EUROPEAN COURT OF HUMAN RIGHTS

472
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Press release issued by the Registrar

CHAMBER JUDGMENT
H.L. v. THE UNITED KINGDOM

The European Court of Human Rights has today notified in writing a judgment[1] in the case of ***H.L. v. the United Kingdom*** (application no. 45508/99).

The Court held, unanimously, that there had been:

- a **violation** of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.
- a **violation** of Article 5 § 4 (right to have legality of detention reviewed by a court) of the Convention.

Under Article 41 (just satisfaction), the Court further held, unanimously, that the finding of these violations constituted sufficient just satisfaction for any non-pecuniary damage sustained by the applicant. The Court awarded 29,500 euros for costs and expenses, less EUR 2,677.57 received in legal aid from the Council of Europe. (The judgment is available only in English.)

1. Principal facts

H.L. is a United Kingdom national, born in 1949 and living in Surrey, England. He is autistic, unable to speak and his level of understanding is limited. He is frequently agitated and has a history of self-harming behaviour. He lacks the capacity to consent or object to medical treatment.

For over 30 years he was cared for in Bournewood Hospital, a National Health Service Trust hospital. He was an in-patient at the hospital's Intensive Behavioural Unit (IBU) from around 1987 until March 1994, when he was discharged on a trial basis to paid carers, with whom he successfully resided until 22 July 1997. In 1995 he started attending a day-care centre on a weekly basis.

On 22 July 1997, while at the day-centre, he became particularly agitated, hitting himself on the head with his fists and banging his head against the wall. Staff could not contact his carers, so called a local doctor, who gave him a sedative. The applicant remained agitated and, on the recommendation of his social worker, was taken to hospital. A consultant

[1] Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

psychiatrist diagnosed him as requiring in-patient treatment. With the help of two nurses, he was transferred to the hospital's IBU as an "informal patient".

Dr M., the medical officer responsible for H.L. since 1977, considered detaining him compulsorily under the Mental Health Act 1983, but concluded that it was not necessary, as H.L. was compliant and had not resisted admission or tried to run away.

In or around September 1997 the applicant sought leave to apply for judicial review of the hospital's decision to admit him. The High Court rejected his application, finding that he had not been "detained" but had been informally admitted in accordance with the common law doctrine of necessity. The applicant appealed.

Following an indication from the Court of Appeal (on 29 October 1997) that the appeal would be decided in the applicant's favour, H.L. was admitted for treatment in the hospital as an involuntary patient under the 1983 Act.

The Court of Appeal found that the applicant had been "detained" in July 1997 and that, as a patient could only be lawfully detained for the treatment of a mental disorder under the 1983 Act, he had been unlawfully detained. The relevant health-care authorities appealed.

The applicant had applied, in the meantime, to the Mental Health Review Tribunal for a review of his detention. An independent psychiatric report was prepared, recommending his discharge. He was released from the hospital on 5 December 2004 and officially discharged to his carers on 12 December 1997.

On 25 June 1998 the House of Lords ruled, by a majority, that the applicant had not been detained and that he had been lawfully admitted as an informal patient on the basis of the common law doctrine of necessity.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 21 December 1998 and declared partly admissible on 10 September 2002. A public hearing was held in the case in the Human Rights Building, Strasbourg, on 27 May 2003.

Judgment was given by a Chamber of seven judges, composed as follows:

Matti **Pellonpää** (Finnish), ***President***,
Nicolas **Bratza** (British),
Elisabeth **Palm** (Swedish),
Viera **Strážnická** (Slovakian),
Josep **Casadevall** (Andorran),
Stanislav **Pavlovschi** (Moldovan),
Lech **Garlicki** (Polish), ***judges***,

and also Michael **O'Boyle**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

The applicant mainly alleged that his treatment as an informal patient in a psychiatric institution amounted to detention and that this detention was unlawful, in violation of Article 5 § 1 (right to liberty and security), and that the procedures available to him for a review of the legality of his detention did not satisfy the requirements of Article 5 § 4. In addition, relying on Article 14 (prohibition of discrimination), he alleged that he was discriminated against as an "informal patient".

Decision of the Court

Article 5 § 1

Was the applicant detained?
The Court observed that, between 22 July to 29 October 1997, the applicant was under continuous supervision and control and was not free to leave. It made no difference whether the ward in which he was being treated was locked or lockable. The Court therefore concluded that the applicant was "deprived of his liberty", within the meaning of Article 5 § 1, during this period.

Was his detention lawful?
The Court noted that it was not disputed that the applicant was suffering from a mental disorder on 22 July 1997, that he was agitated, self-harming and controllable with sedation only while in the day-care centre or that he had given rise to an emergency situation on that day. Having regard to the detailed consideration of the matter by Dr M (who had cared for the applicant since 1977) and by the other health care professionals on that day, together with the day-care centre's report, the Court considered there was adequate evidence justifying the initial decision to detain the applicant on 22 July 1997.

The Court further found that the applicant had been reliably shown to have been suffering from a mental disorder of a kind or degree warranting compulsory confinement which persisted during his detention between 22 July and 5 December 1997.

In determining whether the applicant's detention was lawful, the Court considered it clear that the domestic legal basis for the applicant's detention between 22 July and 29 October 1997 was the common law doctrine of necessity. This doctrine, in particular the test of what was in the applicant's best interests, was still developing at the time of the applicant's detention.

Whether or not the applicant, with appropriate advice, could reasonably have forseen his detention, the Court found that a further requirement for lawfulness under Article 5 § 1, namely that any deprivation of liberty should not be arbitrary, had not been met.

The Court found striking the lack of any fixed procedural rules by which the admission and detention of compliant incapacitated patients was conducted. The contrast between this dearth

[1] This summary by the Registry does not bind the Court.

of regulation and the extensive network of safeguards applicable to psychiatric committals covered by the 1983 Act was, in the Court's view, significant.

In particular and most obviously, the Court noted the lack of any formalised admission procedures indicating who could propose admission, for what reasons and on the basis of what kind of medical and other assessments and conclusions. There was no requirement to fix the exact purpose of admission (for example, for assessment or for treatment) and, consistently, no limits in terms of time, treatment or care attached to that admission. Nor was there any specific provision requiring a continuing clinical assessment of the persistence of a disorder warranting detention. The nomination of a representative of a patient who could make certain objections and applications on his or her behalf was a procedural protection accorded to those committed involuntarily under the 1983 Act and which would be of equal importance for legally incapacitated patients with, as in the applicant's case, extremely limited communication abilities.

As a result of the lack of procedural regulation and limits, the Court observed that the hospital's health care professionals assumed full control of the liberty and treatment of a vulnerable incapacitated individual solely on the basis of their own clinical assessments completed as and when they considered fit. While the Court did not question the good faith of those professionals or that they acted in what they considered to be the applicant's best interests, the very purpose of procedural safeguards was to protect individuals against any misjudgement or professional lapse.

The Court therefore found that this absence of procedural safeguards failed to protect against arbitrary deprivations of liberty on grounds of necessity and, consequently, to comply with the essential purpose of Article 5 § 1. The Court therefore held, unanimously, that there had been a violation of Article 5 § 1.

Article 5 § 4

Finding that it had not been demonstrated that the applicant had available to him a procedure to have the lawfulness of his detention reviewed by a court, the Court held, unanimously, that there had been a violation of Article 5 § 4.

Article 14

The Court considered that the applicant's complaint that he was discriminated against as an informal patient did not give rise to any separate issue not already examined under Article 5 §§ 1 and 4.

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The Court's judgments are accessible on its Internet site (http://www.echr.coe.int).

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The European Court of Human Rights *was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.*