



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

1959 · 50 · 2009

FIFTH SECTION

**CASE OF TRAJČE STOJANOVSKI v. THE FORMER YUGOSLAV
REPUBLIC OF MACEDONIA**

(Application no. 1431/03)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Trajče Stojanovski v. the former Yugoslav Republic of Macedonia,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Rait Maruste,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 1431/03) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Macedonian national, Mr Trajče Stojanovski (“the applicant”), on 18 December 2002.

2. The applicant, who had been granted legal aid, was represented by Mr N. Garazov, a lawyer practising in Štip. The Macedonian Government (“the Government”) were represented by their Agent, Mrs R. Lazareska Gerovska.

3. The applicant alleged, in particular, that his continued confinement in a psychiatric hospital had no longer been justified under Article 5 § 1 (e) of the Convention.

4. By a decision of 16 September 2008, the Court declared this complaint admissible.

5. The applicant and the Government each filed further information (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1973 and lives in Štip.

1. Background of the case

a) The applicant's conviction and his placement in a psychiatric hospital

7. On 10 July 1998 the Štip Court of First Instance (“the trial court”) ordered an indefinite security measure against the applicant, who was a deaf mute, of “compulsory psychiatric treatment and confinement in a medical institution of a closed type” (*задолжително психијатриско лекување и чување во здравствена установа од затворен тип*) (“the confinement order”) for causing “serious bodily injury” and “endangering another with a dangerous implement in a fight or quarrel”. The court established that on 23 October 1995 an incident had taken place in the court building between Mr I., the applicant's father, and Mr D., as parties summoned to attend a hearing scheduled for that day. The applicant intervened in the quarrel and knocked Mr D. down. Mr D. sustained severe head injuries and a brain haemorrhage as a result of the fall and died seven days later. The applicant also hit a judge several times. He was subsequently prevented from assaulting a third person. The court found that the applicant was “slightly mentally retarded” and considered aggressive and a danger to the public, in particular villagers whom he had allegedly often assaulted. Two medical reports drawn up by three psychiatric experts confirmed that the applicant was mentally ill, and needed medical treatment in a specialised psychiatric hospital.

8. The confinement order was enforced immediately. The applicant was placed in the Negorci Hospital for Mental Diseases (hereafter “the hospital”).

b) Previous review of the applicant's detention in the hospital

9. On 28 October 1999 the hospital requested the trial court to amend the confinement order and release the applicant on condition that he undergoes compulsory psychiatric treatment. It based its proposal on the applicant's good behaviour in the past, the good relations he had established with the staff and other patients and the absence of any neurotic or psychiatric disorder since his confinement. The hospital noted that the applicant was mentally ill, which was a permanent state that could not be regarded as a disease. The public prosecutor supported the hospital's proposal.

10. In submissions of 16 June 2000, the applicant's sister requested that the trial court decide on the hospital's proposal. A petition signed by over seventy villagers, indicating that the applicant had been never dangerous and had been accepted in the village, was also attached to the request.

11. The trial court, in a decision confirmed on appeal, dismissed the hospital's proposal relying on a notification by police, according to which the applicant had left the hospital several times and his visits to the village

had been perceived as a threat and a danger by the local inhabitants. The police also referred to an incident of 1 January 2001 involving the applicant and Mr D.'s son. In a court decision of 11 February 2002, confirmed on appeal, Mr D.'s son was acquitted, as having acted in self-defence, of causing grievous bodily injury to the applicant. The court also referred to another petition signed by many villagers, which allegedly had been attached to the notification.

2. The proceedings at issue (“the 2003 review”)

12. On 3 April 2003 the hospital lodged with the trial court a fresh proposal for the applicant's conditional release, which was based on similar grounds to those of the previous review: good relations with the staff and other patients; no disturbance of order; mild drug therapy. The proposal was made with the stated aim of a faster and more efficient re-socialisation and reintegration of the applicant. The applicant was transferred to an open ward of the hospital. The public prosecutor supported the hospital's proposal.

