



## Protective sexological treatment in a psychiatric hospital did not amount to ill-treatment

In today's **Chamber judgment**<sup>1</sup> in the case of [Dvořáček v. Czech Republic](#) (application no. 12927/13) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights with regard to the applicant's detention in a psychiatric hospital and the medical treatment administered;

**no violation of Article 3** concerning the investigation into the applicant's allegations of ill-treatment.

The case concerned the conditions surrounding the compulsory admission of the applicant, Mr Dvořáček, to a psychiatric hospital to undergo protective sexological treatment.

The Court found that although most of the restrictions complained of by Mr Dvořáček in relation to his detention had undoubtedly caused him discomfort, they had been justified by his state of health and his conduct.

It also found that, since it could not be established that the applicant had been pressured into undergoing the sexological treatment, the failure to use a specific form setting out Mr Dvořáček's consent was not such as to infringe Article 3, while indicating that such a form would reinforce legal certainty for all concerned.

### Principal facts

The applicant, Mr Karel Dvořáček, is a Czech national who was born in 1971 and lives in Lipová-lázně.

In 1999 Mr Dvořáček was diagnosed with Wilson's disease, a genetic disorder linked to the accumulation of copper in the tissues, with symptoms such as liver disease and neurological and psychological problems. At the time of diagnosis, Mr Dvořáček was beginning to suffer speech and motor problems and was afflicted with hebephilia, a form of paedophilia. Owing to his hebephilia, Mr Dvořáček was prosecuted on several occasions for offences against minors, including indecent assault, soliciting for sexual favours, and sexual abuse. In 2002 he was given a suspended prison sentence and ordered to undergo protective treatment. He was also confined to psychiatric hospital on a number of occasions. On 30 August 2007 the Olomouc District Court ordered him to undergo protective sexological treatment in a hospital instead of the outpatient treatment which the Prague District Court had previously ordered. Mr Dvořáček was confined to the Šternberk psychiatric hospital from 13 November 2007 to 4 September 2008. According to his medical records, during a medical examination on 3 December 2007 Mr Dvořáček had agreed, after an initial refusal, to undergo anti-androgen treatment (using medication to lower his testosterone level). Subsequently, however, he went back on this decision, stating that he preferred outpatient treatment. The applicant submitted that his illness had worsened during his time in hospital, that he had suffered mental problems caused by fear of the hospital, castration, humiliation and loss of dignity, that the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

medicinal treatment had impeded his sex life with his girlfriend and that he wanted to undergo psychotherapy. After a number of medical examinations, the courts acceded to his request.

In 2008 Mr Dvořáček brought an unsuccessful action concerning the conditions of his confinement in the Šternberk hospital. He complained of the lack of appropriate psychotherapy at the hospital and of his anti-androgen treatment, which he claimed to have accepted out of fear of never being allowed out of the hospital, since he had been offered no alternative treatment. He also submitted that he had been put under psychological pressure by the physicians to induce him to undergo surgical castration, and that he had received inadequate antidepressant treatment. His action for the protection of personality rights having been dismissed, Mr Dvořáček lodged a criminal complaint, which was dismissed on the grounds that the courts that had previously examined his case had found that there had been no ill-treatment.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Mr Dvořáček alleged that the conditions of the protective treatment which he had undergone at the Šternberk psychiatric hospital, the failure to provide him with reasonable accommodation for his disability and his subjection to forcible medical treatment had amounted to torture and inhuman and degrading treatment. He also submitted that no effective investigation had ever been conducted into his allegations. Relying on Article 13 (right to an effective remedy), he complained that he had had no access to an effective remedy.

The application was lodged with the European Court of Human Rights on 12 February 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Mark **Villiger** (Liechtenstein), *President*,  
Angelika **Nußberger** (Germany),  
Boštjan M. **Zupančič** (Slovenia),  
Ganna **Yudkivska** (Ukraine),  
Vincent A. **de Gaetano** (Malta),  
Helena **Jäderblom** (Sweden),  
Aleš **Pejchal** (Czech Republic),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### [Article 3](#)

#### *Conditions of detention*

The protective sexological treatment imposed on Mr Dvořáček had been intended to protect him and therefore had not constituted a “punishment” within the meaning of Article 3. The question examined by the Court was therefore whether the conditions to which he had been subjected at the Šternberk psychiatric hospital had in themselves amounted to “inhuman or degrading” treatment.

The Court considered in this regard that although most of the restrictions complained of by Mr Dvořáček had no doubt caused him discomfort, they had been justified by his state of health and his conduct. This prevented the Court from finding that he had suffered an exceptional ordeal tantamount to treatment contrary to Article 3.

#### *Medical treatment*

As regards Mr Dvořáček'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.

Nevertheless, there was nothing to suggest that Mr Dvořáček had been pressured by the hospital concerning the choice of treatment to be administered, and the physicians had not failed in their duty to protect his health, as they had endeavoured to tailor the treatment to each successive difficulty he had raised. The Court acknowledged that Mr Dvořáček had faced a difficult choice between taking anti-androgen drugs with the prospect of earlier release from hospital, and being treated by psychotherapy and sociotherapy with the prospect of longer confinement. However, it noted that anti-androgen treatment had been a therapeutic necessity and that it had not been established that Mr Dvořáček had been pressured into undergoing it.

While there was no reason to cast doubt on the hospital's statements to the effect that Mr Dvořáček had been apprised of the side-effects of the said treatment, 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 reasonable doubt that Mr Dvořáček had been subjected to forcible medicinal treatment. There had therefore been no violation of Article 3.

### [Article 3 \(investigation\)](#)

In the context of the civil action for the protection of personality rights brought by Mr Dvořáček in order to obtain an apology and compensation from the Šternberk psychiatric hospital, he had had an opportunity to secure, within a reasonable period, an assessment of the acts by the hospital staff which he had considered illegal. The State had therefore fulfilled its obligation to conduct an effective investigation, and the police, to whom Mr Dvořáček had complained after losing his civil action, could not be accused of having merely referred to the outcome of the aforementioned proceedings and of failing to initiate a criminal investigation. Consequently, there had been no violation of Article 3 on this point. Having regard to this conclusion, the Court considered it unnecessary to examine Mr Dvořáček's complaint separately under Article 13.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.