



Football supporters' alleged ill-treatment by helmeted police without name tags: inadequate investigation

In today's **Chamber judgment**¹ in the case of **Hentschel and Stark v. Germany** (application no. 47274/15) 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 in respect of the applicants' treatment by the police; and that there had been **a violation of Article 3** in respect of the investigation into their allegations.

The case concerned the complaint by two football supporters of having been ill-treated by the police following a match and of the inadequacy of the ensuing investigation.

The Court was unable to establish beyond reasonable doubt that the events had happened as described by the applicants.

As regards the investigation, the Court observed in particular that the helmeted police officers of the riot control units had not worn any name tags or other individually identifying signs, but only identification numbers on the back of their helmets. Therefore, other measures to establish the identities of the persons responsible for the alleged ill-treatment had become especially important. However, the difficulties resulting from the lack of identifying insignia had not been sufficiently counter-balanced by other investigative measures. Notably, only excerpts of the video material recorded by the riot units had been provided to the investigating unit and some potentially relevant witnesses had not been identified and questioned.

Principal facts

The applicants, Ingo Hentschel and Matthias Stark, are German nationals who were born in 1969 and 1989 and live in Illertissen and Harburg (Germany) respectively.

Both applicants attended a football match in Munich on 9 December 2007. Over 200 police officers were deployed during the match, including several riot control units, in view of an expected risk of clashes between rival football supporters. After the end of the match the police cordoned off the supporters of one team, including the applicants, for about 15 minutes to prevent them from encountering supporters of the other team.

Mr Hentschel submits that, on their way to the exit after the cordon had been lifted, spectators were approached by a group of police officers, some of whom started hitting them with their truncheons without any prior warning. He alleges that he was hit on his head with a truncheon, resulting in a bleeding wound treated by a paramedic after he had exited the stadium and subsequently requiring further treatment in hospital. According to Mr Stark, before exiting the stadium he was grabbed by the shoulder by a police officer who used pepper spray on his face at close range. He alleges that, when subsequently lying down on the ground, he was struck on his arm with a truncheon.

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.

According to the Government's submissions there was no credible evidence that the applicants were deliberately hit or harmed by police officers.

Following media reports on football supporters' accounts of arbitrary attacks by police officers in the aftermath of the match, the Munich public prosecutor's office opened a preliminary investigation in January 2008. The applicants, who had identified their attackers as police officers but had been unable to distinguish them further, owing to their identical uniforms without identifying signs or name tags, both filed criminal complaints against unidentified police officers.

In September 2008 the public prosecutor discontinued the investigation. He found that there was evidence that some police officers had used truncheons in a disproportionate way but concluded that it had been impossible to identify the suspects. On appeal by the applicants, the public prosecutor reopened the investigation in October 2008, ordering further enquiries. In August 2009, the public prosecutor again discontinued the investigation, finding in particular that several football supporters had aggressively approached, insulted and provoked the deployed police officers and that in that situation the officers could have been justified in using their truncheons. The decision was confirmed by the Munich general public prosecutor in 2011. In September 2011 the Munich Court of Appeal declared inadmissible the applicants' action to force further enquiries. In March 2015 the Federal Constitutional Court delivered a reasoned decision (file no. 2 BvR 1304/12) refusing to admit the applicants' constitutional complaint.

Complaints, procedure and composition of the Court

Relying in particular on Article 3 (prohibition of inhuman or degrading treatment), the applicants alleged that they were ill-treated by police officers who, owing to an inadequate investigation, were neither identified nor punished.

The application was lodged with the European Court of Human Rights on 22 September 2015.

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

Nona **Tsotsoria** (Georgia), *President*,
Angelika **Nußberger** (Germany),
Yonko **Grozev** (Bulgaria),
Síofra **O'Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

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

The Court observed that it was confronted with a dispute over the exact events after the football match on 9 December 2007. It underlined that its role was a subsidiary one and that it had to be cautious in taking on the role of a first-instance tribunal of fact, where this was not rendered unavoidable by the circumstances.

