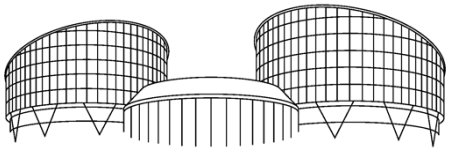

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF K.C. v. POLAND

(Application no. 31199/12)

JUDGMENT

STRASBOURG

25 November 2014

FINAL

25/02/2015

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

In the case of K.C. v. Poland,

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

Ineta Ziemele, *President,*
Päivi Hirvelä,
Ledi Bianku,
Nona Tsotsoria,
Paul Mahoney,
Krzysztof Wojtyczek,
Faris Vehabović, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in an application (no. 31199/12) 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, Ms K.C. ("the applicant"), on 17 May 2012.

2. The applicant was represented by Mr A. Bodnar, a lawyer from the Helsinki Foundation for Human Rights. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska of the Ministry of Foreign Affairs.

3. On 16 January 2014 the President of the Section granted leave, under Rule 44 § 3 of the Rules of Court, for the Mental Disability Advocacy Centre to make written submissions in the proceedings before the Court as a third party. The third party, however, failed to submit any comments.

4. The applicant complained, in particular, about her enforced placement in a social care home and her inability to obtain release from the home, in breach of Article 5 §§ 1 and 4 of the Convention.

5. On 2 October 2013 the complaints concerning the applicant's placement in the social care home were communicated to the Government and the remainder of the application was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1936 and lived in Żary. She is currently residing in a social care home in K.

A. Decision to place the applicant in a social care home

7. The applicant, who is a widow, was living alone in an apartment in Żary. She was receiving a pension from the Social Security Board. She has a daughter, with whom she apparently had had no contact for several years.

8. On 24 March 1981, at the request of the applicant's daughter, the Zielona Góra Regional Court declared the applicant to be partially incapacitated. The court established that she had been suffering from psycho-organic dementia syndrome with elements of paranoia and that she had a tendency to abuse alcohol and medications. It reasoned that it was necessary to declare her to be partially incapacitated because she needed help in making the right decisions, particularly as regards her treatment and the amount of money she spent on alcohol.

9. On 19 December 2007 the Żary City Centre for Social Services *(Miejski Ośrodek Pomocy Społecznej)* requested the Żary District Court to place the applicant, against her will, in a social care home. The City Centre for Social Services submitted that the applicant was suffering from mental disorders, did not go to doctors and behaved in a way that departed from "socially accepted norms", which posed a threat to her health and life. The Centre explained that the applicant had been "walking in the streets incompletely dressed, untidy and dirty. She smelled, talked to herself and often looked as if she was under the influence of alcohol". A medical certificate dated 3 December 2007 was attached to the request. The certificate had been issued by a psychiatrist on the basis of an examination of the applicant in the psychiatric ward of the Żary Military Hospital. It had been found that the applicant had been suffering from organic personality disorders *(organiczne zaburzenie osobowości)* and that she needed constant care. However, she did not require hospital treatment.

10. The Żary District Court scheduled several hearings at which the applicant failed to appear. Therefore, it was decided to hear the applicant at her place of residence on 25 March 2008. On that day contact with the applicant was difficult; her answers to some of the court's questions were illogical. She made it clear, however, that she did not want to be placed in the social care home. At the end of the hearing she refused to sign the relevant document and told the people present in her apartment to get out.

11. On 19 June 2008 the Żary District Court decided to place the applicant in a social care home. The court based its decision on an opinion

given by a psychiatrist, I.S., who had examined the applicant once, on 8 May 2008, and had diagnosed her with chronic schizophrenia and a disorder of the central nervous system. The doctor found that until the time of the examination the applicant had been in the care of a social guardian, R.D. However, the doctor claimed that "care was not provided properly or was not provided at all". The applicant had been neglecting the basic principles of hygiene and nutrition, which might lead to infections or undernourishment. He stressed however that she did not pose a direct danger to her own or other peoples' health or life. The doctor also found that the applicant needed to be under the constant care of a third person. The relevant part of the opinion read as follows:

> "Through her behaviour she poses a risk to her life, i.e. in certain circumstances leaving her without constant care significantly raises the probability of risk to her life. It is not however a direct risk, but it results rather from the applicant's neglect of basic hygiene principles, place of residence and nutrition. [The applicant is therefore exposed to] a risk of malnutrition, [and] infections."

