Selected Legislation and Jurisprudence

European Court of Human Rights

ECHR 2018/11 *Case of X v. Russia*, 20 February 2018, no. 3150/15 (Third Section)

The Facts

The applicant, born in 1995, had already been diagnosed with schizotypal personality disorder and was being treated, when he was apprehended by the police on 24 April 2014 after allegedly harassing a teenager. He was taken to a police station and then by ambulance to a psychiatric hospital, where he was admitted involuntarily.

The initial examination at the hospital noted his being tense and asking for time to “spend with boys”. A further examination carried out a day later spoke of the applicant’s wish to have contact with boys, to look like a girl and to dye his hair to attract attention. It referred to his having been arrested on the street and that he had stalked a boy for months. The applicant demanded to be released from hospital on the same day so a panel of doctors examined him again.

The panel’s report referred to his desire to meet a particular boy, that he had travelled across the city to find him, that he wanted to be “treated gently, to be caressed” and that he visited women’s clothing stores. The panel concluded that he needed involuntary hospitalisation and the hospital applied for a court order on the grounds that the applicant was a danger to himself and others and that there was a risk his health would worsen if he was released.

* These summaries are based on the provisional text of the judgements of the European Court of Human Rights. These judgments are still subject to editorial revision before their reproduction in *Reports of Judgments and Decisions*. For the full provisional text, see: <http://www.echr.coe.int>.

A court granted the order in early May 2014, against the applicant's objections. The court found that the medical evidence showed that the applicant was a danger to himself and others and that his mental state might worsen if he was released. He eventually left the hospital after about two weeks. An appeal against the court order was rejected in July 2014.

The Law

Alleged Violation of Article 5 § 1 of the Convention

The applicant complained that his involuntary placement in a psychiatric facility had not been lawful within the meaning of Article 5 § 1 of the Convention (which protects the right of liberty and security of person), owing to the failure of the national authorities to meet the substantive requirements for his involuntary hospitalisation.

In *Winterwerp v. the Netherlands* the Court set out three minimum conditions which have to be satisfied for the “detention of a person of unsound mind” to be lawful within the meaning of Article 5 § 1 (e): except in emergency situations the individual concerned must be reliably shown to be of unsound mind—that is to say a true mental disorder must be established before a competent authority on the basis of objective medical evidence; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder.

With regard to the first criterion, in this case the medical professionals and the courts were satisfied that the applicant was suffering from a “true mental disorder”—namely, schizotypal and organic delusional disorders.

With regard to the second criterion, the Court notes that the grounds for the applicant's involuntary hospitalisation were that 1) he was a danger to himself and others and 2) his mental state might significantly deteriorate in the absence of treatment.

The Court notes that all the medical reports characterised the applicant as anxious, irritable, secretive, feeling low, distracted, confused, insincere, reserved, tense. None of these characteristics—in the absence of evidence or indications of verbal or physical aggression, self-mutilation, suicide, etc.—suggests that the applicant poses a danger to anyone. It must be further noted that all the applicant's medical records paid detailed attention and attached decisive importance to the applicant's change of hair colour, his interest in women's clothes, jewellery, and make-up, and his desire to be fondled and caressed and “to spend time with boys”. It is not for the Court to express an

opinion on whether these aspects of the applicant's life, taken alone, can be said to demonstrate the existence of any mental disorder; however, in any event it does not find them as such to constitute compelling proof that the applicant posed a danger to anyone.

As regards the second ground for the applicant's hospitalisation, the Court observes that the available medical evidence and judicial decisions contain no explanation whatsoever of why and how the applicant's mental state might have significantly deteriorated in the absence of involuntary inpatient treatment.

In the Court's opinion neither the unspecified risks to the applicant's mental health, nor the long journeys across the city, nor the repeated attempts to establish either friendly or romantic relationships were capable of proving that the applicant's condition was of "a kind or degree" warranting compulsory confinement. The medical professionals and the domestic courts adduced no sufficient and reliable evidence for their decision to hospitalise the applicant against his will.

Given the above-mentioned conclusion the Court does not find it necessary to examine whether the validity of the applicant's continued confinement depended upon the persistence of a disorder.

For these reasons, the Court, unanimously, holds that there has been a violation of Article 5 § 1 of the Convention.

ECHR 2018/12 *Case of Mehmet Günay and Güllü Günay v. Turkey*, 20 February 2018, no. 52797/08 (Second Section)

The judgment is available only in French.