13. In submissions of 25 April 2003, the applicant, who was represented by Mr Garazov, informed the court that his father intended to change residence and had consequently bought an apartment elsewhere.

14. On 24 September 2003 the trial court requested the police to make an inquiry into whether the applicant had caused problems during his stay in the village and whether he had been a danger to the local inhabitants.

15. On 20 November 2003 the trial court dismissed the hospital's proposal, relying on a police report of 13 October 2003. It stated, *inter alia*, that:

“...the applicant left the hospital several times and went to stay with his father...the last visit was in August 2003...after his arrival in the village, he started shouting out some indistinct words...although he was noticed by the inhabitants, there were no attacks on other persons...during the four-day stay in the village, he was always with his father. His presence in the village frightened, in particular, the immediate neighbours, who protected themselves by shutting up their houses and barring them from inside. Many inhabitants said that the applicant was under the psychological influence of his father, who – when intoxicated – had often provoked him by telling lies about the death of his mother and had thus made him aggressive towards some people. Local inhabitants therefore still feared the applicant's aggression...”

16. On 6 January 2004 the applicant left the hospital without consent and remained at large until 8 June 2004, when the police returned him.

17. On 9 February 2004 the applicant complained that the trial court had not based its decision on relevant facts, arguing that the expert opinions of the hospital and the responsible medical officer who had treated him were the only evidence relevant for the court. He maintained that in case of misgivings as to the validity of the hospital's opinion, the court should have obtained an alternative medical expertise. In submissions of 31 March 2004,

the public prosecutor supported the applicant's appeal and his request that the case be remitted for fresh consideration.

18. On 13 April 2004 the Štip Court of Appeal dismissed the applicant's appeal and stated that the hospital's proposal was irrelevant since it was not binding on the court. It ruled that on the basis of the results of the medical treatment it was free to decide whether the applicant was fit to be discharged from the hospital and treated on release. Lastly, it concluded that the applicant had escaped from the hospital several times and had presented a threat to the public. It was therefore too early to consider him fit for release.

19. No further annual reviews were carried out until the hospital's fresh proposal of 7 November 2008 (see paragraph 21 below).

3. The applicant's current situation

20. Since 14 February 2007 the applicant has been placed in a semi-open ward of the hospital, where he is responsible for the maintenance and hygiene of the ward. He cannot leave the hospital at will, unless authorised by a doctor. His last unauthorised leave from the hospital dates back to 11 September 2007. The police returned him after 13 days. After that incident, a decision was taken that the applicant be allowed to leave the hospital. Between October 2007 and September 2008 the applicant was given leave on four occasions, each time lasting not more than a month. During this so-called "therapy probationary leave", the applicant received the prescribed therapy and his father took care of him. His mental health was stable and required no special supervision.

21. On 7 November 2008 the hospital unsuccessfully applied for replacement of the confinement order with the applicant's conditional release, which was now to be accompanied by removal of his legal capacity and appointment of a guardian (*старател*). The latter was based on the hospital's view that the applicant's father was unfit to take proper care of him. At a public hearing held on 27 November 2008, and after consulting two doctors from the hospital and a Social Care Centre representative, the trial court found no one suitable to be appointed as the applicant's guardian, if released. No information was provided as to whether the applicant appealed against this decision.

II. RELEVANT DOMESTIC LAW

22. The relevant provision of the Criminal Proceedings Act ("the Act") reads as follows:

Section 483

A court which at first instance has ordered compulsory psychiatric treatment and confinement in a medical institution may discontinue the order and release the perpetrator from the medical institution of its own motion or upon a proposal lodged by the medical institution or the custodial institution and after hearing the public prosecutor. It shall so decide if, after consulting the medical officer, it finds that there is no need for medical treatment and confinement of the perpetrator in the institution. It can order his or her release on condition that he or she undergoes compulsory psychiatric treatment.

23. The relevant provisions of the Criminal Code read as follows:

Article 63

Compulsory psychiatric treatment and confinement in a medical institution

“(1) The court shall order the compulsory psychiatric treatment and confinement in a medical institution of a perpetrator who has committed an offence while of unsound mind or with a substantial mental deficiency if it finds that, due to that condition, he or she may reoffend and that medical treatment and confinement in such an institution is warranted to prevent him or her from doing so.

