APPLICATION/REQUÊTE N° 14438/88

Marie Antoinette BOUCHERAS and GROUPE INFORMATION ASILES
v/FRANCE

Marie Antoinette BOUCHERAS et GROUPE INFORMATION ASILES
c/FRANCE

DECISION of 11 April 1991 on the admissibility of the application

DÉCISION du 11 avril 1991 sur la recevabilite de la requete

Article 5, paragraph 4 of the Convention

a) The judicial review provided for in Article L 351 of the French Public Health Act satisfies the requirements of this provision since the judicial authorities examine the validity of a placement order with a view to the continued detention or release of the person concerned

b) Internment of a mentally ill person requires a judicial control wide enough to bear on those conditions which are essential for lawful detention and if it is prolonged a subsequent review at reasonable intervals

c) A period of almost three months to examine an application for release of a mentally ill person due to thorough medical examinations and the person's conduct meets the requirements of Article 5 para 4

(TRANSLATION)

THE FACTS

The first applicant, Marie-Antoinette Boucheras, a French national born in 1923 in Sauviat, is retired Her ordinary place of residence is Giroux, 63880 Olliergues, France

In the proceedings before the Commission she is represented by Mr Philippe Bernardet, a researcher in sociology at the National Centre for Scientific Research

The second applicant, the Groupe Information Asiles (Mental Hospital Information Group), has its registered office at 70 avenue Edison, Paris 13 and is represented by Mr Bernard Langlois

The facts, as submitted by the parties, may be summarised as follows

The first applicant was committed to Thiers hospital under a provisional compulsory placement order issued by the mayor of Sauviat on 23 November 1985 and confirmed by the Prefect of Puy-de-Dôme on 2 December 1985

1 In letters dated 20 and 31 December 1985 the applicant complained of arbitrary detention On 7 January 1986 the public prosecutor requested a medical report On 22 January 1986 the President of the Clermont Ferrand Tribunal de Grande Instance, accompanied by his registrar, went to the psychiatric department to interview the first applicant, who requested immediate release under Section L 351 of the Public Health Act

In a decision dated 23 January 1986 the President of the Clermont-Ferrand Tribunal de Grande Instance appointed an expert, who filed his report on 28 January 1986

The first hearing took place on 23 January 1986, but the case was adjourned until 25 February 1986 In a decision dated 11 March 1986 the President of the Clermont Ferrand Tribunal de Grande Instance ruled that in the light of the medical report hospital treatment was justified

On 24 April 1986 the Prefect authorised the first applicant s release for a trial period of three months

The first applicant returned to her family estate On 8 July 1986 the Prefect ordered her reconfinement, without prior medical examination, after the mayor had drawn the medical authorities attention to certain incidents

The applicant once again asked the President of the Clermont-Ferrand Tribunal de Grande Instance to rescind the compulsory placement order against her issued on 8 July 1986 On 18 November 1986, after examining a further medical report dated 15 October 1986, the latter ordered that her detention should continue

The first applicant was made subject to a further compulsory placement order on 20 August 1986 but was allegedly not served with the order The following day she was taken to Thiers hospital

Leave was granted on a number of occasions under prefectorial orders dated 3 November 1986, 7 November 1986, 26 December 1986, 28 January 1987 and 17 April 1987 However, after May 1987 the applicant was refused all further leave by the doctor, although it is claimed that the latter had received no order to that effect

2 On 13 August 1987 Groupement Information Asiles (the second applicant), having been informed of the situation by the first applicant, lodged an application for her immediate release with the President of the Clermont Ferrand Tribunal de Grande Instance, in which application it was joined by the first applicant, represented by Ms Corinne Vaillant a lawyer practising in Paris

The case was examined at a hearing on 21 August 1987

On 25 August 1987 the President of the Clermont Ferrand Tribunal de Grande Instance ordered a medical report and requested the appointment of a

bailiff to assemble all the relevant documents On 9 September 1987 the expert filed his medical report

At a hearing held on 15 September 1987 the first applicant's lawyer failed to appear , as a result the case was adjourned until 22 September 1987

In a decision dated 29 September 1987 the President of the Clermont-Ferrand Tribunal de Grande Instance ordered a further psychiatric report In the same decision the President responded to the complaint the applicants had lodged with the court about the failure to serve the placement order of 20 August 1986 by referring the case to the Administrative Court for a decision as to the lawfulness of the first applicant's detention

On 5 October 1987 the applicants sought leave from the President of the Riom Court of Appeal to appeal against the interlocutory order of 29 September 1987, in accordance with Article 272 of the New Code of Civil Procedure (1)

