



Prolongation of confinement in psychiatric institution not based on objective and recent medical expert opinion

In today's Chamber judgment¹ in the case of **Miklić v. Croatia** (application no. 41023/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.

The case concerned Mr Miklić's placement in a psychiatric institution after his conviction on charges of intrusive and threatening behaviour committed as a minor and while lacking mental capacity.

The Court considered that the prolongation of Mr Miklić's confinement had been decided in a procedure at odds with the domestic legislation and had not been based on objective and recent medical expert opinion. The Court was not convinced that either of the expert opinions relied on by the domestic courts could be considered both objective and recent within the meaning of the Court's case-law. It found in particular that none of the explanations provided justified the fact that no fresh expert evaluation had been ordered, as prescribed by domestic law.

Principal facts

The applicant, Luka Miklić, is a Croatian national who was born in 1999 and lives in Dramalj (Croatia).

In 2016, when he was a minor, criminal proceedings were opened against him following complaints from a teenage girl, also a minor, alleging that he had persistently followed, harassed and stalked her, attempting to establish unwanted contact, been offensive towards her and made remarks with sexual connotations.

In June 2017, relying on psychiatric and psychological expert opinions obtained during the criminal proceedings, the Rijeka Municipal Court found that Mr Miklić had committed criminal offences of two counts of intrusive behaviour and one threat while lacking mental capacity and when he was a minor, and decided that he should be placed in a psychiatric unit for six months. Proceedings were subsequently instituted to have him committed to a psychiatric hospital.

In February 2018, the hospital proposed that Mr Miklić be allowed to continue his treatment as an outpatient. An outside opinion was sought from an independent expert psychiatrist, according to which Mr Miklić suffered from a personality disorder and could become very aggressive when frustrated. The expert therefore considered it necessary that he be kept in the psychiatric hospital. At a subsequent hearing, his confinement was extended until 3 March 2019.

On appeal, the decision was quashed, and an additional expert report commissioned since the hospital had changed its initial recommendation for outpatient treatment as, during his first time out on therapeutic leave, Mr Miklić had sought out the same teenage girl, despite being forbidden from contacting her. At a subsequent hearing, the two external experts and the hospital all agreed

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.

on the diagnosis and agreed that Mr Miklić should continue to be treated in a closed institution. His appeal was dismissed.

In the meantime, on 8 November 2018, Mr Miklić requested that he be released and allowed to continue his treatment outside the hospital. He based his request on a privately commissioned expert medical evaluation, which recommended that treatment in the community be considered, with the involvement of his parents in the process and regular reporting to a psychiatrist.

The court forwarded the applicant's request for release to the hospital on 31 January 2019, which filed comments on his proposal and applied for the continuation of Mr Miklić's hospital placement, refuting certain statements contained in the expert report, and stating that he was not yet ready for outpatient treatment. The hospital's submissions were not forwarded to Mr Miklić but were served on his lawyer at the hearing itself.

Mr Miklić's lawyer contested the hospital's application, emphasising that the independent expert's opinion should be heard in court and reiterating her request for a fresh expert opinion. The County Court dismissed the requests and extended Mr Miklić's compulsory confinement until 4 March 2020.

Mr Miklić then lodged a constitutional complaint, claiming that his rights to a fair trial and equality before the law had been violated and that the domestic courts had not duly considered replacing his compulsory confinement with a milder measure, and they had failed to commission a new expert evaluation. In July 2019 the Constitutional Court dismissed his complaint as ill-founded.

According to the Government, Mr Miklić was treated as an outpatient as of 31 January 2020. However, the following summer, his condition deteriorated and, based on a fresh expert recommendation, the court ordered his re-committal to a psychiatric institution. He is still in compulsory confinement in Vrapče Psychiatric Hospital.

Complaints, procedure and composition of the Court

Relying on Articles 5 § 1 (right to liberty and security) and 6 § 1 (right to a fair hearing) of the Convention, the applicant complained about his compulsory placement in the psychiatric hospital. On the one hand, the court had failed to obtain a fresh expert opinion when ordering the continuation of his confinement and, on the other, it had failed to forward to his lawyer the opinion and the proposal of the hospital prior to the hearing of 13 February 2019, in breach of the equality of arms principle.

