



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

FIRST SECTION

CASE OF M.B. v. POLAND

(Application no. 60157/15)

JUDGMENT

Art 5 § 1 • Persons of unsound mind • Unlawful detention in psychiatric hospital, based on outdated medical assessment issued a year and a half earlier • Lawful, later period of detention based on up-to-date and biannual psychiatric examinations

STRASBOURG

14 October 2021

FINAL

14/01/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of M.B. v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Gilberto Felici,

Erik Wennerström,

Raffaele Sabato,

Lorraine Schembri Orland,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the above application against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr M.B. (“the applicant”), on 30 November 2015;

the decision by the President of the Section not to have the applicant’s name disclosed;

the observations submitted by the Polish Government (“the Government”) and the observations in reply submitted by the applicant;

the comments submitted by the Mental Disability Advocacy Centre, which was granted leave to intervene by the President of the Section;

Noting that on 12 May 2017 the Government were given notice of the complaint concerning the lawfulness of the applicant’s detention in a psychiatric hospital between 4 August 2015 and 30 November 2016 and that the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court;

Having deliberated in private on 21 September 2021,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant’s detention in a psychiatric hospital on the basis of an allegedly outdated medical assessment.

THE FACTS

2. The applicant was born in 1985 and lives in Cracow. He was represented by Mr P. Kładoczny, a lawyer working with the Helsinki Foundation for Human Rights, a non-governmental organisation based in Warsaw.

3. The Government were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

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

I. BACKGROUND TO THE CASE

5. On 13 January 2014 the applicant attacked his parents with a knife. Following that incident, the Trzebnica District Prosecutor instituted criminal proceedings against him on charges of physical assault. On the same day the applicant was placed in the psychiatric ward of a medical centre in Milicz.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

6. On 16 January 2014 the prosecutor charged the applicant with the offence of bodily harm. On the same day the Trzebnica District Court appointed a legal-aid lawyer for the applicant.

7. The applicant was informed of the charges against him in the presence of his lawyer on 17 January 2014.

8. On 17 January 2014 the applicant was examined by two psychiatrists and a psychologist. On the same day the experts issued a joint medical opinion, concluding that the applicant was suffering from a paranoid schizophrenic delusional disorder and could not participate in the criminal proceedings against him. They also found that the risk of his committing similar offences in future was high and that his condition posed a threat to the health and life of members of his family. For those reasons it was decided that he should be placed in a facility with an enhanced level of security.

9. On 27 January 2014 the prosecutor again appointed two psychiatrists and a psychologist to prepare another opinion on the state of the applicant's mental health. On 3 February 2014, after examining the applicant, the experts agreed that, given his condition, he could not participate in the criminal proceedings against him.

10. On 28 March 2014 the Trzebnica District Prosecutor asked the Trzebnica District Court to discontinue the proceedings against the applicant, on the grounds that he could not be held criminally responsible as he was of unsound mind, and at the same time to apply a preventive measure and place the applicant in a psychiatric hospital.

11. On 31 March 2014 the applicant was discharged from the medical centre in Milicz. He was advised to continue psychiatric treatment.

12. Subsequently, on 5 May 2014, the applicant voluntarily started treatment at a therapeutic inpatient centre in Gdańsk for young people suffering from mental health conditions (*Hostel-inkubator samodzielności* – “the Hostel”).

13. At a hearing held on 1 July 2014 before the Trzebnica District Court, the expert psychiatrists confirmed their previous conclusions that the

applicant should be placed in a closed psychiatric institution. In addition, they were of the view that the applicant's mental condition was not stable. If he was not placed in a closed psychiatric facility, there was a high risk that he would discontinue his treatment and commit further offences of significant social harm.

14. On 27 July 2014 the applicant submitted a certificate from the Hostel, prepared by psychologists who stated that he should continue treatment in that institution.

15. On 5 August 2014 the applicant submitted another certificate from the Hostel, which confirmed that as of 6 May 2014 he had been taking his medication regularly, was having therapy and had not experienced any delusional episodes or hallucinations.

16. At a hearing held on 12 January 2015 the Trzebnica District Court heard evidence from the psychologist and the director of the Hostel. It also examined again the psychiatrists who had prepared the expert opinions and who stated that the applicant should be placed in a closed psychiatric institution. They were of the view that the applicant might stop taking his medication and might consequently commit an offence similar to the one he had been charged with.

