

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 39693/12
B.K.
against Finland

The European Court of Human Rights (Fourth Section), sitting on 13 October 2015 as a Committee composed of:

Krzysztof Wojtyczek, *President,*
Faris Vehabović,
Yonko Grozev, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 18 June 2012,

Having regard to the declaration submitted by the respondent Government on 18 March 2015 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr B.K., is a Finnish national who was born in 1946. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). He was represented before the Court by Mr Markku Fredman, a lawyer practising in Helsinki.

2. The Finnish Government ("the Government") were represented by their Agent, Mr Arto Kosonen of the Ministry for Foreign Affairs.

3. The application had been communicated to the Government.

The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

Background of the case

5. In November 2006 the applicant shot his wife while he was severely intoxicated by alcohol. On 27 February 2007 the District Court (*käräjäoikeus, tingsrätten*) ordered the applicant to undergo a psychiatric assessment under the Code of Judicial Procedure (*oikeudenkäymiskaari, rättegångsbalken*) and the Mental Health Act (*mielenterveyslaki, mentalvårdslagen*), and adjourned the proceedings for the assessment to take place in Niuvanniemi State mental hospital in summer 2007. On 31 August 2007 the District Court considered that the applicant was guilty of manslaughter but that he was not criminally liable for his action due to his mental illness. On 30 January 2009 the Court of Appeal (*hovioikeus, hovrätten*) upheld the judgment but qualified the crime as murder.

6. On 5 July 2007 the National Forensic Medical Authority (*terveydenhuollon oikeusturvakeskus, rättsskyddscentralen för hälsovården*) diagnosed the applicant as suffering from delusional disorder, narcissistic personality disorder and alcohol addiction. His illness was considered to be the cause of his violent behaviour. The Authority ordered the applicant to undergo involuntary psychiatric treatment under section 8 of the Mental Health Act. The applicant stayed in the closed ward of Niuvanniemi Hospital.

Impugned sets of proceedings concerning the continuation of the applicant's involuntary care

7. On 3 October 2012 the head physician of the hospital decided to continue the applicant's involuntary care until 2 April 2013. The applicant appealed this decision to the Administrative Court (*hallinto-oikeus, förvaltningsdomstolen*) arguing, that he was neither delusional nor dangerous and that his mental health should be assessed by an independent physician outside the treating hospital. On 22 November 2012 the Administrative Court considered, referring to the Court's judgment of 3 July 2012 in the case of *X v. Finland*, that the applicant had requested an independent assessment which had not been provided and that there was therefore a considerable flaw in the proceedings. Thus it quashed the decision of the head physician.

8. On 26 November 2012 the head physician of Niuvanniemi hospital made a request to the National Institute for Health and Welfare (*Terveyden ja hyvinvoinnin laitos, Institutet för hälsa och välfärd* – previously the National Forensic Medical Authority), that the applicant be committed to involuntary care under section 17 of the Mental Health Act. On 7 December 2012 the Institute dismissed this request as being outside its jurisdiction. It considered, however, that the applicant could be committed to involuntary care on 30 November 2012 on the basis of section 11 of the Mental Health Act and that he should not be left without treatment.

9. Meanwhile, the applicant's condition was assessed by a general physician M. from the municipal health centre, who considered the applicant to be in need of such care. On 30 November 2012 the head physician of the hospital decided to commit the applicant to involuntary care. That decision was to remain in force for a period of three months, thus until 28 February 2013. The applicant appealed to the Administrative Court arguing, *inter alia*, that M. was not a specialist in psychiatry but a general physician and had no expertise to assess his condition. On 6 February 2013 the Administrative Court quashed the decision of 30 November 2012 as it considered that it had been made in accordance with the wrong provisions of the Mental Health Act. The applicant was a forensic patient to whom provisions under Chapter 3 of the Mental Health Act applied, but the impugned decision had been made according to the provisions in Chapter 2 of the Mental Health Act, governing the treatment of civil patients.