On 15 October 1987 the President of the Court of Appeal refused leave to appeal on the ground that the President of the Clermont-Ferrand Tribunal de Grande Instance had correctly considered it necessary to look into the facts of the case by ordering a medical report before responding to the application for immediate release

No appeal lies against the decision of the President of the Court of Appeal

On 10 November 1987 the President of the Tribunal de Grande Instance ordered the first applicant's immediate release in the light of the findings of the second expert opinion ordered on 29 September 1987 and filed on 23 October 1987

(1) *Article 272 of the New Code of Civil Procedure*

An appeal shall lie against a decision ordering an expert opinion separately from any appeal against judgment on the merits, with leave from the President of the Court of Appeal where it is shown that there are serious, legitimate grounds

The party which wishes to appeal shall give notice of appeal to the President who shall grant or refuse leave under the urgent cases procedure Notice of appeal must be lodged within one month from the date of the decision

If the President grants leave to appeal, he shall fix the day when the case will be examined by the court which shall deal with the case and decide the issue as when conducting fixed date proceedings or as provided for in Article 948, depending on the circumstances

If the judgment ordering the expert opinion also addresses the question of jurisdiction the court may look into a dispute over jurisdiction even when the parties have not previously raised this issue

In the meantime, on 24 and 27 July 1987, the applicants had appealed to the Clermont-Ferrand Administrative Court seeking a ruling that the placement order was unlawful. A second appeal was lodged by the first applicant on 20 October 1987.

On 15 December 1987 the Administrative Court declared unlawful the order issued by the Prefect of Puy-de-Dôme on 17 April 1987 authorising the first applicant's trial release. The court also ruled that "the fact that the person concerned was not served with the placement orders does not affect their legality in any way" and referred the case back to the ordinary courts for a decision on the merits.

The Administrative Court declared lawful the provisional compulsory placement order issued by the mayor on 23 November 1985 and the orders confirming compulsory placement issued by the Prefect on 2 December 1985 and 8 July 1986.

There was no appeal to the Conseil d'Etat

COMPLAINTS (Extract)

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1. The applicants complain that the first applicant's detention was unlawful, an abuse of authority and arbitrary, contrary to Article 5 of the Convention. In general, they argue that the Administrative Court's refusal to annul the placement orders, particularly because of the failure to serve them, breached the provisions of the Law of 30 June 1838 governing the placement of persons of unsound mind in treatment centres, and consequently violated Article 5 para. 1 of the Convention.

The applicants also criticise the immediate release proceedings under Section L 351 of the Public Health Act. They consider that these were in breach of the Convention because the ordinary courts did not have jurisdiction to decide the issue of lawfulness and because in any case the length of the proceedings was incompatible with the provisions of Article 5 para. 4 of the Convention

Since Article 5 para. 1 (e) prohibits the unlawful detention of a person of unsound mind, it was important in the case under consideration for the court required to decide the issue of release to be able to decide the issue of lawfulness, and moreover "speedily", as prescribed by Article 5 para. 4 of the Convention. However, it is claimed that this was not the case, since the ordinary courts, to

which the question was submitted at the end of November 1985 did not give a final decision until 10 November 1987

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THE LAW (Extract)

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With regard to the second application for immediate release, lodged on 13 August 1987, the respondent Government mention all the measures taken by the judicial authorities between the date on which this application was lodged and the order authorising release of 10 November 1987 They argue on that basis that the length of the proceedings does not suggest any negligence on the part of the courts dealing with the case but was due to the fact that the application was given serious, detailed consideration

In addition, they criticise the first applicant for prolonging the proceedings through her own conduct For example, it is asserted that she waited until the medical report had been filed before questioning the expert's impartiality, whereas she could have sought leave from the President of the Riom Court of Appeal to appeal against the decision to appoint him

The Government also criticise the failure of the first applicant's lawyer to attend the hearing of 15 September 1987, which caused the adjournment of the case. They consider that the first applicant's decision to seek leave to appeal against the decision of 29 September 1987 was bound to prolong the proceedings. Lastly, it was her criticisms in respect of the choice of the first expert appointed *and the report he submitted that led the President of the Tribunal de Grande* Instance to order a second expert report

The first applicant rejects these arguments. She claims that the intervals between the measures taken by the judge dealing with the application were excessively, indeed exorbitantly, long. She also complains that the proceedings as a whole were invalidated by procedural defects. Moreover, in explanation of her lawyer's failure to appear she asserts that the registry had not sent him a copy of the medical report, and that this made an adjournment inevitable She also mentions that she did not think it worthwhile to contest the appointment of the expert designated by the decision of 25 August 1987 since she was convinced that continuation of the placement would be declared unlawful. Lastly, she maintains that if the judge had accepted jurisdiction the mere fact that she had not been served with the placement orders would have been sufficient justification for him to be able to order her immediate release