17. On 19 January 2015 the Trzebnica District Court discontinued the proceedings against the applicant. The court established that the applicant had committed the offence with which he had been charged. However, he could not be held criminally responsible as he had been suffering from paranoid schizophrenia. It further referred to the experts' opinion and ordered that the applicant be placed in a psychiatric hospital.

18. On 13 February 2015 the applicant's lawyer appealed. He provided further evidence relating to the alleged improvement in the applicant's condition.

19. On 11 May 2015 the Wrocław Regional Court upheld the first-instance decision. The court relied on the reasons given by the District Court, noted that the experts had confirmed that the applicant should be placed in a closed psychiatric institution and stressed that there was no need to obtain any further expert opinions. It was further noted that the District Court had twice heard the psychiatric experts, who had supplemented their reports.

20. On 10 June 2015 the Commission on Preventive Measures (*Komisja Psychiatryczna ds. środków zabezpieczających*) recommended that the applicant be placed in Cracow Psychiatric Hospital ("the Hospital").

21. On 4 August 2015 the applicant was placed in the Hospital.

22. On 8 September 2015 the Trzebnica District Court held a hearing in order to examine an application by the applicant's lawyer for the preventive measure to be changed.

23. On 30 October 2015, at the court's request, two doctors from the Hospital (the head of the ward and the consultant in charge of the

applicant's treatment) submitted information about the applicant's state of health. They noted that at the time of his admission to the Hospital, the applicant had been aware of his illness; however, he had not been remorseful about the offences he had committed. Subsequently, his condition had deteriorated, and despite a change of treatment it was not stable and there remained a risk that he would commit a similar offence again. They also stressed that other preventive measures (electronic monitoring, therapy, treatment for addiction) were not sufficient. In view of the applicant's condition, the experts did not consider that a request for the preventive measure to be changed to outpatient treatment combined with electronic monitoring was justified.

24. On 20 November 2015 the Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) lodged a cassation appeal with the Supreme Court on the applicant's behalf against the decision of 11 May 2015. It was dismissed as manifestly ill-founded on 16 April 2016.

25. On 4 February 2016 psychiatrists from the Hospital submitted an opinion on the applicant's condition following a periodic review. They noted that he was calmer, respected hospital rules (*regulamin szpitala*) and accepted the need to continue treatment. However, the improvement was not stable and there was still a risk that he might commit a similar offence. Consequently, it was necessary to keep him in the Hospital.

26. On 12 April 2016, in the context of a periodic review, the Trzebnica District Court extended the applicant's detention. Referring to the opinion of 4 February 2016, the court held that the applicant should continue treatment in a psychiatric hospital.

27. At the request of the applicant's parents, he was examined by private psychiatrists and a psychologist on 2 April and 18 April 2016 respectively. The experts concluded that the risk of the applicant committing a similar offence was low. Moreover, his condition had improved and he could be treated as an outpatient.

28. On 14 April 2016 psychiatrists from the Hospital, in an opinion following a periodic review of the applicant's condition, had noted that the applicant was calmer but seemed to be emotionally tense or depressed. In their view he should continue treatment at a psychiatric hospital, as there was still a risk that he might commit criminal offences of significant harm to the community.

29. On 23 May 2016 the Trzebnica District Court again extended the applicant's detention in the Hospital.

30. On 28 July 2016 the applicant submitted an application for the preventive measure to be changed to outpatient treatment in Gdańsk, where he had been living before being placed in the Hospital.

31. On 14 October 2016 psychiatrists from the Hospital issued an opinion concerning the applicant, following a periodic review. They confirmed that it was unlikely that he would commit similar offences again

as his psychiatric condition had improved. They further recommended his release from the closed psychiatric facility.

32. On 22 November 2016 the Trzebnica District Court ordered that the applicant be released from the Hospital. It also held that the applicant should continue treatment at the institution in Gdańsk.

33. The applicant was released from the Hospital on 29 November 2016, the date on which it received the court's order.

34. On 20 March 2017 the Trzebnica District Court granted a request by the applicant to continue outpatient treatment at an institution in Cracow.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CRIMINAL CODE

35. The conditions for the detention on medical grounds of people of unsound mind who are not criminally responsible are laid down in the Criminal Code of 1997, the relevant parts of which in its wording until 1 July 2015 read as follows:

Article 93

“A court may impose a preventive measure as provided for in this Chapter, which involves committal to a secure medical institution, only if necessary in order to prevent the repeated commission of a prohibited act by an offender suffering from mental illness ... mental impairment, or addiction to alcohol or other narcotic drugs. Before imposing such a measure, the court shall hear evidence from psychiatrists and a psychologist ...”

