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

COURT (CHAMBER)

CASE OF MEGYERI v. GERMANY

(Application no. 13770/88)

JUDGMENT

STRASBOURG

12 May 1992

In the case of Megyeri v. Germany*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. RYSSDAL, *President*,
Mr L.-E. PETTITI,
Mr C. RUSSO,
Mr R. BERNHARDT,
Mr J. DE MEYER,
Mr N. VALTICOS,
Mrs E. PALM,
Mr I. FOIGHEL,
Mr F. BIGI,

and also of Mr M.-A. EISSEN, *Registrar*, and Mr H. PETZOLD, *Deputy Registrar,*

Having deliberated in private on 27 February and 25 April 1992,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 19 April 1991, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 13770/88) against the Federal Republic of Germany lodged with the Commission under Article 25 (art. 25) on 22 October 1986 by a Hungarian citizen, Mr Zoltan Istvan Megyeri. In the proceedings before the Commission the applicant was designated by the initial "M."; however, he subsequently consented to the disclosure of his identity.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Germany recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by

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* The case is numbered 63/1991/315/386. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

the respondent State of its obligations under Article 5 para. 4 (art. 5-4) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and sought leave, which was granted by the President of the Court, to be represented by Prof. K. Bernsmann, a law professor at a German university (Rule 30). He subsequently indicated that he no longer wished that lawyer to act for him and sought leave to present his own case; the President refused, but gave him the possibility of nominating a new representative within a specified time-limit. As he had not done so, the President decided that the proceedings should continue on the basis that the applicant was not taking part therein.

3. The Chamber to be constituted included ex officio Mr R. Bernhardt, the elected judge of German nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 23 April 1991 the President drew by lot, in the presence of the Registrar, the names of the other seven members, namely Mrs D. Bindschedler-Robert, Sir Vincent Evans, Mr C. Russo, Mr N. Valticos, Mrs E. Palm, Mr I. Foighel and Mr F. Bigi (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr L.-E. Pettiti and Mr J. De Meyer, substitute judges, replaced Mrs Bindschedler-Robert and Sir Vincent Evans, who had resigned and whose successors at the Court had taken up their duties before the hearing (Rules 2 para. 3 and 22 para. 1).

4. Mr Ryssdal assumed the office of President of the Chamber (Rule 21 para. 5) and, through the Deputy Registrar, consulted the Agent of the German Government ("the Government") and the Delegate of the Commission on the organisation of the procedure (Rules 37 para. 1 and 38).

In accordance with the order made in consequence, the Registrar received, on 9 September 1991, the Government's memorial. On 10 December, in accordance with Rule 50 read in conjunction with Rule 1 (k), certain claims under Article 50 (art. 50) of the Convention were filed on the applicant's behalf by his guardian (Vormund; see paragraph 12 below); they were supplemented by additional particulars lodged on 14 February 1992.

By letter of 20 December 1991, the Secretary to the Commission informed the Registrar that the Delegate would submit his observations at the hearing.

On 12 February 1992 the Commission filed a number of documents which the Registrar had sought from it on the President's instructions.

5. As directed by the President, the hearing took place in public in the Human Rights Building, Strasbourg, on 26 February 1992. The Court had held a preparatory meeting beforehand and the President had, on 28 January 1992, granted the members of the Government's delegation leave to use the German language (Rule 27 para. 2).

There appeared before the Court:

- for the Government
Mr J. MEYER-LADEWIG, Ministerialdirigent,
Federal Ministry of Justice, A*gent*,
Mr H.A. STÖCKER, Ministerialrat,
Federal Ministry of Justice, *Adviser*;
- for the Commission
Mr A. WEITZEL, *Delegate*.

The Court heard addresses by Mr Meyer-Ladewig for the Government and Mr Weitzel for the Commission, as well as replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR CIRCUMSTANCES OF THE CASE

6. Mr Megyeri is a Hungarian citizen who has been living in Germany since 1975.

7. In November 1981, after proceedings had been instituted against the applicant with a view to his confinement in a psychiatric hospital, he was provisionally detained in such an institution.