The Facts

The applicants, both born in 1969, are the parents of a girl, who died at the age of six of cerebral oedema some ten days after undergoing a tonsillectomy operation (surgical removal of the palatine tonsils) in hospital.

In 2000, the applicants lodged a prior claim for damages with the ministry of health, which was rejected. In 2001 they lodged a claim for compensation with the administrative court, alleging that their daughter had died as a result of mistakes, carelessness and negligence committed by the operating surgeon and the duty doctor. At the courts' request, an initial expert medical

assessment was carried out. The experts found that the child's death had been the result of cerebral oedema, the cause of which they had been unable to identify. A second expert assessment showed that the child had been administered 10 g more anaesthetic than the quantity usually given to a child of that age and weight, although it noted that her epileptic fits had begun after the effects of the anaesthetics had worn off. The report therefore found that the anaesthetics had not caused the child's death.

In 2004 the administrative court, having regard to the findings of the expert assessments, dismissed all the applicant's claims. In 2007 the Council of State dismissed their appeal on points of law, and in 2008 it also dismissed their application for rectification of that judgment.

The Law

Alleged Violation of Article 2 of the Convention

Relying on Article 2 (right to life), the applicants alleged that the domestic proceedings had failed to identify those responsible for their daughter's death.

The administrative court based its decision on the reports drawn up by an institute of forensic medicine. Those reports found that the cause of the girl's death was unidentifiable even though it had occurred subsequently to her tonsillectomy; nor had the anaesthetics administered been the cause of death. They concluded that no error or negligence was attributable to the medical staff in question.

The Court notes that the expert medical assessments and the findings of the domestic courts, which are extensively reasoned, ruled out any medical error or negligence. It is not its task to question the findings of expert assessments. It therefore rejects the complaint under Article 2 of the Convention as being manifestly ill-founded.

Alleged Violation of Article 6 § 1 of the Convention

Relying on Article 6 § 1 (right to a fair trial within a reasonable time), the applicants complained about the length of the proceedings.

The administrative proceedings opened with a prior claim for compensation lodged with the authorities on 17 November 2000 and ended on 24 March 2008. During that time, the first expert report has been submitted after a period of more than 19 months, and following the appeal on points of law, almost four years elapsed before the case was heard by the Council of State.

The Court finds that those excessive administrative procedural delays in determining the applicants' claim for compensation cannot be explained by the complexity of the case or by the applicants' conduct. It considers that a delay of some seven years and four months in adjudicating on compensation proceedings breached the "reasonable length" requirement.

For these reasons, the Court, unanimously, holds that there has been a violation of Article 6 § 1 of the Convention.

ECHR 2018/13 *Case of Mockutė v. Lithuania*, 27 February 2018, no. 66490/09 (Fourth Section)

The Facts

From 1992 to 2002 the applicant, born in 1973, received occasional treatment for various psychiatric conditions, including paranoia and depression. During that time, she also obtained a law degree and won a competition to pursue post-graduate studies in the United States of America. In 2002 she had professional and personal difficulties and was diagnosed further with post-traumatic stress disorder.

In February 2003 the applicant affiliated herself with the Ojas Meditation Centre, a branch of the Osho religious movement, and began practising meditation, which she said brought her "inner healing". In May 2003 she had a breakdown and was forcibly admitted to a psychiatric hospital, where she was diagnosed with acute psychosis and where she remained for 52 days. During that time, a documentary was aired on national television. It featured the applicant's doctor, mother and sister, referred to the Ojas Meditation Centre, and discussed the applicant using the pseudonym "Violeta".

In 2006 the applicant brought a civil claim against the hospital. Following a forensic report, the regional court found that she had been unlawfully deprived of her liberty during her time at the psychiatric hospital, as she had been held against her will and in "outright disregard" for the 48-hour time-limit, after which time the hospital should have applied for a court order. The court further found that the documentary had allowed her to be identified, despite the use of a pseudonym, thus breaching her right to privacy. "By attempting to alter the applicant's attitude to non-traditional religion" her freedom of religion had also been violated. She was awarded 110,000 LTL (EUR 31,850) in respect of non-pecuniary damage, with costs.

