

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 31244/06
by Žilvinas LOVEIKA
against Lithuania

The European Court of Human Rights (Second Section), sitting on 18 October 2011 as a Chamber composed of:

Françoise Tulkens, *President,*
Danutė Jočienė,
David Thór Björgvinsson,
András Sajó,
Işıl Karakaş,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*

and Stanley Naismith, *Section Registrar,*

Having regard to the above application lodged on 12 July 2006,

Having regard to the observations and information submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Žilvinas Loveika, is a Lithuanian national who was born in 1972 and is currently being held at Rokiškis Psychiatric Hospital. The Lithuanian Government ("the Government") were represented by their Agent, Ms E. Baltutytė.

A. The circumstances of the case

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

According to the applicant, on 25 January 1997 he was arrested by police officers in connection with crimes he had committed in 1993-94. Before that date, the applicant had been hiding from investigators.

On 23 April 1998 the Vilnius Regional Court established that the applicant had committed murder, theft and two serious assaults. The applicant had committed some of those crimes as part of an organised group. On the basis of a forensic expert examination of 20 January 1998 the court found, however, that when breaching the law the applicant had been suffering from a chronic mental illness (paranoid schizophrenia) and could not understand his actions. Instead of a prison sentence, the court ordered the applicant's confinement in a psychiatric institution under strict observation (*griežto stebėjimo sąlygomis*).

On 13 May 1998 the applicant was admitted to Rokiškis Psychiatric Hospital. The doctors prescribed him compulsory medical treatment and administered various neuroleptics used for treating schizophrenia (Haloperidol, Cisordinol, Fenactil). To counteract the undesirable side effects of those drugs, the doctors also prescribed the applicant Cyclodol.

In August 2002 the commission of psychiatrists concluded that the applicant's mental state had improved in the course of the treatment and that he showed no aggressiveness towards others. On that ground, in September 2002 the Panevėžys Regional Court ordered the implementation of the recommendation by a doctor at Rokiškis Psychiatric Hospital that the applicant's compulsory treatment under strict observation be replaced by a milder regime – he was placed under "intensive observation" in the psychiatric hospital (*sustiprinto stebėjimo sąlygomis*).

On 19 September 2005 the applicant attacked the head of the hospital unit with a knife. He also threatened other hospital personnel. As a result, by a decision of the Rokiškis District Court on 24 October 2005, the regime of strict observation was re-imposed.

The treatment regimes applied to the applicant during the period relevant to the case were reviewed by the Rokiškis District Court on 8 March, 9 September and 24 October 2005; 12 April and 6 October 2006; and 18 April and 18 October 2007.

On 30 March 2006 a panel of doctors again diagnosed the applicant with paranoid schizophrenia. The applicant was characterised as aggressive, and uncritical of his crimes or the attack on the doctor.

On 12 April 2006 the Rokiškis District Court extended the applicant's confinement in the psychiatric hospital under strict observation. The court observed that, according to the conclusions of the panel of doctors, the applicant's mental condition was unstable, he was aggressive towards the medical staff and was uncritical of his behaviour. The court concluded that the applicant was still a danger to society.

On 4 May 2006 the Panevėžys Regional Court upheld the decision of the Rokiškis District Court. The court stated that the applicant was still dangerous and that the doctors had concluded that his mental condition was still unstable. It appears from this decision that both courts based their decisions on the psychiatric expert report of 29 December 2005.

On 6 October 2006 the Rokiškis District Court extended the applicant's confinement in the psychiatric hospital under strict observation, based on the conclusions by the panel of doctors of 14 September 2006 that the applicant was still a danger to society and that his mental state was still unstable.

In November 2007 the treating doctor noted in the applicant's medical file that she was continuing to treat the applicant with Cisordinol injections once every two weeks. At the same time she was reducing the dosage of Cyclodol, because of an absence of any clear side effects.

In reply to the Court's request to provide an independent expert report as to the appropriateness of the treatment the applicant received in January and February 2007, the Government submitted a report by the State Medical Audit Inspectorate, dated 19 August 2010.

The report reads that from 1 January 2007 the applicant was treated with the long-acting neuroleptic Cisordinol, administered once every two weeks. Given that the applicant showed no contraindications and had no complaints about the treatment, on 16 January 2007 the doctor decided to stop administering Cyclodol. After being injected with Cisordinol on 26 January, the applicant expressed a concern that he felt stiffness (*pacientas išreiskė nuogąstavimą, kad jį gali "sukaustyti"*). The doctor then prescribed him 2 mg of Cyclodol, to be administered once a day. Afterwards the applicant felt well again and the doctor noticed no side effects of the neuroleptics. On 2 February the doctor stopped administering Cyclodol, on the ground that patients could get used to it and abuse it. The applicant did not receive Cyclodol until 9 February 2007, when he complained of having felt a slight tremor in his fingers as a side effect of Cisordinol. Since that date the applicant has been receiving Cyclodol.