On 14 March 1983 the Cologne Regional Court (Landgericht), before which the applicant was represented by officially-appointed counsel, ordered that he be detained in a psychiatric hospital, pursuant to Article 63 of the Criminal Code. The court found that he had performed acts which constituted criminal offences (insulting behaviour, assault occasioning bodily harm, resisting the police, causing a traffic hazard and unauthorised departure from the scene of an accident) but that he could not be held responsible because he was suffering from a schizophrenic psychosis with signs of paranoia. Relying in particular on a medical expert's opinion, the court stated that Mr Megyeri posed a danger to the general public because it had to be expected that he would commit further serious unlawful acts.

8. On 7 September 1984 the Cologne Administrative Court (Verwaltungsgericht), in one of numerous proceedings instituted by the applicant concerning his detention, declared that he was incapable of conducting (betreiben) court proceedings himself. The court considered that his mental illness was so obvious that it was not necessary to order an expert opinion on the point.

9. On 3 September 1984 and again on 5 August 1985 the Aachen Regional Court, referring to Article 67 e para. 2 of the Criminal Code (see paragraph 16 below), directed that the detention should continue. In the latter decision the court found that Mr Megyeri's delusions had become

more severe and suggested that guardianship proceedings (Entmündigungsverfahren) be instituted against him.

On 3 March 1986 Mr Megyeri, who had tried to have the criminal proceedings against him (see paragraph 7 above) reopened, asked the Aachen Regional Court to replace the lawyer who had acted for him in those proceedings; he also asked why that lawyer had not been present when his detention had subsequently been reviewed. The court informed him in writing, on 12 March, that there was no legal provision to the effect that counsel had to be officially assigned to detainees in review proceedings.

10. On 7 July 1986 the Aachen Regional Court again considered the applicant's possible release on probation under Article 67 e para. 2 of the Criminal Code and decided against it. Referring to its decision of 5 August 1985, it found that it was too early to put to the test whether he would no longer commit offences if he were not in hospital. It relied in particular on a written report by three experts, including two doctors from the hospital, according to which Mr Megyeri's state of mental health had further deteriorated, he was not willing to undergo treatment and he showed a distinct propensity towards aggressive behaviour and violence. It also relied on its own impression of the applicant, formed when it heard him on 7 July, on which occasion he had made numerous complaints and claimed to be someone else. Referring to recent case-law of the Federal Constitutional Court (Bundesverfassungsgericht - see paragraph 17 below), the Regional Court considered that the applicant's continued detention was proportionate to the aim pursued, that is the protection of the public. It also noted that proceedings with a view to placing him under guardianship were pending.

On 2 September 1986 the Cologne Court of Appeal (Oberlandesgericht) dismissed Mr Megyeri's immediate appeal (sofortige Beschwerde) against the Regional Court's decision.

The applicant was not represented by counsel in the 1986 proceedings concerning his possible release. Whilst he had previously raised the question of legal assistance (see paragraph 9 above), he apparently did not specifically ask the Regional Court or the Court of Appeal to assign counsel to him and this point was not mentioned in their decisions. According to the Agent of the Government, it was to be assumed, since German law required the appointment of counsel in certain circumstances, that those courts had considered the matter of their own motion.

11. On 10 February 1987 a panel of three judges of the Federal Constitutional Court (which, in accordance with its usual practice in such cases, had not held a hearing) declined to accept for adjudication the applicant's constitutional complaint (Verfassungsbeschwerde) against the decisions of the Regional Court and the Court of Appeal, on the ground that it did not offer sufficient prospects of success. The Federal Constitutional Court considered that there could be no objection under constitutional law to the fact that the courts had not assigned defence counsel in the 1986

proceedings, since it had not until then been obvious that the applicant could not defend himself due to his illness (see paragraph 18 below). It added, however, that having regard to the stabilising clinical situation and the fact that the end of his detention was not foreseeable, the appointment of an official lawyer would in future come into the picture (in Betracht kommen wird).

12. On 19 March 1987 the Cologne District Court (Amtsgericht) decided to place Mr Megyeri under guardianship. After hearing the applicant and having regard to an expert opinion of July 1986, it found that he was suffering from a serious mental illness that prevented him from dealing with his private affairs.

13. In subsequent review proceedings after May 1987 the applicant was represented by court-appointed counsel. Continuation of his detention was ordered by the Regional Court on 4 July 1988, but it reduced to six months the period for a further review as it was expected that medical treatment would lead to an improvement in his state of health.