(2) The court shall discontinue the measure set forth in paragraph 1 when it finds that there is no need for medical treatment and confinement of the perpetrator in the medical institution.

...

(4) The court shall review the need for medical treatment and confinement in a medical institution every year.”

Article 64

Compulsory psychiatric treatment on release

“(1) The court shall order compulsory psychiatric treatment on release of a perpetrator who has committed an offence while of unsound mind if it finds that, due to that condition, he or she may reoffend and that medical treatment on release would be sufficient to prevent him or her from doing so.

(2) The measure set forth in paragraph 1 may be imposed on an offender who has already undergone compulsory psychiatric treatment and confinement in a medical institution when, on the basis of the results of the medical treatment, the court determines that his or her treatment and confinement in a medical institution is no longer necessary...”

THE LAW

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

24. The applicant complained under Article 5 of the Convention that his continued confinement in the hospital, as confirmed in the 2003 review, had been unlawful since the courts had wrongly based their decisions on police reports instead of on the findings of the hospital, as the only reliable evidence concerning his mental health. Article 5 § 1 of the Convention, in so far as relevant, reads 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...”

1. The parties' submissions

25. The applicant argued that the courts should not have ignored the hospital's proposal, as their decisions should have been based on the results of his medical treatment. He referred to the doctors' unanimous opinion according to which his mental deficiency had not been a result of an illness or psychosis, but of his handicaps which could neither improve nor be cured. His further stay in the hospital had therefore been pointless.

26. The Government stated that the confinement order had been given on the basis of two medical reports confirming his mental deficiency. They argued that the hospital had not established that the applicant had completely recovered from his mental illness, but rather that his health had improved. Furthermore, a possible risk of reoffending could not be determined solely on the basis of psychiatric observations; regard also had to be had to the objective manifestations of the person concerned. In that connection, the trial court's request for a police inquiry regarding the applicant's behaviour had been justified. They maintained that the domestic courts had carefully considered the hospital's proposal with a view to securing the interests of the public and those of the applicant. In that connection, they relied on the reasons for the applicant's conviction, the incident of 1 January 2001 and the hospital's failure to notify the trial court of his leaving.

2. The Court's assessment

27. The Court reiterates that the lawfulness of detention presupposes conformity with the domestic law in the first place and also, as confirmed by Article 18, conformity with the purpose of the restrictions permitted by Article 5 of the Convention (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33 and *H.L. v. the United Kingdom*, no. 45508/99, §§ 114 and 115, ECHR 2004-IX). The detention of an individual is such a serious measure that it is only justified where other, less severe, measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

28. In the present case, the Court notes that the confinement order was issued on 10 July 1998 in the light of the trial court's finding that the applicant was of unsound mind when committing the offences of which he was convicted. That the applicant's mental state required compulsory confinement was established by two medical opinions. The order was executed on the same date and the applicant has been in the hospital since then.

29. The applicant was placed in different wards and was subject accordingly to different regimes at different times. It did not however affect his inability to leave the hospital on his own volition (see, *mutatis mutandis*, *Bollan v. the United Kingdom* (dec.), no. 42117/98, 4 May 2000, in which the Court found that the imposition of a more restrictive form of confinement in respect of a lawfully detained person is regarded solely as a modification of the conditions of detention). Even if he escaped, as he did on a number of occasions, he would be brought back by the police. The applicant is still detained in a semi-open ward which he can leave only with prior authorisation from the responsible medical officer. In these circumstances, the Court is satisfied that the applicant's confinement in the hospital amounted to a "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

