



Paraplegic man suffering from severe chronic pain detained for over two and a half years without adequate medication

In today's Chamber judgment in the case [Kupczak v. Poland](#) (application no. 2627/09), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) of the European Convention on Human Rights.

The case concerned the pre-trial detention of a paraplegic man suffering from chronic pain without a functioning morphine pump which he needed for the permanent pumping of morphine into his spine.

Principal facts

The applicant, Edward Kupczak, is a Polish national who was born in 1955 and lives in Kraków (Poland). As a result of a car accident in 1998, he became paraplegic and suffered continuously from severe back pain. To ease the pain, he had a morphine pump implanted in his body which infused morphine directly into his spinal fluids.

The police arrested Mr Kupczak on 26 October 2006 on suspicion of him leading an organised criminal gang dealing mostly with money laundering. A court authorised his custody on the following day. Mr Kupczak asked to be released as his state of health was incompatible with detention. His request was refused.

Between November 2006 and May 2009, Mr Kupczak's detention awaiting trial was continuously extended and his appeals against it dismissed. The Polish courts justified keeping him in custody given a reasonable suspicion against him, the severity of the penalty which might be imposed if he were found guilty and the risk that he could interfere with the proceedings if released.

Shortly after his detention in October 2006, Mr Kupczak's morphine pump ran out of morphine and the authorities had it refilled with a saline solution instead. Throughout his detention, save for one occasion in the autumn of 2007 when the pump was refilled with morphine, the pump was continuously refilled with saline solution instead of the morphine prescribed by his doctors. Mr Kupczak was being given painkillers orally, and at times in the form of injection, to control his pain. Several medical certificates were issued confirming that the pump was not refilled with morphine and other pain-killers were administered mainly orally; however, none of them assessed the adequacy of that treatment.

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

Mr Kupczak complained repeatedly that the pump was not functioning properly and that the pain-killers he was receiving were addictive and not adapted to his needs. Only once, in October 2008 - which was two years after he had been initially detained - did the court examine properly the compatibility of his state of health with detention. The court recommended that there should be a serious examination of the possibility of making a morphine pump available to him in order to avoid his detention becoming inhumane.

The court lifted Mr Kupczak's detention at a hearing on 14 May 2009, as it found that keeping him in detention was no longer necessary. He was released and had a new morphine pump implanted on 13 August 2009 in the Krakow University Hospital.

Complaints, procedure and composition of the Court

Relying, in particular, on Articles 3, 5 (right to liberty and security) and 8 (right to private life), Mr Kupczak complained that his detention awaiting trial had caused him inhuman suffering.

The application was lodged with the European Court of Human Rights on 22 December 2008.

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

Nicolas **Bratza** (the United Kingdom), *President*,
 Lech **Garlicki** (Poland),
 Ljiljana **Mijović** (Bosnia and Herzegovina),
 David Thór **Björgvinsson** (Iceland),
 Ledi **Bianku** (Albania),
 Mihai **Poalelungi** (Moldova),
 Vincent A. **de Gaetano** (Malta), *Judges*,

and also Fatoş **Araci**, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court observed that Mr Kupczak had been suffering from a serious medical condition and that the only way to treat him had been to relieve him from chronic pain. It had not been disputed that his morphine pump had stopped administering pain-killing medication shortly after his arrest in October 2006 and that, throughout his pre-trial detention, it had been pumping saline solution into his spinal fluid instead. Mr Kupczak had also been treated with powerful pain-killers which he took either orally or in the form of an injection.

While on one occasion in late 2007 the pump had apparently been refilled with morphine, the Court was not satisfied that the pump had been working properly for any meaningful period during Mr Kupczak's pre-trial detention. Examining whether he had been fit for detention, the Polish courts had clearly relied on the fact that a morphine pump had been implanted in his body. In addition, starting at the beginning of 2008, the detention authorities had contacted a few hospitals with a view to letting Mr Kupczak have a new pump implanted. However, given that their efforts had not produced any tangible result or improvement in Mr Kupczak's situation, the authorities' actions had not been sufficient.

The Court then emphasised that there had been no obligation on the State to provide Mr Kupczak, or any other detainee, with a free morphine pump. The question raised by Mr

Kupczak's case had been whether a possibility had been given to him to have a morphine pump implanted. The Court found that such a possibility had not been given to him during the entire period of his detention awaiting trial. In particular, despite Mr Kupczak's numerous requests for it, the Polish courts had not ordered an expert medical opinion in order to assess the adequacy of the medical treatment actually provided to him. Only two years after he had been detained, namely in October 2008, had the courts properly examined for the first time the compatibility of his state of health with detention. Apart from that, Mr Kupczak's detention had been extended many times by the Polish courts on formalistic grounds, such as the reasonable suspicion against him, the severity of the penalty that might be imposed if he had been found guilty and the risk that he interfere with the proceedings. The Polish courts had failed to give serious consideration to Mr Kupczak's state of health. Throughout his detention awaiting trial, they had not provided him with the possibility of having a functioning morphine pump, as required by his condition.

Accordingly, there had been a violation of Article 3.

Other articles

The Court held that it was not necessary to examine Mr Kupczak's complaint under Articles 5 and 8.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Poland was to pay Mr Kupczak 10,000 euros (EUR) in respect of non-pecuniary damage.

Separate opinion

Judge **De Gaetano** expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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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.