14. On 4 January 1989 the Regional Court, which regarded as particularly relevant the fact that Mr Megyeri was now under guardianship, directed that he be released on probation as from 8 May 1989. It fixed a period of three years for supervision of his conduct and instructed him not to leave specified accommodation without the supervisory agency's approval.

15. Since then, the applicant has been living in an open ward of a psychiatric hospital in Cologne. His requests for restoration of his legal capacity have, to date, been rejected, on the ground that his condition has not improved.

II. RELEVANT DOMESTIC LAW

A. Detention in a psychiatric hospital

16. The following provisions of the Criminal Code (Strafgesetzbuch) are relevant in the present case.

Article 67 d para. 2 (Suspension of detention on probation)

> "Where there is no provision for a maximum period ..., the court shall suspend on probation the further execution of the detention as soon as the detainee can responsibly be allowed out of the psychiatric hospital to see whether he will desist from further unlawful acts. Suspension shall be followed by supervision of conduct."

Article 67 e (Review of detention)

"(1) The court may at any time review the question of whether the further execution of the detention should be suspended on probation. It shall review this before the expiry of certain periods.

(2) The periods shall be:

- ...

- [for detention] in a psychiatric hospital, one year;

- ..."

17. According to case-law of the Federal Constitutional Court (decision of 8 October 1985 - 2 BvR 1150/80, 2 BvR 1504/82 - Entscheidungssammlung des Bundesverfassungsgerichts, vol. 70, pp. 297 et seq.), the principle of proportionality governs the detention of a person in a psychiatric hospital and its continuance. When deciding whether to suspend on probation the further execution of such detention, the court has to consider in particular the risk of significant (erhebliche) criminal offences, the detainee's previous conduct and criminal behaviour, relevant changes in the circumstances since his detention was ordered and the detainee's future living conditions. The longer the detention in a psychiatric hospital lasts, the stricter the test of proportionality becomes.

B. Appointment of defence counsel

18. The question of the defence of an accused by counsel is governed by Article 140 of the Code of Criminal Procedure (Strafprozessordnung). Paragraph 1 lists a number of specific cases in which the participation of counsel is obligatory; paragraph 2 provides:

"In other cases, the presiding judge, upon request or ex officio, shall appoint a defence counsel if, having regard to the seriousness of the crime or the difficulty of the factual or legal issues involved, the assistance of a defence counsel appears to be necessary, or if it is obvious that the accused cannot defend himself ..."

Paragraph 2 is applied by analogy to review proceedings under Article 67 e of the Criminal Code.

PROCEEDINGS BEFORE THE COMMISSION

19. In his application (no. 13770/88) lodged with the Commission on 22 October 1986, Mr Megyeri raised complaints concerning a number of different sets of proceedings relating to his detention in a mental institution; he invoked Articles 2 to 14, 17 and 18 of the Convention (art. 2, art. 3, art.

4, art. 5, art. 6, art. 7, art. 8, art. 9, art. 10, art. 11, art. 12, art. 13, art. 14), Articles 1 and 2 of Protocol No. 1 (P1-1, P1-2) and Article 2 of Protocol No. 4 (P4-2).

20. By partial decision of 12 October 1988, the Commission adjourned its examination of his complaint about the 1986 proceedings before the Aachen Regional Court and the Cologne Court of Appeal concerning his possible release from detention and declared the remainder of the application inadmissible. On 10 July 1989 the Commission, having concluded that Mr Megyeri did not intend to pursue his application, decided to strike it off its list. However, on 13 February 1990 it restored the aforesaid complaint to the list and declared it admissible.

In its report of 26 February 1991 (Article 31) (art. 31), the Commission expressed the unanimous opinion that there had been a violation of Article 5 para. 4 (art. 5-4) of the Convention, in that no official lawyer had been appointed to assist the applicant in the above proceedings.