10. On 7 February 2013 the head physician of Niuvanniemi Hospital proposed again to the National Institute for Health and Welfare that the latter commit the applicant to involuntary treatment under section 17 of the Mental Health Act or, in the alternative, decide to discontinue the treatment. On 15 February 2013 the Institute dismissed the proposal and decided that it had no statutory jurisdiction to commit the applicant for treatment. According to the Institute, it was for the hospital and the Administrative Court to decide whether to continue or discontinue the treatment in such a situation.

11. On 22 February 2013 the head physician of the hospital again took a decision to commit the applicant to involuntary care. Before making that decision, the applicant had a possibility to have his condition assessed by a doctor working outside the hospital but he refused the assessment. This decision was in force until 21 August 2013. The applicant appealed. On 6 May 2013 the Administrative Court quashed the decision of 22 February 2013, noting again that the applicant was a forensic patient and therefore the decision concerning his involuntary care could not be taken according to the procedure used for civil patients. As the applicant was a forensic patient, it was for the National Institute for Health and Welfare to take the decision to commit the applicant to involuntary care. The Administrative Court considered furthermore that, due to procedural mistakes, the time-limits set for decision-making in involuntary care cases had been exceeded and that there were no provisions in the Mental Health Act governing such situations.

12. On 7 May 2013 Niuvanniemi Hospital proposed again to the National Institute for Health and Welfare that the applicant be committed for treatment under section 17 of the Mental Health Act. On 23 May 2013 the Institute dismissed the proposal and held that the applicant's status as a forensic psychiatric patient had lapsed. As the Administrative Court did not confirm the continuation of the applicant's involuntary care as a forensic

patient, and as it had also quashed the care order made under Chapter 2 of the Mental Health Act as a civil patient, the applicant could no longer be treated as a forensic patient.

13. On 31 May 2013 the head physician of Niuvanniemi Hospital committed the applicant to care for three months on the basis of sections 8 and 11 of the Mental Health Act. The applicant appealed against this decision to the Administrative Court.

14. On 29 August 2013 the head physician of Niuvanniemi Hospital decided to continue the care on the basis of sections 8 and 12 of the Mental Health Act. The decision was submitted to the Administrative Court for confirmation. The applicant also appealed against the decision to the Administrative Court.

15. On 16 December 2013 the Administrative Court established that the decision to commit the applicant to care as a forensic psychiatric patient had remained open when the National Institute for Health and Welfare had dismissed the request of the head physician of Niuvanniemi Hospital on 7 December 2012. Holding that the applicant needed involuntary psychiatric treatment, the Administrative Court rejected the applicant's appeals against the decisions of 31 May and 29 August 2013 and confirmed the decision of 29 August 2013 on continued care on the basis of sections 8 and 17 of the Mental Health Act.

16. On 24 January 2014 the Supreme Administrative Court (*korkein hallinto-oikeus, högsta förvaltningsdomstolen)* rejected the appeal of the National Institute for Health and Welfare against the decision of 6 May 2013 of the Administrative Court and dismissed the appeals against the decisions of 22 November 2012 and 6 February 2013 of the Administrative Court. It rejected all the applicant's appeals against the said decisions.

17. On 6 March 2014 the National Institute for Health and Welfare dismissed again the proposal of 7 May 2013 by Niuvanniemi Hospital and held that the applicant's status had been confirmed by the decision of 16 December 2013 of the Administrative Court and that that decision was still valid.

18. On 19 March 2014 the Supreme Administrative Court rejected the applicant's appeal against the decision of 16 December 2013 of the Administrative Court. In its decision the Supreme Court found that:

> "[t]he provisions of the Mental Health Act do not indicate directly how to proceed when a hospital's physician responsible for psychiatric care has not, within the prescribed time, made a decision on whether to continue the care of a forensic psychiatric patient [...] The Supreme Administrative Court has decided to fill the gap in law by ruling that the jurisdiction lies with the National Institute for Health and Welfare instead of the Administrative Court. [...] Because the National Institute for Health and Welfare dismissed the proposal of the head physician, responsible for psychiatric care, the head physician was, in that situation, [...] compelled to make a decision on the care [...]. When making the decision in this exceptional situation, the

head physician acted appropriately. [...] The Administrative Court confirmed the decision which had been submitted to it for confirmation. Thus, the deprivation of the applicant's liberty was reviewed. The Supreme Administrative Court holds that in this exceptional conflict of jurisdiction it was justifiable for the Administrative Court to confirm the decision of the hospital's physician responsible for psychiatric care on the grounds mentioned in the decision".