Article 94

“1. If an offender has committed a prohibited act in a state of insanity as specified in Article 31 § 1, causing significant harm to the community, and there is a high probability that he or she will commit such an act again, the court shall commit him or her to a suitable psychiatric institution.

2. The duration of the stay at the institution shall not be fixed in advance; the court shall release the offender from the institution if his or her stay there is no longer deemed necessary.

3. A court can again order the committal of an offender (as specified in paragraph 1) to a suitable psychiatric institution if it is advisable in the light of the circumstances specified in paragraph 1 or Article 93; such an order may not be issued more than five years after release from an institution.”

II. CODE OF EXECUTION OF CRIMINAL SENTENCES

36. The relevant parts of Article 203 of the Code of Execution of Criminal Sentences read as follows:

“1. The director of a closed institution in which a preventive measure is being executed shall send the court, no less than every six months, an opinion on the state of

health of the perpetrator placed in the institution and the progress of his or her treatment or therapy. The opinion shall be sent immediately if, due to a change in the perpetrator's state of health, the director finds that his or her further detention in the institution is unnecessary.

2. The court may request, at any time, an opinion on the state of health of the perpetrator placed in an institution referred to in paragraph 1, the treatment or therapy administered, and the results thereof."

37. Article 204 reads:

"1. No less than every six months, and in the event of receiving an opinion that further detention of the perpetrator in a secure medical institution in which a preventive measure is being executed is unnecessary, the court shall immediately make a decision as regards the further execution of that measure. If necessary, the court shall refer to the opinion of other medical experts.

The decision as regards the further execution of a preventive measure may be appealed against."

III. RELEVANT INTERNATIONAL DOCUMENTS

38. The UN Convention on the Rights of Persons with Disabilities ("CRPD"), adopted by the General Assembly of the United Nations on 13 December 2006 (Resolution A/RES/61/106), is geared to promoting, protecting and ensuring full enjoyment of all the human rights and fundamental freedoms by people with disabilities and promoting respect for their intrinsic dignity. Poland ratified it on 6 September 2012. The relevant provisions of that Convention read as follows:

Article 14 – Liberty and security of person

"1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- a) Enjoy the right to liberty and security of person;
- b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation."

Article 19 – Living independently and being included in the community

"States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;

b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.”

39. In September 2015, at its 14th Session, the Committee on the Rights of Persons with Disabilities adopted the Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities. The relevant parts of those Guidelines read as follows:

“III. The absolute prohibition of detention on the basis of impairment

6. There are still practices in which States parties allow for the deprivation of liberty on the grounds of actual or perceived impairment. In this regard the Committee has established that article 14 does not permit any exceptions whereby persons may be detained on the grounds of their actual or perceived impairment. However, legislation of several States parties, including mental health laws, still provide instances in which persons may be detained on the grounds of their actual or perceived impairment, provided there are other reasons for their detention, including that they are deemed dangerous to themselves or to others. This practice is incompatible with article 14 as interpreted by the jurisprudence of the CRPD committee. It is discriminatory in nature and amounts to arbitrary deprivation of liberty.

... [A]rticle 14 (1) (b) [CRPD] prohibits the deprivation of liberty on the basis of impairment even if additional factors or criteria are also used to justify the deprivation of liberty. ...

9. Enjoyment of the right to liberty and security of the person is central to the implementation of article 19 on the right to live independently and be included in the community. The Committee has stressed this relationship with article 19. It has expressed its concern about the institutionalization of persons with disabilities and the lack of support services in the community, and it has recommended implementing support services and effective deinstitutionalization strategies in consultation with organizations of persons with disabilities. In addition, it has called for the allocation of more financial resources to ensure sufficient community-based services.”

...

XI. Security measures

20. The Committee has addressed security measures imposed on persons found not responsible due to ‘insanity’. Initially, the Committee requested that States parties modify legislation to ensure due process guarantees for the application of security measures to persons found to be exempt from criminal responsibility, and to ensure that persons with disabilities are subject to the same guarantees and conditions as those applicable to any other person. More recently, the Committee has also recommended eliminating security measures including those which involve forced medical and psychiatric treatment in institutions, while expressing concern about

security measures that involve indefinite deprivation of liberty and absence of regular guarantees in the criminal justice system.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

40. The applicant complained under Article 5 § 1 of the Convention that his detention in a psychiatric hospital had been unlawful in that it had not been based on recent medical evidence. The Court considers that the complaint falls to be examined under Article 5 § 1 (e) of the Convention, the relevant parts of which read:

“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 ... of unsound mind ...”