The full text of the Commission's opinion is reproduced as an annex to this judgment*.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 PARA. 4 (art. 5-4) OF THE CONVENTION

21. Before the Commission, Mr Megyeri submitted that the failure to appoint a lawyer to assist him in the 1986 proceedings before the Aachen Regional Court and the Cologne Court of Appeal concerning his possible release had given rise to a violation of Article 5 para. 4 (art. 5-4) of the Convention, which reads:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

The Commission concluded that there had been a breach of this provision. The Government stated that they understood the applicant's concern but doubted whether a finding of violation could be based on reasons such as those given by the Commission. They recognised, however, that the same result might follow from the adoption of the "more generalised approach" which they suggested might be called for, namely

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* Note by the Registrar. For practical reasons this annex will appear only with the printed version of the judgment (volume 237-A of Series A of the Publications of the Court), but a copy of the Commission's report is obtainable from the registry.

that counsel must be appointed in cases of this kind unless there were special circumstances.

22. The principles which emerge from the Court's case-law on Article 5 para. 4 (art. 5-4) include the following.

(a) A person of unsound mind who is compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings "at reasonable intervals" before a court to put in issue the "lawfulness" - within the meaning of the Convention - of his detention (see, inter alia, the X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, p. 23, para. 52).

(b) Article 5 para. 4 (art. 5-4) requires that the procedure followed have a judicial character and give to the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether a proceeding provides adequate guarantees, regard must be had to the particular nature of the circumstances in which such proceeding takes place (see, as the most recent authority, the Wassink v. the Netherlands judgment of 27 September 1990, Series A no. 185-A, p. 13, para. 30).

(c) The judicial proceedings referred to in Article 5 para. 4 (art. 5-4) need not always be attended by the same guarantees as those required under Article 6 para. 1 (art. 6-1) for civil or criminal litigation. None the less, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation. Special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves (see the Winterwerp v. the Netherlands judgment of 24 October 1979, Series A no. 33, p. 24, para. 60).

(d) Article 5 para. 4 (art. 5-4) does not require that persons committed to care under the head of "unsound mind" should themselves take the initiative in obtaining legal representation before having recourse to a court (see the same judgment, p. 26, para. 66).

23. It follows from the foregoing that where a person is confined in a psychiatric institution on the ground of the commission of acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he should - unless there are special circumstances - receive legal assistance in subsequent proceedings relating to the continuation, suspension or termination of his detention. The importance of what is at stake for him - personal liberty - taken together with the very nature of his affliction - diminished mental capacity - compel this conclusion.

24. As regards Mr Megyeri's state of mental health, the Court recalls that the origin of his confinement was the finding by the Cologne Regional

Court on 14 March 1983 - in criminal proceedings in which he had been represented by officially-appointed counsel - that he could not be held responsible for his acts because he was suffering from a schizophrenic psychosis with signs of paranoia (see paragraph 7 above).

In July 1986 the Aachen Regional Court had before it expert evidence to the effect that there had been a further deterioration in his condition, that he was not willing to undergo treatment and that he showed a distinct propensity towards aggressive behaviour and violence (see paragraph 10 above). There had, in addition, been previous court decisions which pointed in the same direction: the applicant was incapable of conducting court proceedings and his mental illness was so obvious that no expert opinion on the point was necessary (Cologne Administrative Court, 7 September 1984; see paragraph 8 above); his delusions had become more severe and guardianship proceedings should be instituted (Aachen Regional Court, 5 August 1985; see paragraph 9 above).

25. One of the issues falling to be determined in the 1986 review was whether, if Mr Megyeri were released on probation, he would be likely to commit illegal acts similar to those that had occasioned the original confinement order. In this connection, the Aachen Regional Court not only considered a report by three experts but also heard the applicant in person, in order to form its own impression of him (see paragraph 10 above). It is doubtful, to say the least, whether Mr Megyeri, acting on his own, was able to marshal and present adequately points in his favour on this issue, involving as it did matters of medical knowledge and expertise.

Again, it is even more doubtful whether, on his own, he was in a position to address adequately the legal issue arising: would his continued confinement be proportionate to the aim pursued (the protection of the public), in the sense contemplated in the Federal Constitutional Court's leading judgment of 8 October 1985 (see paragraph 17 above)?

26. Finally, the Court notes that by July 1986 the applicant had already spent more than four years in a psychiatric hospital. As required by German law (see paragraph 16 above), his confinement was reviewed by the courts at yearly intervals and the 1986 proceedings before the Aachen Regional Court formed part of this series (see paragraphs 9-10 above). Accordingly, whilst different considerations may apply, as regards the need to appoint counsel, where a detainee applies for release more frequently than "at reasonable intervals" (see paragraph 22 (a) above), that was not the situation here.