The hospital appealed, and the following year the court of appeal upheld the lower court's decision on deprivation of liberty but overturned the findings on privacy and religious freedom. In particular, it stated that the evidence as a whole was not sufficient to conclude that the interviews had led to a breach of confidentiality and that the information on her diagnosis provided to her mother could not be regarded as a breach of her right to privacy. Furthermore, the doctors' critical approach to her meditative practices had not in itself restricted her freedom of religion. The damages were reduced and costs were awarded against her. An appeal on points of law by the applicant was refused.

The Law

Alleged Violation of Article 8 of the Convention

The applicant complained that a psychiatrist of the hospital had disclosed information about her health and private life to the journalists of the television documentary and her mother. She relied on Article 8 of the Convention, which protects the right to respect for private life.

General Principles

The Court reiterates that personal information relating to a patient belongs to his or her private life. The protection of personal data, not least medical data, is of fundamental importance to a person's enjoyment of his or her right to respect for private and family life as guaranteed by Article 8 of the Convention. Respecting the confidentiality of health data is a vital principle in the legal systems of all the Contracting Parties to the Convention. It is crucial not only to respect the sense of privacy of a patient but also to preserve his or her confidence in the medical profession and in the health services in general. Without such protection, those in need of medical assistance may be deterred from revealing such information of a personal and intimate nature as may be necessary in order to receive appropriate treatment and, even, from seeking such assistance, thereby endangering their own health and, in the case of transmissible diseases, that of the community. The domestic law must therefore afford appropriate safeguards to prevent any such communication or disclosure of personal health data as may be inconsistent with the guarantees in Article 8 of the Convention.

Whether There Was Interference with the Applicant's Right to Respect for Her Private Life

Although some of the circumstances of this case are not entirely clear, it transpires from the record of the regional court's hearing that after the applicant

had been admitted to the psychiatric hospital without her consent on 7 May 2003, her mother contacted the journalists of the television documentary and told them where the applicant was being held, but that she did not know her daughter's diagnosis.

For her part, the psychiatrist testified at the hearing that when the journalists had come to that hospital, she had been asked by the hospital's administration to meet them and told that the "talk would be about Mockuté", an aspect of the case which the Court finds particularly disturbing. The regional court held that the psychiatrist, without obtaining the applicant's consent, had revealed information to the journalists about her diagnosis, acute psychosis, the fact that she was being treated at that hospital, and that she had studied in the United States. The Court further observes that the psychiatrist used such statements as "it does not appear that this young woman would participate in orgies" and that "she is not hypersexual". In this context it recalls the State's obligation to protect information about a person's sexual life and moral integrity.

In deciding whether there was an interference with the applicant's right to respect for her privacy, the Court also notes that under the United Nations Convention on the Rights of Persons with Disabilities, which was adopted in 2007, the States' have a duty to protect persons with disabilities from unlawful attacks on their honour and reputation (see Article 22 of the CRDP). Examining further, the Court observes that the psychiatrist also discussed the applicant as manifesting secretive behaviour, which was a trait of those belonging to sects. The Court is also mindful of the applicant's argument that she experienced emotional insecurity because she was afraid of which of the additional facts the psychiatrist had forced out of her might have been revealed to the journalists.

It has not been contested that the psychiatric hospital is a public hospital and that the acts and omissions of its administration and medical staff were capable of engaging the responsibility of the respondent State under the Convention.

The Court finds that the disclosure by the psychiatrist to the journalists of highly personal and sensitive confidential information about the applicant, obtained during her involuntary hospitalisation and treatment at that hospital, entailed an interference with the applicant's right to respect for her private life guaranteed by paragraph 1 of Article 8.

Lastly, the Court turns to the applicant's complaint that the psychiatric hospital revealed information about her state of health to her mother. Although the Government disputed that such a disclosure had taken place, the Court notes that the court of appeal did not deny such a fact, but instead stated that the hospital had been entitled to act in that way. Given the applicant's statements about her tense relationship with her mother, the Court is also ready to

concede that disclosure by the hospital of information about the applicant's health to her mother, whichever form it might have taken, also amounted to an interference with the applicant's right to respect for her private life.

Whether the Interference Was Justified

The Court finds it clear that the applicant did not give her consent to the psychiatrist or the hospital to discuss her state of health, her sexual life or her beliefs, either with the journalists or with her mother. Furthermore, the Court fails to see the legal grounds justifying the release of such information, whether under Lithuanian law or under Article 8 § 2 of the Convention. Even if there were exceptions to the rule of non-disclosure, none of those have been argued by the Government, which instead pleaded a legitimate aim of informing society about new religious movements. The interference with the applicant's right to respect for her private life was therefore not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

Lastly, as to the legal basis for disclosing information related to the applicant's health to her mother, the Court observes that the appeal court focused its analysis on the proportionality of the interference, in particular, on the fact that the applicant's mother had known of her history of mental troubles, without citing any legal basis for such a disclosure. The Government did not specify one either. That being so, the Court cannot but hold that the psychiatric hospital's release of information about the applicant's health to her mother, whichever form it might have taken, was likewise not "in accordance with the law".