A. Admissibility

41. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. *The parties’ submissions*

(a) **The applicant**

42. The applicant submitted that he had not been reliably shown to be “of unsound mind” since the medical opinions on the basis of which he had been placed in a psychiatric hospital had not been “sufficiently recent” at the time when the court’s decision had been given. He stressed that the psychiatric opinions had been issued on 17 January and 3 February 2014, fifteen months before the final decision had been given and eighteen months prior to his placement in a psychiatric hospital. Most importantly, there had been a significant change in his situation since the last examination by experts. In that respect he referred to the fact that he had in the meantime undergone innovative and unique treatment in the Hostel, which had resulted in an improvement in his mental health. He stressed that owing to the modern methods used in the Hostel, his mental health had significantly improved and therefore the risk that he would commit another offence in future had diminished.

43. The applicant maintained that given the improvement in his mental condition since the last psychiatric examination, the courts should have at least examined him again before placing him in a psychiatric hospital. He stressed that in the present case there had been an effective and less restrictive alternative to the closed psychiatric institution, namely treatment in the Hostel. This treatment, as confirmed by experts, had proved to be extremely effective in treating his condition. In the applicant's view, the domestic courts had not stated clearly why, despite the numerous positive effects of the treatment in the Hostel and a clear improvement in his mental condition, it had still been necessary to place him in a closed institution.

44. He also noted that the domestic courts had disregarded the testimony of witnesses who had been in daily contact with him and who had carried out his treatment, and instead had relied on outdated psychiatric opinions and the evidence given by the experts who had written them.

45. In addition, he submitted that his detention had been extended on the basis of psychiatric opinions issued by doctors working in the same hospital where he had been detained.

46. In view of the above, he concluded that the whole period of his detention in a psychiatric hospital had not been justified under Article 5 § 1 (e) of the Convention.

(b) The Government

47. The Government submitted firstly that the applicant had been released from the Hospital on 29 November and not on 30 November 2016, as originally indicated. They further stated that the applicant had been detained in a psychiatric hospital on the basis of expert opinions of 17 January and 3 February 2014 and supplementary evidence given by those experts during the court hearings. The psychiatric experts had been heard on 1 July 2014 and 12 January 2015 and the expert psychologist had been heard on 5 August 2014.

48. The Government stressed that the experts had taken into consideration the applicant's treatment in the Hostel and had analysed his medical file from that facility. At the same time, they had noted that the applicant's condition was not stable and that he required treatment. Consequently, at the time when his detention had been ordered, he had, on the basis of medical expertise, been reliably shown to be suffering from a "true mental disorder".

49. The Government further maintained that the requirement that the disorder must be of a kind or degree warranting compulsory confinement had also been entirely fulfilled. The applicant had been diagnosed with paranoid schizophrenia. As confirmed by experts, following the incident of 13 January 2014 he had required treatment in a closed facility.

50. Lastly, the Government submitted that the necessity of the applicant's continued detention had been systematically examined by the

domestic authorities. When extending the applicant's confinement, the courts had relied each time on a recent psychiatric opinion and as soon as his condition had improved, he had been released from hospital.

(c) The third-party intervener

51. The Mental Disability Advocacy Centre ("the Centre") referred to relevant international safeguards and the extent of State obligations to address the provision of psychiatric treatment based on consent, the use of the least severe measures, and in the least restrictive environment possible in community-based settings.

52. The Centre stressed firstly that States were required to ensure that persons with disabilities were not deprived of their liberty on the basis of their disability, including in the criminal-law context. Secondly, it was noted that pursuant to the provisions of the United Nations Convention on the Rights of Persons with Disabilities, forced psychiatric treatment was not only in violation of the right to freedom from torture, but also of the rights to personal integrity, freedom from violence, exploitation and abuse, and the right to decide about medical treatment. This meant that persons with psychosocial disabilities should have access to a range of support and services in the community, to include support for independent living as an alternative to the medical model of mental health (see paragraph 38 above).

53. Furthermore, as confirmed by the United Nations Committee on the Rights of Persons with Disabilities, there was a need for less severe measures to be available, such as community treatment and independent living, to avoid compulsory detention and treatment. The criminal law could also provide for appropriate sanctions for criminal behaviour. The provision of genuine alternatives to compulsory treatment allowed those with psychosocial disabilities to exercise their capacity and enjoy independence on an equal basis (see paragraph 39 above).