27. Nothing in the foregoing analysis reveals that this was a case in which legal assistance was unnecessary, even if it is correct that Mr Megyeri did not specifically ask the Aachen Regional Court or the Cologne Court of Appeal to assign counsel to him in the proceedings in question (see paragraphs 10 and 22 (d) above). Nor does the Court perceive any other special circumstances which would lead it to a different conclusion.

There has therefore been a breach of Article 5 para. 4 (art. 5-4).

II. APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

28. Article 50 (art. 50) of the Convention provides:

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

29. On behalf of the applicant his guardian first claimed compensation, in an amount to be assessed by the Court, for pecuniary damage in the shape of loss of earnings, since Mr Megyeri might have been released earlier and then found employment if he had received legal assistance in the proceedings in question.

30. Bearing in mind that subsequent reviews of the applicant's detention, in which he was represented by counsel, did not lead to his release (see paragraph 13 above), the Court cannot assume that the outcome of the July 1986 review would have been more favourable to him if a lawyer had been assigned to him on that occasion. It thus agrees with the Government that no causal link has been established between the violation of Article 5 para. 4 (art. 5-4) and the alleged pecuniary damage. By the same token, the Court does not consider that Mr Megyeri can be regarded as having suffered a real loss of opportunities on account of the breach.

The claim under this head must therefore be dismissed.

B. Non-pecuniary damage

31. The guardian also sought compensation for non-pecuniary damage quantified at 25,000 German marks, which figure also took account of the length of the proceedings.

Whilst recognising that the applicant might have found himself in an unpleasant situation because of the absence of a lawyer, the Agent of the Government doubted whether the applicant would be satisfied with any decision which the Court might take in accordance with its case-law in the matter of non-pecuniary damage.

The Delegate of the Commission, for his part, considered that compensation for such damage should be awarded, in an amount to be assessed by the Court.

32. The applicant must have been left with a certain feeling of isolation and helplessness by reason of the fact that he was not assisted by counsel in the 1986 review of his detention. Making an assessment on an equitable basis, as is required by Article 50 (art. 50), the Court awards him 5,000 German marks under this head.

C. Costs and expenses

33. Finally, the guardian claimed reimbursement of 23,940 German marks, being the fees of Prof. Bernsmann (21,000 marks) for representing the applicant before the Commission and in the initial stage of the proceedings before the Court (see paragraph 2 above) and value-added tax thereon (2,940 marks).

The Agent of the Government expressed the view that Prof. Bernsmann had no enforceable claim against the applicant in respect of his fees, in view of the latter's inability to enter into contracts. In any event, the amount sought under this head was much more than could be claimed in comparable domestic proceedings.

The Delegate of the Commission considered that the claim should be accepted, subject to deduction of any sums received by way of legal aid; although the figure put forward was rather high, it was not clearly disproportionate.

34. The Court has examined this issue in the light of the principles that emerge from its case-law in this area. In its view, the costs in question must be regarded as having been "actually incurred" by the applicant: not only did the Government raise no objection to his representation by Prof. Bernsmann in the Strasbourg proceedings, but also the inclusion of this item in the claim put forward by the applicant's guardian indicates that such representation had the latter's approval. Nor was it suggested by the Government that those costs had not been "necessarily incurred". Finally, the Court, which is not bound in this context by domestic scales or standards, does not consider that the quantum of the fees can be regarded as unreasonable, having regard to the circumstances of the case.

The applicant is accordingly entitled to be reimbursed under this head 21,000 German marks less 6,900 French francs, being the amount of the legal aid payments made by the Council of Europe in respect of Prof. Bernsmann's fees; the resulting figure is to be increased by any value-added tax that may be due.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 5 para. 4 (art. 5-4) of the Convention;

2. Holds that Germany is to pay to the applicant, within three months, 5,000 (five thousand) German marks in respect of non-pecuniary damage and the sum of 21,000 (twenty-one thousand) German marks less 6,900 (six thousand nine hundred) French francs, together with any value-added tax that may be due, in respect of costs and expenses;

3. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 12 May 1992.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar