



## Removal of tissue from a deceased man's body without the knowledge or consent of his wife amounted to degrading treatment

The European Court of Human Rights delivered today its **Chamber judgment**<sup>1</sup> in the case of **Elberte v. Latvia** (application no. 61243/08).

The case concerned the removal of body tissue from Ms Elberte's deceased husband by forensic experts after his death, without her knowledge or consent. Unknown to Ms Elberte, pursuant to a State-approved agreement, tissue had been removed from her husband's body after her husband's autopsy and sent to a pharmaceutical company in Germany for the creation of bio-implants. She only learned about the course of events two years after her husband's death when a criminal investigation was launched in Latvia into allegations of wide-scale illegal removal of organs and tissues from cadavers. However, domestic authorities eventually did not establish any elements of crime.

The Court held, unanimously, that there had been:

**a violation of Article 8 (right for respect to private and family life)** of the European Convention on Human Rights;

**a violation of article 3 (prohibition of inhuman or degrading treatment)** of the Convention.

The Court found in particular that Latvian law regarding the operation of the consent requirement on tissue removal lacked clarity and did not have adequate legal safeguards against arbitrariness: although it set out the legal framework allowing the closest relatives to express consent or refusal in relation to tissue removal, it did not clearly define the corresponding obligation or discretion of experts to obtain consent. Indeed, the manner in which the relatives' right to express their wishes was to be exercised and the scope of the obligation to obtain consent were the subject of disagreement among the domestic authorities themselves. The Court further concluded that Ms Elberte had had to face a long period of uncertainty and distress concerning the nature, manner and purpose of the tissue removal from her husband's body, underlining that, in the special field of organ and tissue transplantation, the human body had to be treated with respect even after death.

### Principal facts

The applicant, Dzintra Elberte, is a Latvian national who was born in 1969 and lives in Sigulda (Latvia).

On 19 May 2001, Ms Elberte's husband was killed in a car accident. On the following day, his body was transported to the Forensic Centre, where an autopsy was carried out.

Ms Elberte first saw her deceased husband when his remains were transported back from the Forensic Centre for the funeral, which took place on 26 May 2001. His legs had been tied together and he was buried that way. About two years later, the Security Police opened a criminal inquiry into the illegal removal of organs and tissue between 1994 and 2003 in Latvia and contacted Ms Elberte,

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).

who was told that tissue had been removed from her husband's body prior to the funeral by the experts of the Forensic Centre. Under a State-approved agreement, some of his body tissue had been removed and later sent to a pharmaceutical company in Germany to be modified into bio implants. On 9 October 2003, Ms Elberte was recognised as an injured party.

In December 2005 and January 2006, the prosecutors decided to discontinue the inquiry. They accepted that, under the 2004 amendments to the Law on the Protection of the Bodies of Deceased Persons and the Use of Human Organs and Tissues ("the Law"), the Latvian system was one of "presumed consent". According to the Forensic Centre specialists, this meant that "everything which was not forbidden was allowed" as opposed to an "informed consent" system, whereby tissue removal was permissible only when it was expressly allowed by the donor during his or her lifetime or by the relatives.

On two occasions, on 24 February 2006 and 3 December 2007, superior prosecuting authorities examined the case-file and concluded that the inquiry should not have been discontinued. They established that the experts at the Forensic Centre had breached provisions of the Law and that the tissue removal had been unlawful. The decision to discontinue was quashed on both occasions and the case file sent back to the Security Police.

During the course of the fresh investigation which started in March 2008, it was established that in 1999 tissue had been removed from 152 people; in 2000, from 151 people; in 2001, from 127 people; and in 2002, from 65 people. In exchange for the supply of tissue to the company in Germany, the Forensic Centre had organised the purchase of different medical equipment, instruments, technology and computers for medical institutions in Latvia.

