



**HELŚIŃSKA FUNDACJA PRAW CZŁOWIEKA**  
**HELSINKI FOUNDATION for HUMAN RIGHTS**

00-018 Warszawa, ul. Zgoda 11  
tel./fax: (48 22) 828-10-08, 828-69-96  
e-mail: hfhr@hfhrpol.waw.pl  
konto: PKO BP SA I O/Centrum  
58 1020 1013 0000 0502 0002 9165  
swift: BPKOPLPW

ZARZĄD FUNDACJI  
Prezes: Marek Antoni Nowicki  
Wiceprezes: Danuta Przywara  
Sekretarz: Andrzej Rzepliński  
Skarbnik: Elżbieta Czyż  
Członek Zarządu: Zbigniew Hołda

Warsaw, 30.10.2006

The Honorable  
Jerzy Engelking  
Deputy Attorney General  
Al. Ujazdowskie 11  
00-950 Warsaw

Dear Mr. Deputy Attorney General,

With regards to the reply of the Deputy Attorney General to the general approach of the Helsinki Foundation for Human Rights regarding the starosts' practice of referring, without any legal basis, persons with valid driving licenses for psychological and medical examinations in order to determine whether there are any psychological contraindications for them to drive motor vehicles, I have taken the liberty of presenting our opinion on the legal grounds for such actions. Since in the Foundation's previous letter we already presented our position with regards to referring persons for psychological examinations, in this letter we are limiting ourselves merely to issues associated with referring persons for medical examinations.

According to the bill – the Road Traffic Act (Journal of Laws of 2005, No. 109, Item 908) ordering the abovementioned examination may only occur under the circumstances enumerated in Art 124 of this Act.

In his letter, the Deputy Attorney General cited point 4 of Article 122 of the abovementioned act as the grounds for applying the alarming practices. According to this regulation the following individuals are required to take a medical examination in order to determine whether there are any medical contradictions for them to drive a motor vehicle:

(...)

4) a person driving a motor vehicle referred for an examination by the head of local authorities, in case there are reservations as to his or her condition;

(...)

It is necessary to emphasize that this regulation clearly states that only “a person driving a motor vehicle” can be subject to this examination.

The legal definition included in Art. 2 point 20 of the act defines a person driving a vehicle as “a person driving a vehicle or group of vehicles, as well as a person leading a column of pedestrians, riding horseback or driving animals singly or in a herd”. Therefore, it only permits the aforementioned examination to be performed in the case of individuals whose condition was questionable at the time and in connection with driving the vehicle. If the legislator wished to subject a different group of persons to this examination – he would have probably used a different phrase.

He could have in particular used the phrase “driver”, which according to the legal definition included in the next point (21) of Art. 2 of the act means a person entitled to drive a motor vehicle.

As the above mentioned regulations show, there are no legal grounds to refer people with diving license for medical examination only because they may be addicted to alcohol or intoxicants (as the necessary condition is that they are referred for an examination as a result of driving under the influence of alcohol or a substance giving similar results).

The premises specified in § 2 par. 4 and 5 of the Ordinance of the Minister of Health of 7 January 2004 on medical examinations for drivers and individuals seeking a driving license (Journal of Laws of 2004, No. 2, Item 15), based on which a starost can refer a person driving a vehicle for medical examinations, only particularize the provisions of the act. They do not present (and cannot present, as this would constitute an inadmissible expansion of the limits to which state authorities can interfere with relation to the limits set out in the act) any other grounds for ordering such examinations.

We are fully aware that it is not the activity of the organs of the prosecution, which submit reliable information to the starosts (heads of local authorities) about reservations as to the condition of persons addicted to alcohol or intoxicants, but the independent decision of the starost himself that results in ordering medical examinations and withdrawing a driving license. We are however once again asking you, Deputy Attorney General, to undertake appropriate actions in order to stop the prosecutors from submitting motions to the local authorities to conduct actions without legal basis.

With highest regard,

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Marek Antoni Nowicki