



## DvorìĀal•cìĀek v. Czech Republic

ECHR 328 (2014)

**Country:**

**Region:** Europe

**Year:** 2014

**Court:** 2014

### Facts

This case is concerned with the conditions surrounding the compulsory admission of the applicant, Mr. DvorìĀal•cìĀek, to a psychiatric hospital to undergo, what the European Court of Human Rights described as, â€œprotective sexological treatmentâ€•.

The applicant was diagnosed with Wilsonâ€™s disease in 1999 and was also found to be afflicted with hebephilia owing to which he was prosecuted on several occasions for offenses against minors including indecent assault, soliciting for sexual favors, and sexual abuse. He was confined to a psychiatric hospital and ordered to undergo anti-androgen treatment in addition to protective sexological treatment, for which he initially agreed to. Subsequently, he went back on his decision and submitted that his illness had worsened due to mental problems caused by fear of the hospital, castration, humiliation, and loss of dignity and has also impeded his sex life with his girlfriend. His request for undergoing psychotherapy was acceded to by the courts.

In 2008 Mr. DvorìĀal•cìĀek had brought an unsuccessful action concerning the conditions of his confinement and lack of proper treatment in the SÌĀternberk hospital. The criminal complaint lodged by the applicant for the protection of personality rights was also dismissed. Ultimately, in 2013, an application was lodged with the ECHR which relied on Article 3 of the European convention, which prohibits torture. The applicant alleged that the conditions of the protective treatment which he had undergone at the psychiatric hospital, the failure to provide reasonable accommodation for his disability and the subjection to forcible medical treatment had amounted to breach of Article 3. The applicant submitted that the lack of effective investigation into the matter has violated his Article 13 which give the Right of Access to Effective Remedy.

### Decision and Reasoning

The Court held that the protective sexological treatment imposed on the applicant had been intended to protect him, therefore, cannot be constituted as a â€œpunishmentâ€• within the meaning of Article 3. The Court held that there was no violation of Article 3 with regard to the applicantâ€™s detention in a psychiatric hospital as it had been justified by the state of his health and conduct.

With regard to the second and third allegations of forcible medical treatment and administration of anti-androgen treatment, the court held that in the Czech Republic, for patients who were subject to protective treatment ordered by the court, no consent was required from the patient. The court also held that the anti-androgen treatment had been a â€œtherapeutic necessityâ€• and that it had not been established that the applicant had been pressured into undergoing it. The Court noted that that there was no evidence that the physicians had failed in their duty to protect his health, as they had made a good faith effort to tailor his treatment to conform with his concerns and provide reasonable accommodations. However, the Court considered that a specific form setting out his consent and informing him of the benefits and side-effects of the treatment and his right to withdraw his original consent at any stage would have clarified the situation, but that the failure to use such a form was insufficient for a breach of Article 3.

The Court also held that since the applicant was able to secure an assessment of acts by the hospital staff which he had considered illegal, the state or the police cannot be accused of conducting ineffective investigation and consequently there has been no violation of Article 3, hence making the examination of the applicantâ€™s complaint separately under Article 13 unnecessary.

### Decision Excerpts

As regards Mr. Dvořák's complaint that the hospital had failed to provide him with appropriate psychotherapy and that he had been subjected to forcible medicinal treatment and psychological pressure, the primary question was whether or not the applicant had consented to the anti-androgen treatment. The Court, like the Czech Ombudsman and the CPT (the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment), noted that the relevant legal basis for such matters in the Czech Republic was rather vague and could be interpreted as meaning that no consent was needed from patients who were subject to protective treatment ordered by a court. Page 3

the Court nonetheless considered that a specific form setting out his consent and informing him of the benefits and side-effects of the treatment and his right to withdraw his original consent at any stage would have clarified the situation. However, even though such a procedure would have reinforced legal certainty for all concerned, the failure to use such a form was insufficient for a breach of Article 3. Therefore, the Court could not establish beyond a reasonable doubt that Mr. Dvořák had been subjected to forcible medicinal treatment. There had therefore been no violation of Article 3. Page 3