The Commission recalls that while Article 5 para 4 does not enounce a right to judicial scrutiny of such scope as to empower the court, on all aspects of the case, to substitute its own discretion for that of the decision-making authority, the review should, however, be wide enough to bear on those conditions which, according to the Convention, are essential for the "lawful" detention of a person on the ground of unsoundness of mind (Eur Court H R , X v United Kingdom judgment of 5 November 1981, Series A no 46, p 25, para 58)

Moreover, there must always be scope for subsequent review at reasonable intervals, since the reasons initially justifying confinement may cease to exist (*ibid* pp 22-23, para 52 , see also the Luberti judgment of 23 February 1984, Series A no 75, p 15, para 30 et seq , and, more recently, the Koendjbiharie and Keus judgments of 25 October 1990, Series A no 185-B, para 27, and no 185-C, para 24, respectively) The question therefore arises whether the first applicant was subsequently able, after a reasonable interval, "to take proceedings" by which the lawfulness of her continued "detention" could be decided "speedily' by "a court"

The Commission takes the view that the judicial review provided for in French law satisfies the requirements of Article 5 para 4, since the judicial authorities are required to examine the validity of a placement order with a view to the continued detention or release of the person concerned The broad scope of such review can clearly be seen from the judicial decisions given in this case

The courts dealing with the case looked into the validity of the placement very thoroughly and they had recourse to measures which represented a serious effort to establish the facts, namely an objective medical assessment to determine the extent of the mental derangement of the person concerned, a measure in conformity with the case-law of the Convention institutions on this question (see Eur Court H R , Winterwerp judgment of 24 October 1979, Series A no 33, p 17, para 39)

The question therefore arises whether, in the light of the principles restated above, scrutiny can be held to have been exercised "speedily", as required by Article 5 para 4 of the Convention

It should be noted that a period of two months and twenty eight days elapsed between 13 August 1987, when the application for immediate release was lodged, and the judicial authorities decision of 10 November 1987 to order the first applicant's release

On the face of it, a period of nearly three months to reach a decision on an application for immediate release lodged under the urgent cases procedure, in

accordance with the provisions of Section L 351 of the Public Health Act, may appear excessive The only factors which could justify such a lengthy period are the particular circumstances, involving the need to conduct a thorough, detailed examination of the application, and the first applicant's conduct

As it was, the application of 13 August 1987 was examined at the court's next sitting, one week after being lodged, i e on 21 August Four days later, on 25 August, a medical report was ordered This report was filed on 9 September The case was therefore set down for hearing on 15 September, i e six days later However, the first applicant's lawyer failed to appear, and the case was adjourned until the next sitting, on 22 September Lastly, on 29 September, i e seven days later, the President of the Tribunal de Grande Instance ordered a second medical report and appointed three experts for that purpose The experts filed their report on 23 October The case was then examined and judgment reserved eleven days later, and the decision to order the first applicant's release was taken a few days later, on 10 November 1987

In the final analysis it can be seen that the intervals between the interlocutory measures taken by the judicial authorities to examine the validity of the placement order, namely medical examinations to determine the extent of the first applicant's mental derangement, were reasonable

Moreover, it should be noted that the proceedings were also prolonged as a result of the steps taken by the first applicant, who contested the first medical report, which was prejudicial to her case, by questioning the expert's impartiality, whereas she could have raised her doubts on this score at the outset by seeking leave from the judicial authorities to appeal against the decision of 25 August appointing this expert

In addition, the fact that the first applicant's lawyer failed to attend the hearing of 15 September 1987 caused the adjournment of the case until a later sitting, namely that of 22 September 1987, and the first applicant's criticisms about the choice of the first expert and his report led the President of the Tribunal de Grande Instance to order a second medical report Lastly, under Article 272 of the New Code of Civil Procedure, the first applicant sought leave from the President of the Court of Appeal to appeal against the decision of 29 September 1987 ordering the second expert report, which was bound to prolong the proceedings

The Commission notes that the total length of the proceedings complained of does not suggest any particular negligence on the part of the judicial authorities dealing with the case, but is explained partly by a thorough, detailed examination

of the facts of the case and the application and partly by the first applicant s conduct

The Commission accordingly finds that, in the circumstances of the case, and according to the principles established by the Convention institutions restated above, a period of two months and twenty eight days between the date on which the application for immediate release was lodged and the judicial authorities' decision terminating the deprivation of liberty is not incompatible with the requirement set forth in Article 5 para 4 of the Convention that scrutiny be exercised ' speedily" It follows that this part of the application is [also] manifestly ill-founded and must be rejected pursuant to Article 27 para 2 of the Convention