The court also examined the possibility of the applicant's stay at her home and referred in this respect to the possibility of taking care of the applicant by third persons and to the assistance provided by the Local Social Care Centre. The relevant part of the court's decision read as follows:

> "...there are no members of family or third persons who could take care of the applicant on permanent basis. In particular the applicant's daughter declared that she did not want to look after her mother on permanent basis and that she would not take her mother to her place...
>
> ...
>
> The expert opinion is clear in so far as it states that (the applicant) needs constant care lack of which poses a danger to her life.
>
> ...
>
> As regards the assistance from the employees of the Żary Social Care Centre it is to be noted that this assistance is not of a permanent nature. This means that social employee does not spend the whole day with a person concerned and does not take care of that person on permanent basis because, as a rule, social employees [...] assist at the same time many persons living in the area covered by their activity. The applicant in turn, requires permanent care which cannot be secured by the social employees."

12. The applicant was placed in a social care home in K. on 10 September 2008.

B. The applicant's attempts to challenge the decision to place her in a social care home

13. It appears that the District Court granted the applicant a legal aid lawyer in 2007. However, according to the applicant's submission the

lawyer was not present at the hearing before the first-instance court and *de facto* she was not represented in the judicial proceedings.

14. On 8 December 2008 the applicant's daughter appealed against the decision of 19 June 2008. She also requested that her mother be granted a legal aid lawyer and that she be served with the decision of 19 June 2008 with written reasoning.

15. On 29 December 2008 the Żary District Court dismissed the request for a legal aid lawyer, finding that the applicant's daughter had sufficient knowledge and abilities to represent her mother before the court. It also rejected the appeal and the request for the reasoning of the first-instance decision.

16. On 7 February 2009 the applicant lodged another appeal against the decision of 19 June 2008 and requested leave to appeal out of time.

17. On 3 March 2009 the applicant was granted a legal aid lawyer. Since she was not satisfied with the lawyer who represented her, on 2 June 2009 she was granted another lawyer, who subsequently requested that the court grant the applicant leave to appeal out of time.

18. On 25 August 2009 the Żary District Court granted the applicant's request for leave to appeal out of time.

19. On 7 December 2009 the Zielona Góra Regional Court dismissed the applicant's appeal. The minutes of the court decision reveal that nobody was present at the hearing on that day. The same minutes state, however, that "the applicant, who was not represented by a lawyer, was informed that she could request reasons for the decisions in writing if she lodged a relevant request within seven days from the day of publication [of the decision]." The applicant submitted that she had not been served with the court's decision and that she had found out about it by chance two years later. In the meantime she lodged a complaint with the court about the excessive length of the proceedings. Her complaint was rejected by the Zielona Góra Regional Court on 31 October 2011.

20. When the applicant learned that her appeal had been dismissed she requested the leave of the Regional Court to lodge a request for written reasons for the decision out of time. She also requested leave to lodge a cassation appeal out of time, to be exempted from the court fees and to be granted a legal aid lawyer who would prepare and lodge a cassation appeal on her behalf.

21. On 21 November 2011 the Zielona Góra Regional Court dismissed her request for leave to appeal out of time and therefore she could not lodge a cassation appeal with the Supreme Court.

22. On the same day the Zielona Góra Regional Court dismissed the applicant's request for exemption from the court fees and for the appointment of a legal aid lawyer to lodge a cassation appeal on her behalf.