COMPLAINT

19. The applicant complained under Article 5 § 1 of the Convention that his right to liberty had been violated. The legal remedies were insufficient as he had been deprived of independent medical assessment and an oral hearing.

THE LAW

20. The applicant complained of a violation of his right to liberty under Article 5 § 1 of the Convention.

21. Article 5 § 1 of the Convention reads in relevant parts as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

..."

22. After the failure of attempts to reach a friendly settlement, by a letter of 18 March 2015 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

23. The declaration provided as follows:

"Whereas the efforts with a view to securing a friendly settlement have been unsuccessful, the Government wish to express – by way of its unilateral declaration – its acknowledgement that, in the special circumstances of the case, as is described above, the deprivation of the applicant's right to liberty did not fulfil the requirements of Article 5 § 1 (e) of the Convention.

Consequently, the Government are prepared to pay the applicant in compensation for non-pecuniary damage EUR 13,500 as well as for costs and expenses (inclusive of value-added tax) the sum which remains after the legal aid to be granted by the Court to the applicant has been subtracted from the applicant's claim of EUR 2,170 made by the applicant in his letter of 7 November 2014. In the Government's view, having

regard to the circumstances of the case and your Court's jurisprudence and practice in comparable cases, the above amount constitutes adequate redress for the aforementioned deprivation of the applicant's liberty under Article 5 § 1 (e) of the Convention.

The total sum will be payable within three months from the date of notification of the decision pursuant to Article 37 § 1 (c) of the Convention. In the event of a failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Referring to the Government's present observations, the Government submits that the Ministry of Social Affairs and Health is, since summer 2014, drafting a government proposal to amend the Mental Health Act. The aim is that the Act would be supplemented with provisions concerning the decision to continue or discontinue the treatment of an involuntarily treated forensic psychiatric patient after the expiry of the maximum period of six months stipulated for involuntary treatment in section 17 of the Act. The draft government proposal is intended to be circulated for comments for the second time in spring 2015, as the amendments made to the draft on the basis of the first circulation in autumn 2014 necessitated a new circulation, and subsequently the amended proposal is to be presented to Parliament in autumn 2015. The Government is also planning a more comprehensive review of the relevant legislation, especially the Mental Health Act, and will, if need be, propose further amendments.

In the Government's view, the aforementioned unilateral declaration constitutes adequate redress for the impugned breach of the applicant's right to liberty under Article 5 § 1 (e) of the Convention having regard to the circumstances of the case.

In the light of the above, the Government suggests that the Court finds that the circumstances of the present case allow for the justified discontinuation of the examination of the alleged violation of Article 5 § 1 (e) on the basis of "any other reason" as referred to in Article 37 § 1 (c) of the Convention. Moreover, there are no reasons of a general character, as defined in Article 37 § 1 *in fine*, which would require the further examination of the case by virtue of that provision.

Accordingly, the Government invites your Court to strike the application out of its list of cases."

24. By a letter of 22 April 2015, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that he was kept in involuntary psychiatric care even when there was no need for such care. His fate had been decided without proper consideration by independent and competent psychiatric experts.

25. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

"for any other reason established by the Court, it is no longer justified to continue the examination of the application".

26. It also reiterates that, in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

27. To this end, the Court has examined the declaration carefully in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; see also *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

28. The Court has established in a number of cases, including those brought against Finland, its practice concerning complaints about involuntary care under Article 5 of the Convention (see, for example, *X v. Finland*, no. 34806/04, § 171, ECHR 2012 (extracts)).

29. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

30. Moreover, in the light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

31. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 5 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 5 November 2015.

Fatoş Aracı
Deputy Registrar

Krzysztof Wojtyczek
President