



Rights violations of disabled eight-year-old who had been tied to his bed in public care “for his own safety”

The case [L.R. v. North Macedonia](#) (application no. 38067/15) concerned a child, L.R., who has been in the care of State-run institutions since he was three months old and allegations of inadequate care and ill-treatment. His case came to the notice of an NGO when the Ombudsman visited him in an institute in 2013 and found him tied to his bed.

In today’s **Chamber judgment**¹ in the case the European Court of Human Rights held:

unanimously, that there had been a **violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights, finding that the authorities had been responsible for L.R.’s placement in an institute which could not cater for his needs, the lack of requisite care and the inhuman and degrading treatment he had endured, and

by six votes to one, that there had been a **violation of Article 3 (investigation)** because of the authorities’ failure to hold a proper inquiry into the case.

The Court found it particularly worrying that someone as vulnerable as the applicant, an eight-year-old mentally disabled child who was deaf and could not speak, had frequently been tied to his bed during his stay of approximately a year and nine months in an institute which had clearly been inappropriate as it was for the physically disabled, despite the staff there voicing their concerns to the authorities from the outset that it was understaffed and not qualified to cope with him.

Moreover, the investigation, instead of looking into the general failure of the system in L.R.’s case, had focussed on the institute’s employees’ individual criminal liability, which had led to the prosecutors finding that there had been no intention to harm the child and dismissing his case.

Principal facts

The application was lodged by the Helsinki Committee for Human Rights in Skopje (“the HCHR”) on behalf of L.R., a Macedonian/citizen of the Republic of North Macedonia.

L.R. was abandoned by his mentally ill parents after he was born in 2004. A social welfare centre was appointed as his guardian, which since then has ordered and arranged his placement in several State-run social care institutions. Growth delay was detected when he was one year old and, at the age of three and half, a team of hospital doctors diagnosed him with mental, physical (cerebral palsy) and speech disabilities.

On the basis of this diagnosis, L.R. was placed in June 2012 in the B.B.S. Rehabilitation Institute, an open-type State-run institution for physically disabled people. The institute, both before L.R.’s admission and throughout his stay during the next year and nine months, repeatedly voiced its concerns to the relevant authorities that it could not accommodate persons with mental disabilities, that it was understaffed and that its personnel were not qualified to communicate with L.R., who was deaf and unable to speak.

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.

In November 2013 the Ombudsman visited the institute and found L.R. tied to his bed, which he revealed at a press conference presenting his annual report in June 2014.

Soon after the HCHR took up the applicant's case and complained to the prosecuting authorities. The authorities went on to examine documents provided by the institute and the Ombudsman and hear oral evidence from the institute's director and four of its employees. They established that L.R.'s placement in the institute was inappropriate and that he had occasionally been tied to his bed with a rope for "safety reasons", namely to prevent him from running away and putting himself in danger. However, they found that there were no grounds to hold that a criminal offence had been committed because there had been no intent to subject the child to inhuman or degrading treatment. The complaint was thus rejected in 2014. The higher prosecuting authorities confirmed those findings in 2015.

In the meantime, the first-instance prosecutor had notified the prosecutor in the jurisdiction of the hospital which had made L.R.'s medical diagnosis in 2008 of a discrepancy between the finding that he was severely physically disabled, and his apparent real state of health as experienced by the institute. The subsequent investigation has produced no results.

L.R. was transferred to another institute in April 2014. A medical report since stated that he has a very low level of development, in particular owing to insufficient stimulation and timely treatment.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), L.R. complained that he had been wrongly diagnosed as physically disabled, which had led to his being placed in an institute which had not been able to cater for his needs and to inadequate care and treatment amounting to neglect. He also complained that the investigation into his allegations had been ineffective.

The application was lodged with the European Court of Human Rights on 27 July 2015.

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

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Armen **Harutyunyan** (Armenia),
Pere **Pastor Vilanova** (Andorra),
Pauliine **Koskelo** (Finland),
Jovan **Ilievski** (North Macedonia),
Raffaele **Sabato** (Italy),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

First, the Court considered that in the exceptional circumstances of the case and bearing in mind the serious nature of the allegations, the HCHR should be granted standing to act as the applicant's representative. The HCHR had visited the applicant shortly after his case had been made public by the Ombudsman, had contacted various authorities about his situation, had submitted the criminal complaint to the public prosecutor without delay and had pursued the matter, taking it up to the highest prosecuting authorities.

Article 3 (L.R.'s placement and treatment in the B.B.S. Institute)

The Court accepted the prosecuting authorities' conclusions that L.R.'s placement in the B.B.S Institute had been inappropriate and added that, as a result, he had not received the care he had required.

It found it particularly striking that his guardian and the other authorities had been made aware from the outset, before even his admission to the institute, that it could not cater for his needs. However, nothing had been done in response to the staff's serious concerns and the placement had continued for a considerable period of time. The Government had provided no explanation for the authorities' failure to react in a prompt, concrete and appropriate manner.

Such inadequate treatment had been made worse by the applicant being tied to his bed, which the Court considered reasonable to assume had been a common practice, given the understaffing problem in the institute. The Court was not convinced that such a measure had been the least intrusive option available to ensure his safety. No alternative had apparently been considered.

Moreover, it found it worrying that such a measure had been used on somebody as vulnerable as the applicant, an eight-year-old disabled child, who was deaf and could not speak and therefore could not complain about his treatment, for approximately a year and nine months.

Indeed, such neglect had led to an overall worsening of his condition, as highlighted in the 2014 medical report.

The Court considered that the authorities had been under an obligation to safeguard the applicant's dignity and well-being as he had at all times been in their care, and they had therefore been responsible for his inappropriate placement in the institute, lack of requisite care and the inhuman and degrading treatment that he had endured. It concluded that there had been a violation of the applicant's rights under Article 3.

Article 3 (procedural obligation)

The Court found that the investigation into the HCHR's allegations had been thorough. It had lasted less than a year, with the prosecuting authorities examining many documents, hearing those directly involved in the alleged neglect and establishing the facts.

The authorities had concluded in particular that the applicant's placement had been inappropriate; that the institute had notified the authorities of its inability to care for him; and that there had been shortcomings as regards his medical diagnosis.

Those conclusions, made in the context of charges against the institute's employees, had not, however, resulted in any effective attempt to ascertain in general whether the authorities' representatives or any other public servant could be held accountable for the system's failures. Indeed, what was at issue in the proceedings was not individual criminal liability, but the State's international-law responsibility to carry out an effective investigation.

Furthermore, the subsequent investigation by a prosecutor in another jurisdiction into the medical misdiagnosis had not produced any results.

Therefore, the authorities' overall response to the allegations of serious human rights violations had been inadequate, in further violation of Article 3.

Article 13 (right to an effective remedy)

The Court found that no separate issues arose under this provision of the Convention and there was therefore no need to examine this part of the applicant's complaint.

Article 41 (just satisfaction)

The Court held that North Macedonia was to pay the applicant 18,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,650 in respect of costs and expenses.

Separate opinions

Judge Wojtyczek expressed a dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on www.echr.coe.int. To receive the Court's press releases, please subscribe here: www.echr.coe.int/RSS/en or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Denis Lambert (tel: + 33 3 90 21 41 09)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

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.