C. The attempts of the applicant's daughter to vary the decision on her mother's compulsory placement in the social care home

23. On 20 November 2008 the applicant's daughter requested the District Court to vary the measure applied to her mother and to amend the decision of 19 June 2008.

24. The Żary District Court ordered that the applicant be examined by a psychiatrist in order to check whether she needed to remain in the social care home. It also ordered that the applicant be heard by the Gorzów Wielkopolski District Court by way of judicial assistance.

25. The applicant was examined by a psychiatrist on 6 April 2009. The relevant part of the psychiatric opinion reads as follows:

> "In her current mental state the applicant does not need to be admitted and treated in hospital.
>
> ...
>
> As a result of her sickness she requires help in day-to-day matters, first of all, taking care of her treatment process and controlling her expenses so that she does not spend money on alcohol. She also needs assistance in preparing meals, personal hygiene and shopping.
>
> ...
>
> The applicant needs the twenty-four-hour care that may be offered in a social care home. It is admissible that she be placed in a family home provided that the family is able to assure twenty-four-hour care.
>
> ...
>
> There has been no change in the applicant's mental state or circumstances which constituted the basis for her placement in the social care home.
>
> The applicant does not require to be placed in a psychiatric ward ... She does not pose a direct danger to her own or a third person's health or life."

26. On 6 April 2009 the applicant was also heard by the Gorzów Wielkopolski District Court. The hearing lasted fifteen minutes. The applicant's statement reads as follows:

> "I am afraid that I could be locked up. I would need a sanatorium where they treat heart disease. I do not feel at ease in the social care home because the people there are not normal, they are constantly asking for cigarettes and I do not smoke. Medical care is assured there. The doctor is a colleague of mine, because I was manager of a chemist and he was the doctor. I take the medication *promazyn* because I was exposed to radiation during the war, but now I am fine. I am in good hands, I need my home, my daughter comes to see me. She comes every week. I lived in my home in Żary for 30 years. My daughter, when she became an adult, used to come to see me and she helped me out. I want to stay in my apartment in Żary, which is situated not far from my daughter's apartment."

27. On 15 June 2009 the court summoned the applicant's daughter in order to establish whether she was capable of providing care for her mother. She failed to appear, so a further hearing was scheduled for 10 August 2009.

The applicant's daughter again failed to appear. The court then decided to close the case, finding that the facts had been sufficiently established to make a final decision.

28. On 20 August 2009 the Żary District Court dismissed the request lodged by the applicant's daughter to vary the measure applied to the applicant. Neither the applicant, her daughter, nor the applicant's guardian was present when the court announced its decision. The decision was not appealed against and became final on 10 September 2009.

D. The applicant's attempts to vary the decision on her compulsory placement in the social care home

29. On 5 April 2009 the applicant requested the Żary District Court to reopen the proceedings which had resulted in her placement in the social care home. If it was not possible to re-open the proceedings, she requested that the respective decision be varied.

30. On 21 May 2009 the District Court rejected her request. The court found that there were no grounds for reopening the proceedings. It further informed the applicant that, under section 41 of the 1994 Psychiatric Protection Act, an applicant placed in a social care home or members of his or her family could request that the court vary the decision on placing him or her in the social care home. The court disregarded the applicant's alternative request in that regard.

31. On 9 February 2009 the applicant requested the District Court to supplement the decision of 19 June 2008 and allow her to leave the social care home for one hour a day in order to go to a shop, as well as allow her to stay in her room all day.

32. On 25 August 2009 the Żary District Court dismissed the request to supplement the original decision, finding that those matters fell outside the court's jurisdiction and that they were provided for by the internal regulations of each social care home.

33. On 19 July 2009 the applicant again asked the court to vary the measure applied to her. She also requested legal aid; she submitted that she could not afford to appoint a lawyer at her own expense because 70% of her pension was retained by the social care home.

34. On 1 October 2009 the Żary District Court refused to grant a legal aid lawyer, finding that the applicant was able to deal with her affairs herself and that her case was not complicated from a legal or factual point of view.