54. Lastly, the Centre submitted that through strict adherence to some elements of the criteria set out in the Court's case-law (in particular, the requirement of the principle of least restriction and resorting to alternatives), the Court could uphold the most basic guarantees of individual freedom and promote the convergence of international standards in relation to the right of liberty, autonomy and dignity.

2. The Court's assessment

(a) General principles

55. As regards the deprivation of liberty of persons suffering from mental disorders, an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the

basis of objective medical expertise; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; and thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Ilmseher v. Germany* [GC], nos. 10211/12 and 27505/14, § 127, 4 December 2018, and *Rooman v. Belgium* [GC], no. 18052/11, § 192, 31 January 2019).

56. As regards the first condition for a person to be deprived of his liberty as being of “unsound mind”, namely that a true mental disorder must have been established before a competent authority on the basis of objective medical expertise, the Court observes that, despite the fact that the national authorities have a certain discretion, in particular on the merits of clinical diagnoses, the permissible grounds for deprivation of liberty listed in Article 5 § 1 are to be interpreted narrowly. A mental condition has to be of a certain severity in order to be considered a “true” mental disorder for the purposes of sub-paragraph (e) of Article 5 § 1, as it has to be so serious as to necessitate treatment in an institution for mental health patients (see *Rooman*, cited above, § 129).

57. No deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert. Any other approach falls short of the required protection against arbitrariness, inherent in Article 5 of the Convention (see *Kadusic v. Switzerland*, no. 43977/13, § 43, 9 January 2018, with further references).

58. Moreover, the objectivity of the medical expertise entails a requirement that it was sufficiently recent. The question whether the medical expertise was sufficiently recent depends on the specific circumstances of the case before it (see *Ilmseher*, cited above, § 131 and the references therein).

59. The relevant time at which a person must be reliably established to be of unsound mind, for the requirements of sub-paragraph (e) of Article 5 § 1, is the date of adoption of the measure depriving that person of his liberty as a result of that condition. However, as shown by the third minimum condition for the detention of a person as being of unsound mind to be justified – namely that the validity of continued confinement must depend on the persistence of the mental disorder – changes, if any, to the mental condition of the detainee following the adoption of the detention order must be taken into account (*ibid.*, § 134).

(b) Application of the above principles to the present case

60. Turning to the circumstances of the present case, the Court will first examine whether the applicant has reliably been shown to be of unsound mind, in other words, that his mental disorder was of a kind or degree warranting compulsory confinement (see *Petschulies v. Germany*, no. 6281/13, § 67, 2 June 2016).

61. The Court observes that the applicant's confinement in a psychiatric hospital was ordered in the course of criminal proceedings in which the domestic courts established that he had committed the offence of causing bodily harm. The applicant was found not to be criminally liable on account of his mental condition and instead it was decided that he should be placed in a closed psychiatric facility (see paragraphs 17 and 19 above).

62. In that connection the Court notes that the applicant underwent psychiatric examinations on 17 January and 3 February 2014, as a consequence of which expert psychiatrists concluded that he was suffering from paranoid schizophrenia and should be placed in a closed psychiatric facility (see paragraphs 8 and 9 above). The decision ordering the applicant's confinement was given by the domestic courts on 19 January 2015 and was upheld on 11 May 2015 (see paragraphs 17 and 19 above). He was subsequently admitted to the Hospital on 4 August 2015 (see paragraph 21 above).

63. The Court reiterates that pursuant to the *Winterwerp* criteria (see *Winterwerp v. the Netherlands*, 24 October 1979, Series A no. 33), the existence of a mental disorder warranting compulsory confinement must be reliably shown at the date of detention and throughout the detention, especially given the marked tendency of mental disorders to develop over time (see also *Herz v. Germany*, no. 44672/98, § 50, 12 June 2003; *X v. Finland*, no. 34806/04, §§ 169-70, ECHR 2012; *H.W. v. Germany*, no. 17167/11, § 107, 19 September 2013; *Ruiz Rivera v. Switzerland*, no. 8300/06, § 60, 18 February 2014; and *C.W. v. Switzerland*, no. 67725/10, § 38, 23 September 2014).

64. The Court further reiterates that the medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. A medical opinion cannot be seen as sufficient to justify deprivation of liberty if a significant period has elapsed (see *Varbanov v. Bulgaria*, no. 31365/96, § 47, ECHR 2000-X; *Witek v. Poland*, no. 13453/07, § 41, 21 December 2010; and *D.C. v. Belgium*, no. 82087/17, §§ 86, 103-104, 30 March 2021). At the same, as is apparent from the Court's well-established case-law, the question whether medical expertise was sufficiently recent is not answered by the Court in a static way but depends on the specific circumstances of the case before it. In this connection the Court also notes that pursuant to the relevant provisions of the Code of Execution of Criminal Sentences there is an obligation to carry out every six months a periodic review of the need to continue a person's involuntary treatment in a closed facility (see paragraphs 36 and 37 above).