Alleged Violation of Article 9 of the Convention

The applicant complained of a violation of her right to practise her religion on account of the restrictive environment at the psychiatric hospital and because the psychiatrists had persuaded her to have a critical attitude towards her religion. She relied on Article 9 of the Convention, which protects the right to freedom of thought, conscience and religion.

On the Existence of an Interference

The Court firstly notes that the Government did acknowledge that the right to practise one's religion in accordance with the Osho teaching fell within the scope of Article 9 of the Convention. The Court has no reason to hold otherwise, all the more so since pursuant to the Supreme Administrative Court's decision the Ojas Meditation Center had been registered as a religious community.

The Court finds that it has been presented with diverging accounts of the applicant's factual situation in the psychiatric hospital. In principle it is not

the Court's task to substitute its own assessment of the facts for that of the domestic courts. Even so, the Court has already held that, in a situation like this, it remains free to itself evaluate the facts in the light of all the material at its disposal. It has also held that the position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with.

Examining further, the Court turns to the applicant's twofold argument that at the psychiatric hospital she had been prevented from practicing her religion, firstly, because of restrictive regime therein, and, secondly, because of the doctors' unsympathetic views towards her beliefs. The Court notes that, after the applicant was placed in the hospital, she was forcibly administered drugs, physically restrained, and various restrictive treatment regimes were applied to her during the fifty-two days of her stay at that institution. The Government have not suggested that the applicant could have left the hospital to practise her religion with the circle of people with whom she shared it, even though she had clearly indicated to the psychiatrists that attending the Ojas Meditation Center "brought her peace". In fact, the regional court had clearly ruled out any possibility for the applicant to leave the hospital for 52 days of her stay therein. In the hospital she had to submit and subordinate her wishes to unyielding authority of the psychiatrists who were trying to "correct" the applicant so that she abandoned her "fictitious" religion, and whom she felt constrained to obey, even on pain of receiving a diagnosis which would make her unemployable. The applicant therefore has demonstrated that pressure was exerted on her to change her religious beliefs and prevent her from manifesting them.

While it is for the medical authorities to decide on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves, the Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist. In this case the psychiatrists who attended to the applicant admitted themselves that the applicant's life "had not been in danger" for all fifty-two days of her stay at the psychiatric hospital. This view was also confirmed by the court-appointed experts.

The Court holds that there has been an interference with the applicant's right to respect for her religion.

Whether the Interference Was Justified

The above-mentioned interference contravened Article 9 of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in paragraph 2 of that Article and was "necessary in a democratic society" for achieving such aim or aims.

In the present case, however, it is sufficient to note that, except for the first day of her involuntary hospitalisation, the applicant was held at the psychiatric hospital unlawfully. Given that the applicant's psycho-correction treatment in fact continued throughout her stay at that institution, the Court finds that the interference was not "prescribed by law".

The Court also attaches weight to the fact that, under the Lithuanian Constitution and the Constitutional Court's case-law, freedom of religion becomes a matter of legal regulation only to the extent that an individual expresses his or her thoughts or religion by actions, and that, as long as a person has a religion or faith, it falls within the inviolable sphere of private life and may not be limited in any way. The Court is prepared to accept that the needs of psychiatric treatment might necessitate discussing various matters, including religion, with a patient, when he or she is being treated by a psychiatrist. That being so, it does not transpire from Lithuanian law that such discussions might also take the form of psychiatrists prying into the patients' beliefs in order to "correct" them when there is no clear and imminent risk that such beliefs will manifest in actions dangerous to the patient or others.

For these reasons, the Court holds, unanimously, that there has been a violation of Article 8 of the Convention; and, by five votes to two, that there has been a violation of Article 9 of the Convention.

Joint partly dissenting opinion of Judges Yudkivska and Ranzoni, defending the view that the applicant was not pressured to change her religious beliefs, but her treatment was based on her completely uncritical attitude towards those beliefs and, in particular, towards her psychotic behaviour.

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