On 18 April 2007 the Rokiškis District Court approved the applicant's continued confinement in the psychiatric hospital under strict observation. The court stated that the decision was based on the conclusions of the panel of doctors.

On 18 October 2007 the Rokiškis District Court once again approved the applicant's continued confinement in the psychiatric hospital under strict observation. Based on an examination by doctors on 27 September 2007, the court concluded that the applicant was still a danger to society. The court also noted that on 15 September 2007, after a visit from relatives, the applicant had tried to bring his own psychotropic medication into the hospital ward.

By a ruling of 9 October 2008 the Rokiškis District Court maintained its decision that the applicant should be kept in the psychiatric hospital under strict observation. The court based its decision on the doctors' conclusion

that the applicant was still a danger to society, his mental state was not stable and he was not critical of the crimes he had committed.

According to the aforementioned report by the State Medical Audit Inspectorate, A.D., a professor and the director of the psychiatric clinic of Vilnius University Faculty of Medicine, had evaluated the applicant's treatment as an expert and concluded that from 13 May 1998 to 16 June 2010 the applicant had been properly diagnosed and appropriate psychotropic medication had been prescribed to him. Moreover, on 16 January 2007 the doctor had correctly decided to stop administering Cyclodol to the applicant. The treatment with Cyclodol had been temporarily resumed, after the applicant had informed the doctors of side effects. However, as the side effects did not materialise, eight days later the doctor again decided to stop administering Cyclodol. The psychiatrist also pointed out that Cyclodol, besides being able to correct the side effects of neuroleptics, was a drug capable of causing psychological and physical dependency in patients. Therefore Cyclodol was to be prescribed only if clear side effects were visible.

The State Medical Audit Inspectorate concluded that the treatment the applicant had received in Rokiškis Psychiatric Hospital in 1998-2010 had been appropriate and not in breach of the applicable legislation. The inspectorate also noted that there had been no other health-care related violations at the institution, unrelated to the services provided to the applicant.

B. Relevant domestic law and practice

At the time relevant to this case, Article 12 of the Penal Code provided that a person who, owing to chronic mental illness or temporary mental incapacity, could not understand or control his or her actions when committing a crime could not be held criminally liable. Pursuant to Article 59 of the Code, the court would take a decision to place a person in a psychiatric institution under general, intensive or strict observation, depending on the danger posed by the person to society and the likelihood that he or she might commit a fresh crime. The person would stay in a psychiatric institution until he or she regained a normal mental state or until he or she ceased to be a danger to society. The court was to review the imposed measure every six months.

A patient's right to appropriate treatment is provided for in Article 3 of the Law on the Rights of Patients and Compensation for Damage to Their Health. The same provision is envisaged in Article 10 of the Law on Mental Health Care. Both of these legal acts provide that where a person considers that his or her rights as a patient have been violated, he or she may complain in writing to the treating medical institution, and, if not satisfied with the answer received, to a court (Articles 11 and 20 respectively).

The Civil Code provides that civil liability may arise from non-performance of a duty established by law or a contract or from violation of the general duty to behave with care (Article 6.246 § 1). When a person's health is impaired, the person liable for the damage shall be bound to compensate the aggrieved person for all his suffering, including non-pecuniary damage (Article 6.283 § 1).

According to the Regulations of the State Medical Audit Inspectorate at the Ministry of Health, the Audit Inspectorate's task is to carry out State control and expertise of the accessibility and quality (adequacy) of personal health-care services provided by health-care institutions. It may review patients' requests, applications and complaints.

The Government submitted details of domestic case-law as regards domestic remedies in cases of medical malpractice.

They referred, first, to the ruling of 14 November 2001 in case no. 3K-3-1140, where the Supreme Court pronounced on certain aspects of the legal classification of actions by doctors. With regard to the admissibility of the appeal on points of law, the Supreme Court noted that establishment of circumstances proving guilt of a person was a question of fact. However, the legal classification and assessment of such facts constituted a question of law, examining whether or not certain actions of doctors should be found at fault. The court noted that a doctor could not normally guarantee to achieve particular results, that is, that a patient would be cured. Consequently, a patient and a doctor (or the health-care institution) were bound by an obligation which encompassed the doctor's obligations to do his utmost, namely, to ensure the maximum degree of diligence, care, caution and competence. Moreover, the health-care institutions were liable under the rules of delictual liability if damage was caused by the actions of the institution staff. In that particular case the Supreme Court found that a doctor had not been sufficiently diligent, given that he had failed to provide the patient with extensive information about additional risks of complications. In reaching that conclusion the court relied, among other evidence, on a report by the State Medical Audit Inspectorate.