(i) *The applicant's confinement between 4 August 2015 and 12 April 2016*

65. In the present case after the psychiatric examination on 3 February 2014, and until the adoption of the final decision, no other medical examinations had been ordered by the domestic courts.

Notwithstanding the applicant's submissions that following his voluntary treatment in the Hostel – a therapeutic inpatient centre for young people suffering from mental health conditions – his confinement in a closed facility was no longer necessary. In support of his submissions the applicant provided certificates from the Hostel dated July and August 2014, confirming that his condition had improved (see paragraphs 14 and 15 above). Nevertheless, the domestic courts disregarded that evidence and based their decisions on medical reports dating back to January and February 2014. Consequently, the applicant was admitted to the Hospital on 4 August 2015, based on medical reports issued a year and six months earlier without any attempt to resolve contradictions between the opinions of the experts and the Hostel's certificates. The Court finds in the circumstances of the present case that that delay was excessive (compare *Raudevs v. Latvia*, no. 24086/03, § 62, 17 December 2013) and that at the time of the applicant's detention on 4 August 2015 it had not been "reliably shown" that his mental condition necessitated his confinement. However, as explained below (see paragraph 67 below), the Court is satisfied that on 12 April 2016, at the time of the review proceedings, a clear diagnosis of a true mental disorder in the applicant's case was established before the competent domestic court on the basis of medical expertise.

66. The Court thus concludes that the applicant's hospitalisation between 4 August 2015 and 12 April 2016 was not "lawful" within the meaning of Article 5 § 1 (e) of the Convention and that there has been a violation of that provision in respect of the period in question.

(ii) The applicant's confinement from 12 April 2016

67. The Court observes that, following the applicant's placement in a psychiatric hospital, the Trzebnica District Court ordered his examination by expert psychiatrists. The expert evidence confirming the need to continue the applicant's confinement was submitted to the court on 30 October 2015 (see paragraph 23 above), and again on 4 February 2016 (see paragraph 25 above). Subsequently, on 12 April 2016, the Trzebnica District Court confirmed that the applicant was suffering from a mental disorder which justified placing him in a psychiatric hospital (see paragraph 26 above). Although the applicant criticised the experts' reports, the Court sees no reason to doubt that the experts were fully qualified and had based their conclusions on their best professional judgment.

68. The Court further notes that, during the period after 12 April 2016 until his release, the applicant was examined by expert psychiatrists at six-monthly intervals and that the results of the psychiatric examinations served as the basis for a fresh judicial decision (see paragraphs 28 and 31 above). In addition, the domestic court took into consideration the evolution of the applicant's mental health, as following an improvement in his condition it was decided to release him from the Hospital (see paragraph 32 above).

69. In view of the above the Court is satisfied that the applicant's deprivation of liberty between 12 April 2016 and 29 November 2016 was lawful within the meaning of Article 5 § 1 (e) of the Convention. There has therefore been no violation of Article 5 § 1 (e) in respect of that period.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

71. The applicant claimed 5,900 euros (EUR) in respect of pecuniary damage. He argued that, before placement in the Hospital, he had been employed and that because of the detention, he had lost earnings over a period of nearly seventeen months. He submitted that his monthly salary had amounted to EUR 348. He further claimed EUR 25,000 in respect of non-pecuniary damage.

72. The Government contested these claims.

73. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it finds that the applicant undoubtedly sustained damage of a non-pecuniary nature on account of his confinement in breach of Article 5 § 1 (e) and therefore it awards him EUR 16,000 in that respect.

B. Costs and expenses

74. The applicant also claimed EUR 940 for the costs and expenses incurred before the Court.

75. The Government contested this claim.

76. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 940 covering costs for the proceedings before the Court.

C. Default interest

77. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 (e) of the Convention in respect of the applicant's hospitalisation between 4 August 2015 and 12 April 2016;
3. *Holds* that there has been no violation of Article 5 § 1 (e) of the Convention in respect of the applicant's hospitalisation between 12 April and 29 November 2016;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 16,000 (sixteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 940 (nine hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 14 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Renata Degener
Registrar

Ksenija Turković
President