



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

FIRST SECTION

**CASE OF M.S. v. BULGARIA**

*(Application no. 40061/98)*

JUDGMENT  
(Friendly settlement)

STRASBOURG

4 July 2002

*This judgment is final but it may be subject to editorial revision.*



**In the case of M.S. v. Bulgaria,**

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

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mrs F. TULKENS,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mr V. ZAGREBELSKY, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 20 June 2002,

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

**PROCEDURE**

1. The case originated in an application (no. 40061/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mrs M.S. ("the applicant"), on 2 September 1997.

2. The case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention.

3. The Bulgarian Government ("the Government") were represented by their Agent, Mrs G. Samaras, of the Ministry of Justice and, subsequently by Mr S. Bojikov, Deputy Minister of Justice. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

4. The applicant complained, *inter alia*, that her detention in a psychiatric clinic had been unlawful and arbitrary.

In her initial application she also raised complaints concerning her apartment, the arrest of her son and the alleged attempt on her life. Those complaints were declared inadmissible by a partial decision of 17 May 2001 of the Court (Fourth Section).

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

6. On 31 January 2002 the Court declared the remainder of the application admissible.

7. On 22 February 2002 the applicant and the Government's representative signed in Sofia a friendly settlement agreement. The applicant informed the Court thereof by letter of 15 March 2002.

By decision No. 396 of 10 June 2002 the Council of Ministers of Bulgaria approved the agreement.

8. On 14 June 2002 the Registry of the Court received a declaration signed by the applicant and Mr S. Bojikov for the Government. The parties declared that they would not seek the referral of the case to the Grand Chamber.

## THE FACTS

9. The applicant was born in 1953 and lives in Gabrovo.

10. On 28 June 1996 she was arrested upon the order of a prosecutor and brought to a psychiatric clinic for an examination. She was detained for five days and then released.

She was again detained for a psychiatric examination on 28 August 1996.

On 21 March 1997 the applicant was arrested and detained for a third time. She was brought to a psychiatric clinic where she was detained allegedly incommunicado until 4 April 1997.

11. Upon the applicant's complaint, she was informed by letter of 28 March 1997 of the district health authorities that her detention had been ordered by a prosecutor in accordance with the law. The applicant allegedly submitted another complaint to the Ministry of Health on 25 April 1997 but never received an answer.

12. A summary of the relevant domestic law and practice in respect of detention with the purpose to conduct psychiatric examinations is contained in the Court's judgment in the case of *Varbanov v. Bulgaria* (no. 31165/95, ECHR 2000-X). Paragraphs 28-32 of that judgment, insofar as relevant, read as follows:

“[Judicial proceedings for an order for compulsory psychiatric treatment] are instituted by a district prosecutor who is under the obligation to undertake a prior inquiry, including a psychiatric examination, in order to assess the need for instituting proceedings. The prosecutor therefore would normally invite the person concerned to undergo an examination in the framework of his inquiry.

The Public Health Act, as in force [until February 1997], did not contain a provision expressly authorising a prosecutor to order a person being brought by force to a hospital and his detention at the hospital for purposes of such a psychiatric examination... The relevant law did not provide for an appeal to a court in cases of persons detained for an examination in the framework of a district prosecutor's inquiry...

Certain amendments to the Public Health Act were introduced in February 1997... [providing] ... that a prosecutor, in the framework of his inquiry, can order confinement to a psychiatric hospital for up to 30 days (up to three months in exceptional cases) for the medical examination of a person who has refused to

undergo such an examination voluntarily. However, no provision allowing judicial review of the prosecutor's order was introduced.

The Code of Criminal Procedure, by virtue of an amendment in force since 1 January 2000, introduced a judicial procedure for confinement in a psychiatric clinic of a person against whom criminal proceedings have been brought. This procedure, however, does not concern persons who have been confined in a clinic for a psychiatric examination pursuant to a prosecutor's order under Section 61 of the Public Health Act.”

13. In the *Varbanov* case the Court made the following findings relevant to the present case (see paragraphs 43-53 of that judgment):

“... the Public Health Act, as in force [until February 1997], did not contain any provision empowering prosecutors to commit a person to compulsory confinement in a psychiatric clinic for the purpose of effecting a psychiatric examination.

Moreover, the applicable law, as in force at the relevant time and even after its amendment in 1997, does not provide for the seeking of a medical opinion as a precondition to ordering detention with a view to compulsory psychiatric examination and thus falls short of the required standard of protection against arbitrariness.

The Court thus finds a violation of Article 5 § 1 of the Convention on account of the fact that the applicant's deprivation of liberty was not justified under subparagraph (e) of this provision and had no basis in domestic law which, moreover, does not provide the required protection against arbitrariness as it does not require the seeking of a medical opinion.”

## THE LAW

14. The text of the friendly settlement reached by the parties is as follows:

“1. The applicant, [M.S.], agrees to withdraw her application no. 40061/98 against Bulgaria ... concerning a violation of Article 5 of the Convention.

2. The Bulgarian State shall pay to the applicant the amount of 3,500 (three thousand five hundred) [Bulgarian] leva as compensation for the non-pecuniary damage caused by her detention in a psychiatric clinic in violation of the requirements of Article 5 of the Convention and for costs in the proceedings before the Court.

3. The said compensation shall be paid not later than one month after the notification of the judgment of the Court approving the settlement and striking the application out of the list of cases.

4. The parties have agreed on the amount of the compensation on the basis of respect for human rights as defined in the Convention and in view of the Court's judgment in the case of *Varbanov v. Bulgaria* (no. 31165/95, 5 October 2000)...

The present agreement shall become final upon its approval by the Council of Ministers of the Republic of Bulgaria...”

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It must establish whether the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

The Court observes in this regard that neither the agreement nor the Government's decision approving it make any reference to relevant amendments in domestic law which, as established in *Varbanov* cited above, does not provide sufficient safeguards against arbitrariness.

Having regard, however, to the fact that the execution of the *Varbanov* judgment – which concerned issues almost identical to those in the present case – is currently under review by the Committee of Ministers of the Council of Europe in accordance with Article 46 § 2 of the Convention, the Court is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols.

16. Accordingly, the case should be struck out of the list.

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to strike the case out of the list;
2. *Takes note* of the parties' undertaking not to request a rehearing of the case before the Grand Chamber.

Done in English, and notified in writing on 4 July 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President