EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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The continued detention of a prisoner on hunger strike and a decision to force-feed him do not necessarily entail a violation of the Convention

In its decision in the case of Rappaz v. Switzerland (application no. 73175/10), the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.

The applicant, who had been imprisoned for various offences, embarked on a hunger strike in an attempt to secure his release.

In this case the Court held that the Swiss authorities had not failed in their obligation to protect the applicant's life and to provide him with conditions of detention compatible with his state of health.

Principal facts

The applicant, Bernard Rappaz, is a Swiss national who was born in 1953 and lives in Saxon (Switzerland). He is currently serving a prison sentence.

The applicant was sentenced on 22 October 2008 by the Valais Cantonal Court to five years and eight months' imprisonment for various offences. On 20 March 2010 he began serving his sentence in Sion Prison and embarked on a hunger strike, seeking the legalisation of cannabis use and also protesting against his sentence, which in his view was unduly harsh. He applied for release under Article 92 of the Criminal Code, arguing that his health was at risk. On 7 May 2010 the Valais Department of Security ordered his release for 15 days. On his return to prison he resumed his hunger strike.

On 10 June 2010 the applicant was admitted to a Geneva hospital in order to serve his sentence there under medical supervision. He gave prior instructions stating that he did not consent to artificial nutrition or to being given fluids intravenously or through a feeding tube.

On 21 June 2010 the applicant again requested a stay of execution of his sentence on health grounds. He instituted proceedings before the Valais Cantonal Court, alleging that his hunger strike could be assimilated to a suicide risk. After his complaint was dismissed he applied to the Federal Court. The investigating judge placed the applicant under house arrest for the duration of the proceedings, and he ended his hunger strike. On 26 August 2010 the Federal Court dismissed the applicant's application, taking the view that despite the deterioration in his health it was not necessary to interrupt his sentence since he could be force-fed. The Federal Court pointed out that force-feeding could be ordered on the basis of the general law and order clause contained in Article 36 § 1 of the Constitution, which permitted the State to place restrictions on fundamental rights, without a specific legal basis, in order to avert a serious, direct and imminent threat.

Mr Rappaz was recalled to prison on 26 August 2010 and resumed his hunger strike. He was transferred on 21 October 2010 to Geneva University Hospital, where he again indicated his refusal to be forced-fed intravenously or via a feeding tube. He applied once more to be released. The Department of Security refused his application and reminded the doctors treating him of their duty to force-feed him in line with the Federal Court judgment. Mr Rappaz applied to the Valais Cantonal Court, which rejected his application and ordered one of the doctors treating him in the hospital to begin

force-feeding him or face criminal prosecution. The doctor appealed against that decision.

On 23 November 2010 the applicant lodged a third request to have his sentence interrupted, which was rejected by the Department of Security in a decision upheld by the Cantonal Court and by the Federal Court. He then applied to the Strasbourg Court, requesting it to secure his release on the basis of an interim measure. On 15 December the President of the Section to which the case had been allocated refused the request for interim measures and asked the applicant to end his hunger strike for the duration of the proceedings before the Court.

On 24 December 2010 Mr Rappaz ended his hunger strike. The Federal Court struck out of its list the appeal lodged by the doctor who had been ordered to force-feed the applicant. In August 2012 Mr Rappaz was placed under a semi-custodial regime.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 14 December 2010.

Relying on Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant alleged that, in refusing to release him despite his decision to continue his hunger strike, the domestic authorities had placed his life in danger. He complained that the refusal to release him amounted to inhuman and degrading treatment.

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

Guido **Raimondi** (Italy), *President*,
Peer **Lorenzen** (Denmark),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland)*, Judges*,

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

Article 2

The Court observed that the applicant had not died in detention and that his aim in embarking on a hunger strike had been to exert pressure on the domestic authorities rather than to end his life. It reiterated that, where a prisoner began a hunger strike, the potential consequences for his or her state of health would not entail a violation of the Convention if the national authorities had duly examined and dealt with the situation. This was especially so if the person concerned continued to refuse food and drink.

The Court noted that the judicial and administrative authorities had immediately recognised the risk which the hunger strike presented to the applicant's health and even his life, and had taken the necessary and appropriate measures to avert it. During the first set of proceedings before the Federal Court, the judge hearing the case had expressly requested the Department of Security to take all necessary steps to safeguard the applicant's life and physical integrity.

The applicant's condition had given cause for alarm from 26 October 2010 onwards. By that date he had no longer been in prison but had been admitted to the prison wing of Geneva University Hospital, where he had been under the constant supervision of a medical team which kept the authorities informed of any change in the situation. On 3 November 2010 the administrative authority, followed by the Valais Cantonal Court, had ordered that the applicant be force-fed. That order had been issued to the doctor responsible for monitoring Mr Rappaz, in the form of a formal injunction addressed to him personally and with which he had to comply on pain of prosecution.

Hence, in the Court's view, it could not be said that the national authorities had not duly examined and dealt with the situation; likewise, their intention to protect the applicant's life was not open to doubt. The complaint alleging a violation of Article 2 therefore had to be rejected as being manifestly ill-founded.

Article 3

The Court observed that the applicant's physical and psychological suffering had been the direct consequence of his decision not to take food or drink.

As to the two decisions recalling Mr Rappaz to prison, the Court noted that the applicant did not claim to have been suffering from irreversible effects at that time. The Court therefore concluded that his return to prison had not been contrary to Article 3 on either occasion. From the time of his final return to prison, on 26 August 2010, he had received the medical assistance he required in hospital.

With regard to the decision to force-feed the applicant, the Court observed that it had not been established that the decision had been implemented. It further considered that the decision in question had reflected a medical necessity and had been attended by sufficient procedural safeguards. Nor was there any reason to believe that, had the decision been implemented, the manner in which it was put into practice would have been in breach of Article 3.

The force-feeding of the applicant had been ordered when his state of health had begun to give cause for alarm, and was to be carried out by a qualified medical team within a properly equipped hospital setting. While ethical objections had been raised, no objections had been made to the treatment on medical grounds. The Court considered that the decision by the national authorities to force-feed the applicant had been taken on the basis of an established medical need.

In its judgment of 26 August 2010 the Federal Court, in ordering that the applicant be force-fed, had established several principles which henceforth represented the state of Swiss law in this sphere. Even though the force-feeding of the applicant had amounted to an infringement of his freedom of expression, that infringement, which had been atypical and unforeseeable, had been justified in terms of the general law and order clause laid down in the Constitution, which authorised restrictions on fundamental rights by means other than legislation in the event of a direct, imminent and serious threat.

Taking the view that Swiss law as interpreted by the Federal Court allowed the domestic authorities to order the force-feeding of the applicant with the aim of saving his life, and that all the decisions adopted on the basis of the Federal Court judgment of 26 August 2010 had been accompanied by ample reasons and had been given following adversarial proceedings, the Court acknowledged that the decision to force-feed the applicant had been attended by the appropriate procedural safeguards. Even had the decision been implemented – which was not the case – there were no grounds for asserting that the procedure would have resulted in treatment exceeding the threshold of severity required by Article 3. The applicant's complaint under Article 3 therefore had to be rejected as being manifestly ill-founded.

The Court, by a majority, declared the application inadmissible.

The decision is available only in French.

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