consider Article 13 separately.

### Decision Excerpts

As to whether the domestic law afforded adequate legal protection against arbitrariness, the Court notes that the removal of tissue in the present case was not an isolated act as in the above-cited Petrova case, but was carried out under a State-approved agreement with a pharmaceutical company abroad; removals had been carried out from a large number of people (see paragraphs 13, 14 and 26 above). In such circumstances it is all the more important that adequate mechanisms are put in place to counterbalance the wide margin of discretion conferred on the experts to carry out removals on their own initiative (see paragraph 15), but this was not done (see also the international material cited in paragraphs 34 et seq. above). In response to the Government's argument that nothing had prevented the applicant from expressing her wishes in relation to tissue removal, the Court notes the lack of any administrative or legal regulation in this regard. The applicant was, accordingly, unable to foresee what was expected from her if she wished to exercise that right. (Para.

“The Court considers that the applicant’s suffering had a dimension and character which went beyond the suffering inflicted by grief following the death of a close family member. The Court has already found a violation of Article 8 of the Convention because, as the closest relative, the applicant had a right to express consent or refusal in relation to tissue removal, but the corresponding obligation or margin of discretion on the part of domestic authorities was not clearly established by Latvian law and there were no administrative or legal regulations in this respect (see paragraphs 109-116 above)...These facts demonstrate the manner in which the domestic authorities dealt with the complaints brought to their attention and their disregard vis-à-vis the victims of these acts and their close relatives, including the applicant. These circumstances contributed to feelings of helplessness on the part of the applicant in the face of a breach of her personal rights relating to a very sensitive aspect of her private life, namely giving consent or refusal in relation to tissue removal, and were coupled with the impossibility of obtaining any redress.” (Para. 140)

“The applicant’s suffering was further aggravated by the fact that she was not informed about what exactly had been done in the Forensic Centre. She was not informed about the tissue removal and, having discovered that her deceased husband’s legs were tied together on the day of the funeral, assumed this to be a consequence of the car accident. Two years later she was informed about the pending criminal inquiry and the potentially unlawful acts in respect of her deceased husband’s body. It is clear that at this point the applicant experienced particular anguish and realised that her husband might possibly have been buried with his legs tied together as a consequence of the acts that had been carried out in the Forensic Centre on his body. The Government’s argument that this was not proved “beyond reasonable doubt” is misplaced, since the applicant’s complaint relates to the anguish resulting from precisely that uncertainty regarding the acts carried out at the Forensic Centre in respect of her deceased husband’s body.” (Para 141)

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