35. The applicant appealed against that decision.

36. On 18 November 2009 the Zielona Góra Regional Court quashed the challenged decision and granted the applicant a legal aid lawyer.

37. As regards the applicant's request to vary the measure, a hearing took place on 6 November 2009 in the presence of both the applicant and her lawyer. Following a request by the lawyer, the court decided to stay the proceedings. They were resumed on 5 February 2010.

38. On 15 March 2010 the Żary District Court dismissed the applicant's request. The applicant did not appeal against that decision and it became final on 6 April 2010.

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. Admission to a social care home is governed by section 38 et seq. of the 1994 Psychiatric Protection Act (U*stawa o ochronie zdrowia psychicznego*). It provides that a person who, on account of a mental disorder or mental disability, is unable to take care of himself or herself, cannot be taken care of by somebody else and does not need hospital treatment may be placed in a social care home with his or her consent or the consent of his or her guardian. Only if the person concerned or his or her guardian does not consent to the placement must the decision be taken by a court.

40. The Ordinance of the Minister of Justice of 22 February 1995 provided that a regional court had to supervise the legality of the admission and "continuing residence" of individuals confined to psychiatric hospitals and social care homes (section 1). However, an obligation to carry out every six months a periodic review of the need for "continuing residence" applied only to those admitted to psychiatric hospitals (section 2(3)). That Ordinance has been replaced by the Ordinance of the Minister of Justice of 11 October 2012. The new Ordinance does not mention any review of the need for "continuing residence" either in psychiatric hospitals or in social care homes. It only imposes an obligation on judges to visit at least once every two years social care homes in which there are persons deprived of their liberty. However, judges are under no obligation to check whether those persons need to remain in the social care home. Their obligations are rather limited to checking whether the facilities in question are properly maintained from an administrative point of view.

41. Section 41 of the 1994 Psychiatric Protection Act provides as follows:

> "1. A person admitted to a social care home [on the basis of a court decision], his or her legal representative, spouse, lineal relatives, brothers and sisters and the patient's official carer may request the court to vary the decision ordering admittance to a social care home.
>
> 2. The request referred to above may also be lodged by a manager of the social care home if he or she considers that the circumstances which served as the basis of the decision to compulsorily place a person in a social care home have changed."

42. Section 47 of the 1994 Act provides less strict formal requirements for remedies requested by a person admitted to a social care home; such remedies do not have to be reasoned and it is usually sufficient that the person concerned expresses his or her dissatisfaction with the challenged decision.

43. Under Article 87^1 § 1 of the Code of Civil Proceedings, parties must be represented by advocates or legal advisers in the proceedings before the Supreme Court. This mandatory representation also concerns procedural measures connected with proceedings before the Supreme Court and undertaken before the courts of lower instances.

44. The regulations on the functioning of social care homes were also governed by the 1990 Social Assistance Act (*Ustawa o pomocy społecznej*), which was replaced by the Act of 2004. Under the relevant regulations, the costs of a person's stay in a social care home must not exceed 70% of his or her income or pension. Both Acts provided that placement of a totally incapacitated person in a social care home may only be done with the consent of his or her guardian.

45. The relevant international instruments and the comparative law are set out in the judgment of *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 72, 73 and 88-95, ECHR 2012.

THE LAW

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

46. The applicant complained that her compulsory placement and continued deprivation of liberty in a social care home amounted to a violation of her right to liberty, as provided for in Article 5 § 1 of the Convention, the relevant part of which 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 ... of unsound mind..."

47. The Government contested that argument in general terms.

A. Submissions by the parties

1. The applicant

48. The applicant considered that her detention did not fulfil the three conditions of "lawful detention of persons of unsound mind" laid down in

the Court's case-law. In particular, her mental disorders were not of a kind or degree warranting compulsory confinement. She referred to the expert witnesses' opinions on the basis of which she had been deprived of her liberty and stressed that none of the opinions had stated that she posed a direct risk to her life or to that of third persons. She considered that her detention was of a "prophylactic nature".

