



## Herczegfalvy v. Austria

App. No. 10533/83, Eur. Ct. H.R. 58 (1992).

**Country:** Austria

**Region:** Europe

**Year:** 1992

**Court:** European Commission on Human Rights European Commission of Human Rights

**Health Topics:** Diet and nutrition, Mental health, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Freedom of expression, Right of access to information, Right to family life, Right to liberty and security of person

### Facts

Applicant, a Hungarian national, served a prison sentence during which he assaulted prison officers, other detainees and threatened judges. He served a six-month pre-detention period in a facility for mentally ill offenders where he remained until his conditional release. He claims that his rights pursuant to Article 5 of the European Convention of Human Rights were violated, alleging that his detention was unlawful (5-1), complaining that it was unreasonably long (5-3), and arguing that he could not adequately appeal the lawfulness of his detention (5-4).

Further, he claims a breach of Article 3 (prohibition of torture) regarding the conditions of his detention where he received forced medical care, was forcibly administered food and was with handcuffs to a security bed over the course of weeks. The applicant complained that administering food and medical treatment to him by force, together with refusing to send many of his letters and correspondence amounted to breaches of his rights under Article 8 (right to privacy). Finally, the applicant complained of a breach of Article 13 in that he had not had an effective national remedy in respect of the violations of the Convention complained of.

### Decision and Reasoning

The Court found that in forcefully administering food to the applicant and in imposing treatment on him, the hospital authorities had not violated Article 3, despite recognizing that mentally ill persons remained under the protection of the Convention. Indeed, while the Court expressed concern at the length of time during which the handcuffs and security bed were used, it held that there was insufficient evidence to indicate that medical necessity did not justify the impugned treatment.

Regarding Article 5, the Court found that the decisions of the relevant authorities were lawful (5-1) and the length of the applicant's pre-trial detention had not exceeded the "reasonable time" required by Article 5-3. Further, the Court found a violation of Article 5-4 as the applicant lacked sufficient means to appeal the lawfulness of his detention.

Regarding Article 8, the Court considered that the forced feeding and treatment did not violate the Convention as the hospital authorities were entitled to regard the applicant's psychiatric illness as rendering him entirely incapable of taking decisions for himself. However,, the hospital practice of sending the applicant's letters to his curator for selective dispatch violated Article 8 as this interference had not been "in accordance with the law" within the meaning of Article 8, paragraph 2 because the discretionary power allotted to authorities was overly vague and broad in scope.

Similarly, the restrictions placed upon the applicant's access to information were in breach of Article 10. Just as the Court found that the domestic law did not meet the minimum requirements of "law" within the meaning of Article 8, paragraph 2, a breach of Article 10 was found upon similar grounds.

In view of its decisions with respect to Articles 8 and 10, the Court did not consider it necessary to decide whether there had been a breach of Article 13.

### Decision Excerpts

"82. The Court considers that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been

complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3 (art. 3), whose requirements permit of no derogation. The established principles of medicine are admittedly in principle decisive in such cases; as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist."

"91. These very vaguely worded provisions do not specify the scope or conditions of exercise of the discretionary power which was at the origin of the measures complained of. But such specifications appear all the more necessary in the field of detention in psychiatric institutions in that the persons concerned are frequently at the mercy of the medical authorities, so that their correspondence is their only contact with the outside world. Admittedly, as the Court has previously stated, it would scarcely be possible to formulate a law to cover every eventuality (see, inter alia, the Silver and Others judgment cited above, Series A no. 61, p. 33, para. 88). For all that, in the absence of any detail at all as to the kind of restrictions permitted or their purpose, duration and extent or the arrangements for their review, the above provisions do not offer the minimum degree of protection against arbitrariness required by the rule of law in a democratic society. According to the information provided to the Court, there has been no case-law to remedy this state of affairs. There has therefore been a violation of Article 8 (art. 8) of the Convention."

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