



## Trial court was entitled to find that a man who killed an eight-year old boy had a mental disorder justifying his compulsory confinement

In its decision in the case of [Constancia v. the Netherlands](#) (application no. 73560/12) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned Mr Constancia's complaint about being detained as a person of "unsound mind" in the absence of a precise diagnosis of his mental state. Mr Constancia, who was convicted of the violent manslaughter of an eight-year old boy, had refused to be examined, making the assessment of his mental condition impossible.

The Court found in particular that Mr Constancia's trial court, in the face of his complete refusal to cooperate, had been entitled to conclude from the information obtained – notably via existing psychiatric reports drawn up on previous occasions, the opinion of a psychologist and a psychiatrist on Mr Constancia's complete case file, including the audio and audio-visual recordings of his interrogations, as well as the trial court's own investigation of the case file – that he was suffering from a genuine mental disorder which was of a kind or degree warranting compulsory confinement.

This is the first case in which the Court allowed other existing information to be substituted for a medical examination of the applicant's mental state.

### Principal facts

The applicant, Julien Hira Bisnudew Constancia, is a Netherlands national born who was born in 1984.

On 1 December 2006 Mr Constancia entered a primary school in Hoogerheide and, finding one of the pupils alone, cut his neck and throat several times and left him dead.

In the ensuing criminal proceedings he refused to cooperate in any examination of his mental state, so that no diagnosis of his mental condition was possible.

In September 2007 the trial court nonetheless found him to be severely disturbed and imposed a 12-year prison sentence followed by detention as a person of unsound mind ("TBS order").

Ultimately, in May 2011, the appeal court also convicted him of manslaughter and handed him the same prison sentence. It based its decision on: an existing psychologist's report of 2004, drawn up following Mr Constancia's prosecution for armed robbery; a report drawn up in 2007 referring to Mr Constancia having psychotic episodes and being diagnosed with a borderline personality at the age of 15; a report by a psychologist and a psychiatrist of January 2011 based on the complete case file, including the audio and audio-visual recordings of his interrogations; and, the trial court's own investigation of the case file. The appeal court's judgment referred extensively to police reports of statements made by Mr Constancia following the killing, quoting him as saying that he wished to help children stuck behind a mirror, that he had tricked the Devil by signing a contract with him in wine rather than blood and that the death of the young boy would clarify for him the meaning of our earthly existence.

In May 2012 the Supreme Court ultimately dismissed on summary reasoning Mr Constancia's appeal on points of law in which he complained that he had not reliably been shown to be of unsound mind.

## Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 November 2012.

Relying on Article 5 § 1 (e) (right to liberty and security), Mr Constancia complained about having been detained as a person of unsound mind even though no precise diagnosis of his mental state had been made.

The decision was given by a Chamber of seven, composed as follows:

Josep **Casadevall** (Andorra), *President*,  
Luis **López Guerra** (Spain),  
Ján **Šikuta** (Slovakia),  
Dragoljub **Popović** (Serbia),  
Kristina **Pardalos** (San Marino),  
Valeriu **Grițco** (the Republic of Moldova),  
Iulia Antoanella **Motoc** (Romania), *Judges*,

and also Marialena **Tsirli**, *Deputy Section Registrar*.

## Decision of the Court

The Court has never before allowed other existing information to be substituted for a medical examination of an applicant's mental state. It had been suggested in certain previous cases<sup>1</sup> that, in order to show reliably that a person was of "unsound mind" and could be deprived of his or liberty, at the very least (if for instance the person concerned refused to appear for an examination) an assessment by a medical expert on the basis of their file had to be sought. Furthermore, the medical assessment had to be based on the actual state of mental health of the person concerned and not solely on past events.

In Mr Constancia's case, the Court accepted that a medical assessment based on the information available be substituted for information obtained with the suspect's active co-operation. It noted in particular the trial court's recourse to a plurality of existing reports by psychiatrists and psychologists as well as a report based on the criminal file and the audio and audio-visual recordings of interrogations. Although the various psychiatrists and psychologists had been unable to establish a precise diagnosis, they had expressed the view that Mr Constancia was severely disturbed. The trial court found that view to be reinforced by its own investigation of the case file, and especially of Mr Constancia's confused statements noted in police reports following the killing of the pupil in December 2006. Faced as it was with Mr Constancia's complete refusal to cooperate in any examination of his mental state at any point, the trial court had been entitled to conclude from the information thus obtained that he was suffering from a genuine mental disorder which, whatever its precise nature might be, was of a kind or degree warranting compulsory confinement.

The Court therefore rejected Mr Constancia's application as manifestly ill-founded.

*The decision is available only in English.*

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<sup>1</sup> In particular, *Varbanov v. Bulgaria*, no. 31365/96 of 5 October 2000.

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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.