30. The Court further notes that the confinement order followed and was dependent upon the applicant's "conviction by a competent court". It is therefore not in doubt that the applicant's deprivation of liberty, initially, was to be regarded a "lawful detention" within the meaning of Article 5 § 1 (a) of the Convention. However, the particular circumstances of this case, and notably the reasons which the domestic courts advanced for the applicant's continued detention, put into question the continued applicability of sub-paragraph (a). In this connection, the Court observes that, contrary to the Government's contentions, the 2003 review did not make any reference to the applicant's conviction of 1998, but rather focused on his mental health with reference to the interests of the public, if released. The Court finds that

by the time of the 2003 review, there was no longer a causal connection between the applicant's conviction and his detention. Indeed, it has not been disputed between the parties that the lawfulness of the applicant's detention falls to be determined on the basis of Article 5 § 1 (e) of the Convention (see, *mutatis mutandis*, *Johnson v. the United Kingdom*, 24 October 1997, § 58, *Reports of Judgments and Decisions* 1997-VII). The Court therefore has to verify whether the requirements of Article 5 § 1 (e) were fulfilled.

31. The Court has outlined three minimum conditions for the lawful detention of an individual on the basis of unsoundness of mind under Article 5 § 1 (e) of the Convention: 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; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement must depend upon the persistence of such a disorder (see *Winterwerp*, cited above, § 39; *Johnson*, cited above, § § 60 and *Shtukaturv v. Russia*, no. 44009/05, § 114, 27 March 2008).

32. The Court notes that the 2003 review was initiated under section 483 of the Criminal Proceedings Act by the hospital seeking his release on condition that he undergo compulsory psychiatric supervision (see, *a contrario*, *Puttrus v. Germany* (dec.), no. 1241/06, 24 March 2009, where the application for release was submitted by the applicant and contested by the hospital which treated him). The request was based on the applicant's good behaviour and his good relations with the personnel and other patients in the hospital. The hospital's opinion was that the applicant's mental deficiency was permanent, that there had been no disturbance of order and had been treated with mild drug therapy and that – subject to continuing psychiatric supervision – he could be released.

33. It transpires, therefore, that the hospital's request was made with a view to securing the applicant's conditional release since his mental disorder no longer satisfied the second and/or third conditions outlined above (see paragraph 31 above). The domestic courts dismissed this request on the basis of information provided by the police regarding the applicant's behaviour outside the hospital and the local inhabitants' perceptions of him. They disregarded the hospital's opinion as not binding on them.

34. In this connection, the Court recalls that in deciding whether an individual should be detained as a “person of unsound mind”, the national authorities are to be recognised as having a certain margin of appreciation since it is in the first place for the national authorities to evaluate the evidence before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75). Whether or not recovery from an episode of mental illness which justified a patient's confinement is complete and definitive or merely apparent cannot in all cases be measured with absolute certainty. It is the behaviour of the patient in the period spent

outside the confines of the psychiatric institution which will be conclusive of this (see *Johnson*, cited above, § 61). A requirement of continued psychiatric supervision does not in itself justify continued detention (see *Johnson*, § 65)

35. The Court notes that the 2003 review was carried out pursuant to Article 63 of the Criminal Code, in order to assess whether the applicant still needed treatment and confinement. The query made by the trial court aimed at securing information from the police about the applicant's behaviour outside the hospital. However, the Court notes that this review did not reveal any objective sign that the applicant presented a threat or danger to the community (unlike the previous review in which the trial court referred to the 2001 incident, see paragraph 11 above). The domestic courts relied solely on the perceived fears of the villagers. There was no evidence before the court of a risk that the applicant would reoffend if released (see, *a contrario*, *X v. the United Kingdom*, 5 November 1981, § 23, Series A no. 46, where the applicant was recalled to the medical institution upon a complaint by his wife that he had threatened her). It was only the villagers' fears that stood against and prevailed over the applicant's conditional release from the hospital. The domestic court noted that the applicant had visited his village in August 2003, but did not find that he had demonstrated any hostility or aggression (see, *a contrario*, *Van Droogenbroeck v. Belgium*, 24 June 1982, § 14, Series A no. 50, where each time the applicant was released, he yielded to impulse and committed further offences). In addition, there was no indication in the hospital's reports that the applicant was still aggressive or would present, if released, a risk to the public (see, *a contrario*, *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 19, ECHR 2003-IV). On the contrary, the hospital described him as cooperative, having regularly received his mild therapy (see, *a contrario*, *Putrus*, cited above). The applicant's loud utterances (see paragraph 15 above), even though deaf and mute, cannot be regarded as decisive for restricting his freedom. The events after the 2003 review did not add anything new in this respect.