The application was lodged with the European Court of Human Rights on 29 July 2019.

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

Marko Bošnjak (Slovenia), *President*,

Péter Paczolay (Hungary),

Krzysztof Wojtyczek (Poland),

Alena Poláčková (Slovakia),

Erik Wennerström (Sweden),

Raffaele Sabato (Italy),

Davor Derenčinović (Croatia),

and also Renata Degener, *Section Registrar*.

Decision of the Court

Article 5 § 1

As Mr Miklić's deprivation of liberty had been prolonged twice based on a finding by the domestic courts that he had been suffering from a mental disorder and had therefore been of "unsound mind", the Court decided to examine the complaint under Article 5 §§ 1 (e) (right to liberty and security) and 4 (right to have lawfulness of detention decided speedily by a court).

The Court reiterated that no deprivation of liberty of a person considered to be of unsound mind could be deemed to be in conformity with Article 5 § 1 (e) if it had been ordered without seeking a sufficiently recent opinion of a medical expert. Given the vulnerability of individuals suffering from mental disorders and the need to put forward weighty reasons to justify any restriction of their rights, the proceedings leading to the involuntary placement of an individual in a psychiatric facility must provide effective guarantees against arbitrariness.

In the present case, the Court observed that, under section 37(2) of the Protection of Persons with Mental Disorders Act, when deciding on the periodic prolongation of a person's compulsory confinement or his or her request for out-of-hospital treatment, the domestic court is, as a rule, obliged to obtain a fresh expert opinion from a person not employed by the institution concerned. Mr Miklić's lawyer had submitted a request for a fresh expert opinion, but her request had been rejected because "the requirements for the continuation of the applicant's compulsory [confinement] had not been called into question". Replying to the same request at the appeal stage, the appellate court stated that an expert evaluation had already been carried out during his treatment. In the Court's view, none of these explanations justified the fact that no fresh expert evaluation had been ordered in Mr Miklić's case, as prescribed by domestic law.

Furthermore, as Mr Miklić rightly pointed out, the Rijeka County Court had had ample time to obtain a fresh expert opinion between the moment he had submitted his proposal for out-patient treatment on 8 November 2018, and the holding of the court hearing on 13 February 2019 before the previous decision expired on 4 March 2019. Instead, despite the fact that the proceedings had been considered urgent under domestic law, the County Court had waited three months before taking any action on Mr Miklić's application for release. The Court did not find any justification for such an excessive delay.

Even assuming that the domestic court had decided to apply the exceptional procedure as prescribed in section 37(3) of the Protection of Persons with Mental Disorders Act, it had not obtained an opinion from a new psychiatric expert. Indeed, the only person who had given an opinion on the need for Mr Miklić's continued confinement, on which the decision of 13 February 2019 was based, was a doctor from the hospital who had been involved in the previous decisions prolonging his confinement.

Having refused Mr Miklić's proposal to obtain a fresh expert opinion, the domestic courts had based their decisions on expert evaluations which had not only initially disagreed on the applicant's diagnosis, but had been carried out one to two years previously. In such circumstances, the Court was not convinced that either of the expert opinions could be considered both objective and recent within the meaning of the Court's case-law. When Mr Miklić's placement was being prolonged for the first time, the appeal court had instructed the first-instance court to obtain a fresh expert report, but it had not done so. Given that Mr Miklić had previously shown changes in his condition, in order to obtain the most accurate information on his mental state at the time of his request for discharge, the court should at least have sought a fresh medical expert opinion at that point.

The Court considered that the assessment of Mr Miklić's mental state when prolonging his placement had been adopted in a procedure at odds with the domestic legislation and had not been based on objective and recent medical expert opinion. His position in the ensuing proceedings had

been further compromised by the fact that he had not learned about the hospital's counterproposal for his continued confinement or its opinion on his request for release prior to the hearing of 13 February 2019. The foregoing meant that it was not necessary for the Court to examine whether he should have been kept in psychiatric detention or not. There had accordingly been a violation of Article 5 § 1.

Article 5 § 4

Having regard to its findings under Article 5 § 1, the Court did not find it necessary to examine separately whether there had also been a violation of Article 5 § 4.

Just satisfaction (Article 41)

As the applicant had not submitted a claim for just satisfaction, no sum was awarded on that account.

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.