In the decision of 12 March 2008 in case no. 2A-11/2008 the Court of Appeal has examined the legal acts regulating health care and diagnostics for haemothorax. In this case the court also relied on a report by the State Medical Audit Inspectorate as evidence.

In the decision of 15 April 2008 in case no. 2A-137/2008 the Court of Appeal examined whether a proper care regime had been assigned to a patient hospitalised owing to a poorly plastered broken hand. The court emphasised that patients should be accorded high quality health care, treated in such manner that assured a respectful attitude towards their diagnosis, and that the selected treatment should be justified from a medical point of view. To substantiate its conclusions, the appellate court relied upon expert findings and, among other pieces of evidence, on a report by the State Medical Audit Inspectorate.

COMPLAINTS

1. Without invoking any Article of the Convention the applicant complained about his treatment at Rokiškis Psychiatric Hospital.

2. Under Articles 5 and 6 of the Convention, the applicant further complained about the lawfulness of his arrest in 1997 and the fairness of the court proceedings of 1998.

3. Finally, the applicant complained that his correspondence had been intercepted by the hospital staff.

THE LAW

1. The applicant complained of ill-treatment in Rokiškis Psychiatric Hospital. The Court considers that the applicant's complaint falls to be examined under Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. The parties' submissions

1. The Government

The Government submitted, first, that the complaint was inadmissible for failure to exhaust domestic remedies. They emphasised that the applicant could have complained about his medical treatment to staff at Rokiškis Psychiatric Hospital as well as to the various national authorities, including the courts, on the basis of the domestic legislation. In addition, the applicant could have claimed compensation for pecuniary and non-pecuniary damage caused by the doctors' alleged malpractice which he suffered during the period when the Cyclodol was not administered to him. However, the applicant had not made use of those rights. On this point the Government also contended that the Court normally does not assume the task of national authorities to investigate the facts.

In the alternative the Government argued that the treatment the applicant received in Rokiškis Psychiatric Hospital had been in compliance with the generally established medical principles and rules, taking into account the nature and prescribed doses of neuroleptic drugs as well as giving due regard to the applicant's individual mental and somatic condition. In addition, as provided for by the domestic law, the treatment regimes were constantly reviewed by the Rokiškis District Court.

Should the Court disagree with the Government's argument as regards the justification of the applied medical treatment, they maintained that a minimum level of severity of ill-treatment had not been attained in the instant case. On this point they emphasised that the administration of

Cyclodol had been terminated only for a very short period, from 17 to 26 January 2007, and from 3 to 9 February 2007, that is to say for fifteen days in total. That being so, the object of the doctor's actions had not been to cause suffering to the patient, or to humiliate or debase him. The applicant's need for the corrector (Cyclodol) had been verified by trying to terminate its administration. Be that as it may, once the applicant had expressed his concerns about likely side effects of the Cisordinol, administration of Cyclodol had been resumed in minimal doses to accompany the neuroleptic drug. The Government also contended that the medical records kept by the doctor in charge contained no mention of any objectively clear manifestations of side effects of neuroleptic drugs. The applicant had suffered no health deterioration owing to the temporary non-administration of the corrector; moreover, the applicant's treatment had been regularly monitored by qualified psychiatrists. For the Government it was also crucial to note that an independent medical assessment by the State Medical Audit Inspectorate had confirmed the adequacy of the treatment the applicant had received in Rokiškis Psychiatric Hospital.

Lastly, the Government submitted that on 15 September 2007, after the visit from the applicant's relatives, he had been found to have obtained 50 pills of Cyclodol. By taking those pills into the hospital the applicant had violated the Rokiškis Psychiatric Hospital regulations that prohibited the acquisition and consumption of medical substances without a doctor's prescription. That was one of the circumstances the Rokiškis District Court took into account in deciding to extend the applied regime of in-patient treatment on 18 October 2007. For the Government, that fact showed that the applicant was predisposed to Cyclodol abuse. The Government submitted that, as explained to them by the experts, the drug in question was popular in psychiatric hospitals and prisons because it not only neutralised the symptoms of the side effects of neuroleptic drugs, but also caused euphoria and produced a feeling of satisfaction, if used in relevant doses (about 6-7 pills).

2. The applicant

The applicant maintained that the medical treatment he had received in Rokiškis Psychiatric Hospital amounted to torture and inhuman and degrading treatment. He alleged, in particular, that while at first he had also received other medication to minimise the side effects of the psychotropic drugs, the doctors had stopped prescribing these "correctors" at the beginning of 2007. According to the applicant, the side effects of the psychotropic medication with which he is treated were unbearable.

B. The Court's assessment

1. General principles

According to the Court's well-established case-law, ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, *inter alia*, *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII; *Mouisel v. France*, no. 67263/01, § 37, ECHR 2002-IX; and *Naumenko v. Ukraine*, no. 42023/98, § 108, 10 February 2004).