2. The Government

49. The Government submitted that the applicant's placement in the social care home had been lawful. It had been ordered by the relevant domestic court and after examination of the applicant by two psychiatrists, who had found that the applicant had been suffering from chronic schizophrenia and an organic mental disorder. The Government further submitted that there had been no necessity to admit the applicant to a social care home; however, there had been no other means of providing her with the necessary help. Her daughter had refused to take care of her and there was had been no one else who could have taken on such a responsibility. In the social care home the applicant was under the constant care of medical professionals and received treatment which would not be available if she lived alone.

50. The Government also submitted that the applicant's mental disorders had fully warranted her admission to a social care home; the fact that she could not take care of herself posed a threat to her life. At the same time her state of health did not require her admission to a psychiatric hospital.

51. As regards the possibility of leaving the social care home during the day, the Government submitted that such a possibility existed, but that the applicant had never requested permission to leave the home on her own for a short period of time.

B. Admissibility

1. Whether the applicant has been deprived of her liberty within the meaning of Article 5 § 1 of the Convention

52. The Court notes that it had already had opportunities to examine the placement of mentally incapacitated individuals in social care homes, and found that it amounted to deprivation of liberty within the meaning of Article 5 § 1 of the Convention (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 132, ECHR 2012, and *D.D. v. Lithuania*, no. 13469/06, § 152, 14 February 2012).

53. In the present case, although the applicant has been declared only partially incapacitated and although the Government submitted that she could ask to leave the social care home on her own during the day, they did not contest that she had been deprived of her liberty. She was compulsory

placed in the social care home, against her will, on the basis of a court decision. Therefore, the responsibility of the authorities for the situation complained of is engaged (see *Kędzior v. Poland*, no. 45026/07, § 59, 16 October 2012).

54. In the light of the foregoing, the Court concludes that the applicant has been "deprived of her liberty", within the meaning of Article 5 § 1 of the Convention, from 10 September 2008 to this day.

2. The Government's objections as to non-compliance with the six-month rule and non-exhaustion of domestic remedies

55. The Government submitted that the present application had been lodged after the expiry of the six-month time-limit. They submitted that the decision of 7 December 2009 by which the Zielona Góra Regional Court dismissed the applicant's appeal should be regarded as a final domestic decision.

56. The Government further considered that the applicant had not exhausted all domestic remedies. She had failed to lodge a cassation appeal against the decision of 7 December 2009 dismissing her appeal. She had also failed to appeal against the two court decisions of 20 August 2009 and 15 March 2010 dismissing requests lodged by her and her daughter to vary the measure applied to her.

57. The applicant's lawyer submitted that the decision of 21 November 2011 should be considered as final for the purpose of calculating the six-month time-limit.

58. The Court notes that after the decision given by the Zielona Góra Regional Court on 7 December 2009, the applicant requested leave to lodge a request for written reasons for the decision out of time. She also requested leave to lodge a cassation appeal out of time, to be exempted from the court fees and to be granted a legal aid lawyer who would prepare and lodge a cassation appeal on her behalf (see paragraph 20 above). All her requests were dismissed by the Zielona Góra Regional Court on 21 November 2011. The Court considers that the applicant was not informed that she could not lodge a cassation appeal until that date. In any event, the present application does not merely concern the decision to place the applicant in the social care home or the proceedings following that decision. The gist of the applicant's complaints is her prolonged deprivation of liberty in the social care home, which started on 10 September 2008 and has not yet ended (see paragraph 12 above). It follows that the situation complained of persists and therefore the application was lodged within the appropriate time-limit.

59. For the above reasons the Government's preliminary objection as regards the alleged non-compliance with the six-month time-limit must be dismissed.

