



## Enhorn v. Sweden

[2005] E.C.H.R. 56529/00

**Country:** Sweden

**Region:** Europe

**Year:** 2005

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

**Health Topics:** Child and adolescent health, Controlled substances, Health care and health services, Health information, HIV/AIDS, Hospitals, Infectious diseases, Mental health, Public safety, Sexual and reproductive health

**Human Rights:** Right to liberty and security of person

### Facts

The Applicant was an HIV-positive man who had sex with men. He had transmitted HIV to another, younger man through a sexual encounter prior to his diagnosis. He was subsequently instructed by the county medical officer, among other things, not to have sexual intercourse without first disclosing to his partner that he was HIV-positive, to use a condom, and not to consume large amounts of alcohol. The Applicant failed to appear for several scheduled medical appointments. The county medical officer petitioned the county Administrative Court to order that the Applicant be compulsorily confined in a hospital for up to three months, pursuant to the 1988 Infectious Diseases Act. The county medical officer and a specialist in psychiatry testified that the Applicant was at risk of transmitting HIV due to his refusal to modify his behaviours and extensive alcohol abuse. The Administrative Court found that the Applicant had failed to comply with the measures prescribed by the county medical officer and ordered the Applicant to be compulsorily confined in a hospital for up to three months. The Applicant's confinement was repeatedly prolonged every six months. The order of confinement was in force for a period of almost seven years, during which time the Applicant absconded on multiple occasions for months at a time. His actual confinement lasted for one and a half years in total.

The Applicant claimed his compulsory confinement violated his right to liberty and security of person in article 5 of the European Convention on Human Rights (the Convention). The Government argued that the Applicant's confinement was lawful pursuant to article 5, section 1(b) and (e) of the Convention, which allow for the detention of a person "for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law" and "for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants."

### Decision and Reasoning

The Court first noted that the parties agreed that the compulsory isolation orders and the Applicant's involuntary confinement in a hospital amounted to a "deprivation of liberty" under article 5 of the Convention. The Court next stated that article 5, section 1(e) of the Convention, which allows for the detention of a person in order to prevent the spread of an infectious disease, was applicable. The Court held that where a deprivation of liberty is concerned, the law under which the person is detained must be clearly defined and sufficiently accessible to allow the person to foresee the consequences of a given action. The detention must also be free from arbitrariness and in accordance with the principle of proportionality. It is therefore justified only where "less severe measures have been considered and found to be insufficient to safeguard the individual or the public interest." The Court next held that the "essential criteria" when determining the lawfulness of the detention of a person "for the prevention of the spreading of infectious diseases" are (1) "whether the spreading of the infectious disease is dangerous to public health or safety;" and (2) "whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest." The Court held that it was undisputed that the HIV virus is dangerous to public health and safety. The Court next stated that the Government had not provided any examples of less severe measures, aside from confinement, which were considered and deemed insufficient to safeguard public interest. The Court thus held that because no less severe measures had been considered, the compulsory confinement of the Applicant was not the last resort to prevent spread of the HIV virus and that the Government had failed to strike the appropriate balance between public safety and the applicant's right to liberty. Therefore the Applicant's compulsory confinement based on the risk that he may transmit HIV did violate his right to liberty and security of person in article 5 of the European Convention on Human Rights.

## Decision Excerpts

"44. Taking the above principles into account, the Court finds that the essential criteria when assessing the lawfulness of the detention of a person for the prevention of the spreading of infectious diseases are: whether the spreading of the infectious disease is dangerous to public health or safety, and whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest. When these criteria are no longer fulfilled, the basis for the deprivation of liberty ceases to exist.

45. Turning to the instant case, it is undisputed that the first criterion was fulfilled, in that the HIV virus was and is dangerous to public health and safety.

46. It thus remains to be examined whether the applicant's detention could be said to be the last resort in order to prevent the spreading of the virus, because less severe measures had been considered and found to be insufficient to safeguard the public interest."

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"55. In these circumstances, the Court finds that the compulsory isolation of the applicant was not a last resort in order to prevent him from spreading the HIV virus because less severe measures had not been considered and found to be insufficient to safeguard the public interest. Moreover, the Court considers that by extending over a period of almost seven years the order for the applicant's compulsory isolation, with the result that he was placed involuntarily in a hospital for almost one and a half years in total, the authorities failed to strike a fair balance between the need to ensure that the HIV virus did not spread and the applicant's right to liberty."

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