In considering whether treatment is "degrading" within the meaning of Article 3, one of the factors which the Court will take into account also is the question whether its object was to humiliate and debase the person concerned, although the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3 (see *Raninen v. Finland*, 16 December 1997, § 55, *Reports of Judgments and Decisions* 1997-VIII; *Peers v. Greece*, no. 28524/95, §§ 68 and 74, ECHR 2001-III).

With respect to medical interventions to which a detained person is subjected against his or her will, Article 3 of the Convention imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V; *Hurtado v. Switzerland*, 28 January 1994, opinion of the Commission, § 79, Series A no. 280). The persons concerned nevertheless remain under the protection of Article 3, whose requirements permit no derogation (*Mouisel*, cited above, § 40, and *Naumenko*, cited above, § 112). A measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman or degrading (see, in particular, *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244, and *Naumenko*, cited above, § 112).

According to the Court's case-law, allegations of ill-treatment must be supported by appropriate evidence. In particular, the assessment of whether the treatment concerned is incompatible with the standards of Article 3 has, in the case of mentally ill persons, to take into consideration their vulnerability and their inability, in some cases, to complain coherently or at all about how they are being affected by any particular treatment (see *Keenan v. the United Kingdom*, no. 27229/95, § 111, ECHR 2001-III). That being so, in assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see, as a recent authority, *Gavazov v. Bulgaria*, no. 54659/00, § 93, 6 March 2008). Moreover, Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must

prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on their part to submit such information without a satisfactory explanation may therefore give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Timurtaş v. Turkey*, no. 23531/94, § 66, ECHR 2000-VI; *Taniş and Others v. Turkey*, no. 65899/01, § 163, ECHR 2005-VIII; *Fedotov v. Russia*, no. 5140/02, § 60, 25 October 2005; *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts); *Yordanov v. Bulgaria*, no. 56856/00, § 83, 10 August 2006; *Kostadinov v. Bulgaria*, no. 55712/00, § 48, 7 February 2008; and *Gavazov*, cited above, § 95). Indeed, Rule 44C § 1 of the Rules of Court, inserted on 13 December 2004, expressly provides that "[w]here a party fails to adduce evidence or provide information requested by the Court ... the Court may draw such inferences as it deems appropriate".

2. Application to the present case

In the instant case, save for his own assertions, which were apparently made for the first time in the proceedings before the Court and were not brought to the attention of any domestic authority, the applicant has not provided any tangible evidence relating to his alleged ill-treatment in Rokiškis Psychiatric Hospital. In contrast, the Government quickly complied with the Court's request that an independent expert examination be conducted in connection with the applicant's situation in Rokiškis.

The Court notes that the applicant's confinement at the Rokiškis facility was ordered by the Vilnius Regional Court on the basis of a psychiatric examination showing that the applicant was not able to serve a prison sentence because of his mental state. The applicant subsequently remained in Rokiškis Psychiatric Hospital, but his state of mind was constantly reviewed by the doctors and courts. Nothing in the case file suggests that the applicant was abused by the doctors at the institution.

In the eyes of the Court it is above all the length of time during which the applicant did not receive the corrector drug Cyclodol which appears worrying in this case. However, the evidence before the Court is not sufficient to disprove the Government's argument that, according to the psychiatric principles generally accepted at the time, medical necessity justified the treatment in issue. The Court notes, moreover, that such a conclusion was corroborated by the expert examination performed by the State Medical Audit Inspectorate. The Court also considers that the latter institution is much better placed to assess the quality of the medical services provided to the applicant. Neither can it fail to observe that the report of the State Medical Audit Inspectorate unequivocally states that the applicant's treatment in Rokiškis in 1998-2010 was appropriate overall.

In the light of the preceding considerations, the Court arrives at the conclusion that the applicant's complaint of ill-treatment at Rokiškis Psychiatric Hospital, including him being not administered Cyclodol, is

manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. As a result, it must therefore be rejected pursuant to Article 35 § 4.

2. Invoking Articles 5 and 6 of the Convention, the applicant complained about the lawfulness of his arrest in 1997 and the fairness of his trial when, in 1998, the Vilnius Regional Court established that the applicant had committed murder, theft and serious assaults. The Court notes, however, that these complaints were first presented to it on 12 July 2006, whereas the events in question occurred more than eight years before. It follows that this part of the application has not been lodged within six months of the final effective measure or decision, as required by Article 35 § 1 of the Convention. Consequently, these complaints must be rejected pursuant to Article 35 § 4.

3. Lastly, the applicant complained that the Rokiškis institution had intercepted his correspondence. However, on the basis of the materials submitted to it, the Court notes that the applicant has not adduced, let alone substantiated, any facts or circumstances to coherently explain his claims, so that the Court can analyse them. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Stanley Naismith
Registrar

Françoise Tulkens
President