

2022

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Recommended Citation

Amanda Lorenzo (2022) "Chocholáčv. Slovakia: Prisoners, Porn, & Morality in Human Rights," *Human Rights Brief*. Vol. 26: Iss. 1, Article 8.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss1/8>

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Chocholáč v. Slovakia: Prisoners, Porn, & Morality in Human Rights

by Amanda Lorenzo*

Chocholáč v. Slovakia asks whether Slovakia's disciplinary actions against a prisoner in possession of concealed pornographic materials violated the European Convention of Human Rights ("the Convention").¹ Roman Chocholáč, a thirty-three-year-old currently serving a life sentence in Leopoldov prison was found possessing a "popular weekly magazine" with sexually-explicit pictures pasted inside.² The State deemed the added material a threat to morality and prison staff confiscated it.³ On November 21, 2017, *Chocholáč v. Slovakia* was brought to the European Court of Human Rights (ECtHR), presenting legal questions under Slovakia's Criminal Code and Execution of Prison Sentences Act, as well as Articles 8 and 10 of the Convention.⁴ The Convention affords prisoners "all the fundamental rights . . . guaranteed . . . save for the right to liberty."⁵

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1 See generally *Chocholáč v. Slovakia*, App. No. 81292/17, ¶ 1 (July 7, 2022), <https://hudoc.echr.coe.int/fre?i=001-218459>.

2 *Id.* at ¶¶ 2, 7-10.

3 *Id.* at ¶ 9-10.

4 Council of Eur., Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, ETS No. 005 [hereinafter European Convention of Human Rights].

5 *Chocholáč*, App. No. 81292/17, at ¶ 52 (See, e.g., *Hirst v. United Kingdom*, App. No. 74025/01, ¶¶ 69-70 (2005)); See generally 2020 Country Reports on Human Rights Practices: Slovakia, U.S. DEP'T STATE 2-8 (Mar. 30, 2021), <https://www.state.gov/wp-content/uploads/2021/10/SLOVAKIA-2020-HUMAN-RIGHTS-REPORT.pdf> (noting that while conditions in Slovakian prisons do not raise significant human rights concerns, "several prisoners claimed they were reluctant to complain about mistreatment due to fear of reprisals or because they believed authorities would not act on their complaints").

Article 8 of the Convention provides that "there shall be no interference by a public authority with the exercise of his right [to respect private and family life] except in accordance with the law and is necessary in a democratic society . . . for the prevention of disorder or crime, [or] for the protection of . . . morals."⁶ The ECtHR found that the "necessity" language implies weighing a "pressing" social need against private interests.⁷ The Court held that justification of restrictions on Convention rights cannot be based on what would offend public opinion.⁸ Under the facts of *Chocholáč*, the majority opinion found that there had been a violation of Article 8 based on a lack of evidence of concrete risks of adult material concerning values espoused.⁹ Further, the Court found that it has a lack of capacity to examine individual cases.¹⁰

In recognition of this violation, the ECtHR awarded Chocholáč €2,600 in damages but declined to set a bright-line rule on the case's facts or specific subject matter.¹¹ It indicated that a factors test should be applied case-by-case to determine whether interference to a broad and loosely defined "private life" was justified under the acknowledged "tolerance and broadmindedness" of a democratic society.¹²

Ultimately, while asserting prisoners as functional recipients of enumerated rights under the Convention, prisoners' rights add another fold to the already multi-pronged considerations of enforcement relationships between society, states, and a multi-national court.¹³ The ECtHR is a body of elected judges funded by member states.¹⁴ After an era of expansion of protection of prisoners'

6 European Convention of Human Rights, art. 8, ETS No. 005 (emphasis added).

7 *Chocholáč*, App. No. 81292/17, at ¶¶ 64-77.

8 *Id.* at ¶ 71.

9 *Id.* at ¶¶ 71-72.

10 *Id.* at ¶ 74 (citing *Dickson v. the United Kingdom*, App. No. 44362/04, ¶ 76 (2007)).

11 *Chocholáč*, App. No. 81292/17, at ¶ 82.

12 *Id.* at ¶ 52-53.

13 Sonja Snacken, *Human Dignity & Prisoners' Rights in Europe*, 50 CRIME & JUST. 301, 301 (2021).

14 Council of Eur., *About the Council of Europe*, COUNCIL OF EUR., <https://www.coe.int/en/web/yerevan/the-coe/about-coe> (last visited Dec. 1, 2022).

dignity, it has been growing more cautious in the face of a recalcitrant Europe.¹⁵ The Court affirmed that although prisoners have a fundamental right to “private life” under the Convention, it can be justifiably limited, more than what would legally be acceptable for a free individual.¹⁶ It declined to take a definitive stance on the morality argument, deferring the question to “better position[ed]” stated authorities rather than seeking to define a “uniform European conception of morals.”¹⁷

¹⁵ Snacken, *supra* note 13, at 303.

¹⁶ Chocholáč, App. No 81292/17, at ¶ 53.

¹⁷ *Id.* at ¶ 70.