60. As regards the alleged non-exhaustion of domestic remedies, the Court notes that following the decision of 21 November 2011 which, among

other things, dismissed the applicant's request for leave to lodge a cassation appeal out of time, the applicant had no other means of lodging a cassation appeal. In any event, the Court considers that in the particular circumstances of the case the applicant, who suffers from mental disorders, has been deprived of her liberty and had no effective legal assistance, could not have been required to appeal to the highest domestic instance. The Court further notes that the relevant provisions of the 1994 Psychiatric Protection Act exempt persons who lodge appeals against the decisions concerning, in particular, their deprivation of liberty in psychiatric hospitals and social care homes from some requirements which would normally have to be fulfilled (see paragraph 42 above). In order to lodge a cassation appeal, however, the applicant would still have to meet the compulsory requirement of being represented by a professional lawyer in the proceedings before the Supreme Court (see paragraph 43 above). Taking into consideration all the above circumstances, the Court considers that the applicant, by lodging an appeal against the decision to place her in a social care home, fulfilled the requirement of exhaustion of domestic remedies.

61. It follows that the Government's preliminary objection as regards the alleged non-exhaustion of domestic remedies must be dismissed.

62. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. General principles

63. The Court reiterates that in order to comply with Article 5 § 1, the detention at issue must first of all be "lawful", including the observance of a procedure prescribed by law; in this respect the Convention refers back essentially to national law and lays down the obligation to conform to the substantive and procedural rules thereof. It requires in addition, however, that any deprivation of liberty should be consistent with the purpose of Article 5, namely, to protect individuals from arbitrariness (see *Herczegfalvy v. Austria*, 24 September 1992, § 63, Series A no. 244). Furthermore, the detention of an individual is such a serious measure that it is only justified in cases where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest. That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

64. In addition, sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds of deprivation of liberty; such a measure will not be lawful unless it falls within one of those grounds (ibid., § 49; see also, in particular, *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008, and *Jendrowiak v. Germany*, no. 30060/04, § 31, 14 April 2011).

65. As regards the deprivation of liberty of persons with a mental disorder, 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; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; and thirdly, the validity of continued confinement depends on the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Shtukaturov*, cited above, § 114; and *Varbanov*, cited above, § 45).

66. As to the second of the above conditions, the detention of a person with a mental disorder may be necessary not only where the person needs therapy, medication or other clinical treatment to cure or alleviate his condition, but also where the person needs control and supervision to prevent him, for example, from causing harm to himself or other people (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 52, ECHR 2003-IV).

67. The Court further reiterates that there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the "detention" of a person as a mental-health patient will be "lawful" for the purposes of Article 5 § 1 (e) only if effected in a hospital, clinic or other appropriate institution authorised for that purpose (see *Ashingdane*, cited above, § 44, and *Pankiewicz v. Poland*, no. 34151/04, §§ 42-45, 12 February 2008). However, subject to the foregoing, Article 5 § 1 (e) is not in principle concerned with suitable treatment or conditions (see *Ashingdane*, cited above, § 44, and *Hutchison Reid*, cited above, § 49).

2. Application of these principles to the present case

68. Turning to the circumstances of the present case, the Court first notes that the applicant was deprived of her liberty as "a person of unsound mind", in accordance with the relevant provisions of the domestic law. The applicant was examined by two psychiatrists, on 3 December 2007 and 8 May 2008, for the purposes of her confinement. The doctors established that she had been suffering from chronic schizophrenia and other mental disorders (see paragraph 11 above). The relevant decision was given by the competent court.

It follows that the first criterion laid down in the *Winterwerp* case was fulfilled in the present case.