The Court noted that the police cordon following the match had blocked only the exits of the stadium for about 15 minutes. Supporters had still been able to move freely within the stands. The alleged police violence had happened, according to the applicants, after the blockade had been lifted and the applicants had left the stands. The Court therefore concluded that the applicants had not been under the control of the police, which would have shifted the burden of proof to the

Government. Consequently, it had been for the applicants to substantiate their factual arguments by providing the Court with the necessary evidence.

As to the medical certificates submitted by the applicants, the Court considered that they attested to possible consequences of ill-treatment, namely being beaten with a truncheon on the head and having pepper spray applied to the face from a close distance. However, the certificates did not attest to the specific cause of the injuries. Moreover, Mr Stark's medical certificate had only been issued six weeks after the alleged ill-treatment and was not based on an examination of the actual injuries.

While some of the witness statements submitted by the applicants and the press reports described the police operation in terms similar to the applicants' accounts, the applicants had not submitted any witness statements or other evidence directly confirming their accounts, and none of the persons interviewed in the domestic investigation had witnessed the alleged acts. Moreover, Mr Hentschel had reported the alleged police violence only six weeks after the events in question, and both applicants had filed their criminal complaints only several months after those events.

In sum, the Court was unable to establish beyond reasonable doubt that the events had happened as described by the applicants. There had therefore been no violation of Article 3 in respect of their treatment by the police (substantial aspect).

Article 3 (investigation)

The Court considered that the applicants had raised an arguable claim of ill-treatment by the police which had to be effectively investigated by an independent national authority.

As to the independence of the investigation, the Court found no sufficient hierarchical, institutional or practical connection between the police unit investigating the alleged police violence and the riot control unit under investigation which, by itself, would have rendered the investigation unreliable or ineffective. The investigation had not been conducted by a separate police force – which would have been desirable – but by a division of the Munich police specialising in offences perpetrated by public officials. However, the investigating officer had not been a direct colleague of the officers of the riot control unit and the only link between these two divisions was their common Chief of Police and the fact that they belonged to the Munich police. The Court nevertheless emphasised that it was important that the manner in which such types of investigations were conducted also gave an appearance of independence so as to preserve public confidence.

The Court was satisfied that the investigation had been sufficiently prompt and expedient. The Munich police had opened a preliminary investigation after they had been alerted by press reports to allegations of police violence in the context of the football match on 9 December 2007. Based on the documents in the case file, the Court did not detect any long periods of inactivity during the investigation, which had lasted 19 months before it was discontinued. The Court observed that the applicants had lodged their official complaints only in March and April 2008 respectively. Consequently, the authorities had been able to investigate their specific complaints only then, and the delay in lodging the complaints had prevented the authorities to promptly order a forensic examination of the applicants' injuries.

However, as regards the investigative measures actually undertaken, the Court observed that the deployed helmeted police officers of the riot control units had not worn any name tags or other individually identifying signs, but only identification numbers on the back of the helmets. Therefore, other measures to establish the identities of the persons responsible for the alleged ill-treatment had become particularly important.

As to the video material recorded by the riot units, the Court observed that the investigating unit had only been provided with excerpts of the original video material. The Government had not clearly explained whether the entire video material was analysed by an independent unit, why only

excerpts of the video material had been provided to the investigating unit, or when the video material was deleted and by whom.

Concerning other investigative measures potentially capable of counterbalancing the failure to secure all the video footage and to have it analysed by independent investigating units, the Court acknowledged that around 40 witnesses had been questioned, including the squad leaders of the deployed riot control units. However, not all officers deployed in the area where the applicants had allegedly been ill-treated had been interviewed. Moreover, the officers in charge of the video recordings had only been interviewed after the investigation had been reopened in October 2008 and no efforts had been undertaken to identify and question the paramedic who had allegedly treated Mr Hentschel at the stadium.

Since those obvious lines of inquiry had not comprehensively been followed, the Court found that the deployment of helmeted police officers without identifying insignia and any difficulties resulting from it had not been sufficiently counter-balanced during the investigation. The Court therefore concluded that there had not been an effective investigation, in violation of Article 3 (procedural aspect).

Just satisfaction (Article 41)

The Court held that Germany was to pay each applicant 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,575.41 in respect of costs and expenses.

Separate opinions

Judge Hüseyinov expressed a concurring 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.