36. In the circumstances, the Court is not persuaded that the domestic courts established that the applicant's mental disorder was of a kind or degree warranting compulsory confinement, or that the validity of the confinement could be derived from the persistence of such a disorder. The applicant's continued confinement was therefore manifestly disproportionate to his state of mind at that time.

37. The Court therefore considers that the applicant's continued confinement in the hospital under the 2003 review has not been shown to have been necessary in the circumstances and was, therefore, unjustified within the meaning of Article 5 § 1 (e) of the Convention. There has accordingly been a breach of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 115,819 euros (EUR) in respect of pecuniary damage for loss of income during the six years' unjustified detention in the hospital. He argued that, due to the age and poor health of his father, he would have been occupied with farming and cow rearing during the relevant period. In this latter respect, he submitted a certificate issued to his father attesting that the latter's annual income from farming in 2007 amounted to 1,621 Macedonian denars (approximately EUR 25). He further claimed EUR 90,000 in respect of non-pecuniary damage.

40. The Government contested these claims as unsubstantiated and excessive. They further argued that there was no causal link between the alleged violation and the pecuniary damage claimed.

41. The Court, as the Government, finds the applicant's claim for pecuniary damage unsubstantiated since he did not present any evidence that farming and cow rearing had been his regular source of income before being detained. In addition, the amount claimed was not supported by any expert opinion or comparable estimation, both in terms of the relevant time and place. The certificate submitted has no bearing on the applicant's occupation as alleged. For these reasons, the Court rejects this claim.

42. On the other hand, the Court considers that the applicant undoubtedly suffered feelings of frustration and anxiety, which cannot be compensated solely by the finding of a violation. Having regard to the circumstances of the case and ruling on an equitable basis, as required by Article 41, it awards him EUR 1,500 in respect of non-pecuniary damage suffered in relation to the 2003 review, plus any tax that may be chargeable.

B. Costs and expenses

43. The applicant claimed MKD 46,800 (approximately EUR 760) for the costs and expenses incurred in the domestic proceedings. These included the legal fees concerning the 2001 and 2003 review proceedings. He further claimed MKD 110,100 (approximately EUR 1,800) for the costs and expenses incurred in the proceedings before the Court. This figure concerned the lawyer's fees for preparation of the application and other submissions to the Court, as well as the mailing and translation expenses.

The applicant provided an itemised list of the legal fees. No payment slip or other supporting document was provided for the mailing and translation expenses.

44. The Government contested these claims as unsubstantiated and excessive.

45. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum (see *Editions Plon v. France*, no. 58148/00, § 64, ECHR 2004-IV).

46. Having regard to the fee note submitted by the applicant, the Court finds that only EUR 190 related to lawyers' fees which concerned the 2003 review and were expended with a view to seeking prevention before the national courts of the violations found by the Court (see, *mutatis mutandis*, *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 56, 5 April 2007). It considers therefore that the applicant is entitled to be reimbursed under this head EUR 190, plus any tax that may be chargeable to him.

47. Lastly, regard being had to the information in its possession and the above criteria, the Court finds the amount claimed by the applicant in respect of the costs and expenses incurred in the proceedings before it to be excessive and partly unsubstantiated, and awards instead the sum of EUR 1,350, plus any tax that may be chargeable to him, less EUR 850 paid by the Council of Europe in legal aid.

C. Default interest

48. The Court considers it appropriate that the default interest 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. *Holds* that there has been a violation of Article 5 § 1 (e) of the Convention;
2. *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,
 - (i) EUR 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and

(ii) EUR 1,540 (one thousand five hundred and forty euros), less EUR 850 paid by the Council of Europe in legal aid for costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President