69. As regards the second criterion, namely the need to justify the placement by the severity of the disorder, the Court is ready to accept that in the initial phase of the applicant's confinement the domestic courts had reasonable grounds to believe that the applicant's placement in a social care home which would warrant her care on permanent basis was necessary. It is true that none of the psychiatric opinions prepared in the applicant's case mentioned that the applicant posed a direct threat to the life or health of herself or third persons. The opinion of 8 May 2008 mentions only an indirect risk to the applicant's life resulting from her neglect of basic hygiene principles, and of her place of residence and nutrition (see paragraph 11 above). In the opinion dated 6 April 2009, prepared after the applicant's placement in the home, the psychiatrist found no need for the applicant to be admitted to and treated in hospital. Likewise, no direct danger to the applicant's own or a third person's health or life was found (see paragraph 25 above). However, it was established that she had neglected herself and her apartment and failed to observe the basic principles of hygiene and nutrition. It was also confirmed that she needed constant care to be able to function normally. In its decision of 19 June 2008 the District Court stressed the need to provide the applicant with permanent assistance lack of which posed a danger to her life. Having examined the circumstances of the case the District Court found that there were no members of family or third persons who could take care of the applicant on permanent basis. In particular, the applicant's daughter expressly refused to do it. Also the assistance by social care employees, by its nature provided on temporary basis only, had not been sufficient to secure the applicant's basic needs (see paragraph 11 above). The District Court concluded that the applicant's placement in a social care home was the only solution to assure her necessary care and assistance. Taking into consideration the applicant's state of health and all the circumstances addressed by the courts at the time of the applicant's placement in the social care home, the Court accepts that the domestic court's decision to confine the applicant in a social care home was properly justified by the severity of disorder.

It follows that also the second criterion laid down in the *Winterwerp* case was fulfilled in the present case.

70. Turning to the third criterion, namely the persistence of disorder which would justify the validity of continued confinement the Court notes certain deficiencies in the assessment of whether the disorders persisted throughout the whole relevant period. Although the applicant was under the supervision of a psychiatrist, the aim of such supervision was not to provide an assessment at regular intervals of whether she still needed to be kept in the social care home for the purposes of Article 5 § 1 (e). Indeed, no provision was made for such an assessment under the relevant legislation (see *Stanev*, cited above, § 158, *X v. Finland*, no. 34806/04, § 169, ECHR 2012, and paragraph 40 above and compare *Raudevs v. Latvia*,

no. 24086/03, § 86, 17 December 2013). The domestic provisions do not provide for a periodic compulsory examination for the purpose of assessing whether an applicant needs to remain in a social care home. The applicant has been kept in confinement for over six years now and it has not been shown that the authorities undertake any steps which would allow assessment whether her continuous confinement in the social care home is indeed indispensable.

After being admitted to the social care home, the applicant was examined by a psychiatrist for the purpose of the proceedings which her daughter had instituted to have the decision on her mother's compulsory placement in the social care home varied. However this examination was effected on 6 April 2009 and it was the most recent psychiatric opinion given in the applicant's case available to the Court (see paragraph 25 above).

The Court concludes that the persistence of the disorder warranting the validity of the applicant's continued confinement has not been sufficiently shown by the domestic authorities.

71. Having regard to the foregoing, the Court observes that the applicant's confinement in the home was not extended "in accordance with a procedure prescribed by law" and that, with the passing of time, her deprivation of liberty was no longer justified under sub-paragraph (e) of Article 5 § 1 of the Convention. The Government have not indicated any of the other grounds listed in sub-paragraphs (a) to (f) which might have justified the deprivation of liberty at issue in the present case.

There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

72. The applicant complained, in essence, that she had no effective procedure by which she could challenge the lawfulness and the necessity of her continued stay in the social care home. She relied on Article 5 § 4 of the Convention which provides as follows:

> "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."

73. The Government contested that argument. They submitted that under section 41 of the Psychiatric Protection Act the applicant could, at any time, request the court to change the decision to keep her in the social care home. The applicant, being only partially incapacitated, was entitled to act on her own before the courts. The same request could be lodged by the applicant's relatives and by the director of the social care home. Following such a request, judicial proceedings would be opened and the applicant would be

examined by doctors in order to assess whether the grounds for her continued stay in the home still existed.

74. The Government further submitted that under section 43 of the Psychiatric Protection Act a judge had the right to enter the social care home at any time to check the lawfulness of the placement and whether the patients needed to continue to stay there, the conditions of their placement, as well as whether their rights were being respected.