On 27 June 2008 a new decision to discontinue the criminal inquiry was adopted, in which it was reiterated that the experts did not have any legal obligation to inform anyone about their right to consent to or refuse organ or tissue removal. Notably, the Law provided for the right of the closest relatives to object to the removal of the deceased person's organs and tissue, but did not impose such an obligation. Consequently, the Forensic Centre experts could not be convicted of breaching an obligation which was not clearly established by law.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Ms Elberte complained that the removal of her husband's tissue had been carried out without her prior consent. Further relying on Article 3 (prohibition of inhuman or degrading treatment), Ms Elberte complained of emotional suffering as she had been left in a state of uncertainty regarding the circumstances of the removal of tissue from her husband, her husband's body having been returned to her after the autopsy with his legs tied together. Lastly, relying on Article 13 (right to an effective remedy), she alleged that there were several possible interpretations of domestic law on the right for closest relatives to express consent or refusal in relation to tissue removal.

The application was lodged with the European Court of Human Rights on 5 December 2008.

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

Päivi Hirvelä (Finland), *President*,  
Ineta Ziemele (Latvia),  
George Nicolaou (Cyprus),  
Nona Tsotsoria (Georgia),  
Zdravka Kalaydjieva (Bulgaria),  
Krzysztof Wojtyczek (Poland),  
Faris Vehabović (Bosnia and Herzegovina), *judges*,

and also Fatoş Aracı, *Deputy Section Registrar*,

## Decision of the Court

### Article 8

The Court noted that the issue in question was the right of Ms Elberte to express wishes concerning the removal of her husband's tissue after his death and the domestic authorities' alleged failure to ensure the legal and practical conditions for the exercise of that right.

The Court observed that the very authorities responsible for the enforcement of the applicable law – in particular the Security Police and the supervising prosecutors – had disagreed as to its scope. Such disagreement had inevitably indicated a lack of sufficient clarity. Indeed, although Latvian law set out the legal framework allowing the closest relatives to express consent or refusal in relation to tissue removal, it had not clearly defined the scope of the corresponding obligation or discretion left to experts or other authorities in this respect. The Court noted that the relevant European and international documents on this matter gave particular importance to establishing the relatives' views through reasonable enquiries.

In view of the large number of people from whom tissue removal had been carried out, it had been all the more important that adequate mechanisms had been in place to balance the relatives' right to express their wishes against the experts' broad discretion to decide on such matters. Because of the lack of any administrative or legal regulation, Ms Elberte had been unable to foresee how to exercise her right to express her wishes concerning the removal of her husband's tissue. The Court concluded that the relevant Latvian law lacked clarity and did not have adequate legal safeguards against arbitrariness, in breach of Article 8.

### Article 3

The Court found that Ms Elberte's suffering had gone beyond the suffering inflicted by grief following the death of a close family member. Indeed, she had only discovered the nature and amount of tissue that had been removed from her husband's body during the proceedings before the European Court. While it could not be said that she had suffered from any prolonged uncertainty regarding the fate of her husband, she had had to face a long period of uncertainty and distress as to what organs or tissue had been taken, and in what manner and for what purpose.

Moreover, the revelation, following the general inquiry, that body tissue had been removed from hundreds of other persons over a time-span of some nine years had caused additional suffering for Ms. Elberte. The Court further noted that she had been left for a considerable period of time to anguish over the reasons why her husband's legs had been tied together when his body had been returned to her and that, because no prosecutions had ever been brought, she had been denied redress for a breach of her personal rights relating to a very sensitive aspect of her private life, namely consenting or objecting to the removal of tissue from her husband's body.

The Court underlined that, in the special field of organ and tissue transplantation, it had been recognised that the human body had to be treated with respect even after death. Indeed, international treaties including the Convention on Human Rights and Biomedicine and the Additional Protocol had been drafted to protect the dignity, identity and integrity of "everyone" who had been born, whether now living or dead. The Court stressed that respect for human dignity formed part of the very essence of the European Convention. Consequently, the suffering caused to Ms Elberte had undoubtedly amounted to degrading treatment contrary to Article 3 of the Convention.

### Just satisfaction (Article 41)

The Court held that Latvia was to pay Ms Elberte 16,000 euros (EUR) in respect of non-pecuniary damage and EUR 500 in respect of costs and expenses.

*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.