75. The Government concluded that the procedure provided for by the Psychiatric Protection Act had proved to be effective in practice. Following the request made by the applicant's daughter, the Żary District Court had ordered a psychiatrist's opinion and having found that the grounds for placing the applicant in the social care home had not ceased to exist, had dismissed the request lodged by the applicant's daughter.

A. Admissibility

76. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

1. General principles

77. Among the principles emerging from the Court's case-law on Article 5 § 4 concerning "persons of unsound mind" are the following:

(a) a person detained for an indefinite or lengthy period is in principle entitled, where there is no automatic periodic review of a judicial character, to bring proceedings "at reasonable intervals" before a court to challenge the "lawfulness" – within the meaning of the Convention – of his detention;

(b) Article 5 § 4 requires the procedure followed to have a judicial character and to afford the individual concerned guarantees appropriate to the kind of deprivation of liberty in question; in order to determine whether proceedings provide adequate guarantees, regard must be had to the particular nature of the circumstances in which they take place;

(c) the judicial proceedings referred to in Article 5 § 4 need not always be attended by the same guarantees as those required under Article 6 § 1 for civil or criminal litigation. Nonetheless, 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 (see *Megyeri v. Germany*, 12 May 1992, § 22, Series A no. 237-A; see also *Stanev*, cited above, § 171).

78. This is so in cases where the original detention was initially authorised by a judicial authority (see *X v. the United Kingdom*, 5 November 1981, § 52, Series A no. 46), and it is all the more true in

circumstances where the applicant's placement in a care home has been instigated by a private individual, namely the applicant's guardian, and decided upon by the municipal and social care authorities without any involvement by the courts (see *D.D. v. Lithuania*, cited above, § 164).

2. Application of these principles in the present case

79. The Court notes first that the applicant's placement in the social care home was ordered by the court after judicial proceedings in which she had been heard in person (see paragraph 10 above).

80. The Court further observes that in the domestic law there is no obligation to carry out a systematic periodic review of the lawfulness of, and continuous need for, the deprivation of liberty of persons on the grounds of their state of mental health (see paragraph 40 above). The Ordinance of the Minister of Justice of 11 October 2012, which replaced the Ordinance of 1995, does not provide for periodic verification of the legality of admission and continuing residence of individuals confined to psychiatric hospitals and social care homes.

81. At the same time, however, persons deprived of their liberty in psychiatric hospitals or social care homes may at any time request a review of the lawfulness of their detention and the need to remain in the closed facility. Such a request, as the Government submitted, would put in motion judicial proceedings in which an applicant would be heard and an examination by a specialist doctor would normally be ordered (see paragraphs 41 and 72 above).

82. The Court notes firstly that the applicant appealed against the decision to place her in a social care home, although her appeal was not examined on the merits (see paragraph 20 above), and secondly, that she made use of the available procedure to have the lawfulness of her continued deprivation of liberty examined. On one occasion she lodged a relevant request herself (see paragraph 29 above). On another occasion her daughter requested that the measure applied to her mother by the court be varied. In the proceedings instituted on the basis of that request a psychiatric examination of the applicant was ordered and she was heard in person before the court by way of judicial assistance (see paragraph 26 above).

83. It emerges from the above findings that the conditions referred to in the *Megyeri* case (see paragraph 77 above), which need to be met under Article 5 § 4 of the Convention, have been fulfilled in the present case.

It follows that there was no violation of this provision of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed 44,000 euros (EUR) in respect of non-pecuniary damage.

86. The Government contested this claim as excessive.

87. 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 awards the applicant EUR 6,000 in respect of non-pecuniary damage.

B. Costs and expenses

88. The applicant, who was represented by a lawyer from the Helsinki Foundation for Human Rights, did not make any claims for costs and expenses.

C. Default interest

89. 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 complaints under Article 5 §§ 1 and 4 of the Convention admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been no violation of Article 5 § 4 of the Convention;

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, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the 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 amount 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 25 November 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President