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

FIFTH SECTION

DECISION

Application no. 4228/08
O.G.
against Latvia

The European Court of Human Rights (Fifth Section), sitting on 5 September 2017 as a Committee composed of:

André Potocki, *President,*
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 12 December 2007,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant is a Latvian national who was born in 1965 and lives in Riga. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 4). The applicant was granted permission by the President of the Section to represent himself in the proceedings before the Court.

2. The Latvian Government ("the Government") were represented by their Agent, Mrs K. Līce.

A. The circumstances of the case

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

1. Compulsory measures of a medical nature

4. On 18 February 2008, in the course of a first set of criminal proceedings against the applicant for internet fraud, the applicant was relieved of criminal liability and given a compulsory order to attend a medical institution as an outpatient.

5. He was again relieved of criminal liability on 20 August 2008 during a second set of criminal proceedings, for social benefit fraud, and given an order to attend a psychiatric hospital as an inpatient.

6. Between 22 October 2009 and 7 June 2010 and between 9 August 2012 and 14 September 2012 the applicant received inpatient treatment at the psychiatric hospital in Riga. The measure was afterwards changed to outpatient treatment (see paragraph 11 below).

7. After examining a report of 19 June 2013 by a medical commission (see paragraph 12 below), the Riga City Vidzeme District Court revoked the compulsory medical measure at a closed hearing on 20 August 2013 in which the applicant was represented by State-appointed counsel.

8. Other relevant factual information with regard to the above proceedings and the implementation of the compulsory measure is summarised in the applicant's previous cases *O.G. v. Latvia* (no. 66095/09, §§ 6-41 23 September 2014) and *O.G. v. Latvia (no. 2)* (no. 69747/13, §§ 6-12, 30 June 2016).

2. Review of the continued application of the compulsory measures

9. Between 18 February 2008 and 20 August 2013 the medical commission examined the applicant's state of health on several occasions, notably: on 19 August 2008; 12 February, 20 August and 3 November 2009; 25 March and 9 December 2010; 9 June and 15 December 2011; 28 March and 10 August 2012; 25 February and 19 June 2013. During the same period the applicant visited a doctor as an outpatient thirty-eight times.

10. On 16 June 2010 the Riga City Vidzeme District Court assigned a member of the *Bāriņtiesa*, a guardianship and curatorship institution established by the Riga City Council, as the applicant's representative in the proceedings concerning the compulsory medical measure.

11. The domestic courts issued decisions on continuing to apply the compulsory medical measure on the following dates: 28 December 2009 (the Riga Regional Court decided to continue with the inpatient treatment; the applicant was represented by State-appointed representative); 27 May 2010 (the Riga Regional Court changed the measure from inpatient to outpatient treatment; the applicant was represented by a member of the *Bāriņtiesa* and State-appointed counsel); 25 May 2011 (the Riga City Vidzeme District Court decided to continue the outpatient treatment; the applicant was present at the hearing and represented by a member of the *Bāriņtiesa* and State-appointed counsel); 28 May 2012 (the Riga Regional

Court decided to continue outpatient treatment; the applicant was represented by State-appointed counsel); 13 August 2012 (the Riga City Ziemeļu District Court decided to order emergency psychiatric treatment for a period of two months; the applicant was present at the hearing and represented by State-appointed counsel); 8 April 2013 (the Riga City Vidzeme District Court decided to continue with outpatient treatment; the applicant was represented by a member of the *Bāriņtiesa* and State-appointed counsel).

12. On 19 June 2013 the medical commission informed the relevant court that the applicant was not completely well, but that his condition was stable and that he was not a danger to society. It was therefore recommended that the court revoke the compulsory outpatient treatment measure which had been imposed on him.

13. On 21 April and 24 June 2013 the applicant sent letters to the Vidzeme District Court, asking that the compulsory measure be revoked. On 2 July 2013 the court informed him that an application for the revocation or alteration of a compulsory measure could only be examined if less than three months had passed from the previous examination. The court therefore set the examination of the applicant's request to revoke the compulsory measure for 13 August 2013 and informed him that following the applicant's requests it had asked the medical experts concerned to report on his medical condition.

14. After being summoned to the hearing of 13 August 2013, the applicant asked the court to lift the compulsory measure and to hold the hearing in his absence. The hearing was held on 20 August 2013 and the compulsory measure was revoked (see paragraph 7 above).

B. Relevant domestic law

15. Section 68 of the Criminal Law provides that the following compulsory medical measures may be applied to persons who have committed the offences set out in the Criminal Law but who suffer from a mental disorder and have been found to be mentally incapable or have diminished mental capacity: outpatient medical treatment in a medical institution; inpatient medical treatment of a general type in a psychiatric hospital (ward); medical treatment under guard in a specialised psychiatric hospital (ward). Section 69(4) of the Criminal Law stated at the relevant time that a court could revoke or alter compulsory medical measures on the basis of the opinion of a medical institution if the person concerned had recovered or the nature of the illness had changed to such a degree that it was no longer necessary to impose such a measure.

16. The relevant parts of the Criminal Procedure Law pertaining to compulsory medical measures are summarised in the case of *O.G. v. Latvia* (cited above, §§ 42-48). In particular, section 592(1) of the Criminal

Procedure Law, as in force at the material time, provided, *inter alia*, that a compulsory measure of a medical nature could be imposed by a court on persons who had committed criminal offences, if such persons were a danger to society owing to the nature of the offences committed by them or their mental state.

17. Section 607 of the Criminal Procedure Law regulates the manner in which matters regarding the revocation or alteration of compulsory medical measures come before the courts. At the relevant time it provided that if the need to apply such a measure had ceased to exist because the person had been treated successfully or because his or her state of health had otherwise changed, the director of the medical institution could, on the basis of a report by a medical panel, apply to a court to revoke or alter the compulsory measure. Such a request could also be lodged by the person subject to the measure or his or her legal representative. A decision on the revocation or alteration of a compulsory measure had to be taken by a court.

COMPLAINT

18. The applicant complained under Article 8 of the Convention that the continued imposition of the compulsory medical measure, in light of its duration and character, had constituted a disproportionate interference with his private life. In addition, the applicant complained under the procedural head of Article 8 of the Convention that he had had no procedural guarantees with regard to the proceedings in which the necessity of the compulsory measure had been examined.

THE LAW

19. The applicant complained that the continued imposition of the compulsory medical measure and the lack of procedural safeguards in that regard had constituted a disproportionate interference with his private life, in breach of Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Complaint about the lack of proportionality of the interference with the applicant's private life

20. First, the applicant complained about the lack of proportionality of the measure compelling him to undergo regular compulsory psychiatric treatment and examinations. Even though the applicant had initially been convicted in the criminal proceedings of internet fraud and given a suspended six-month prison sentence, the measure had in his view been applied for an excessively long time and had been of an indefinite nature.

21. The Government argued, *inter alia*, that the compulsory medical measure had been a necessary and proportionate response to the applicant's state of health and that it had been applied only for as long as there had been a medical necessity for such treatment. The Government therefore asked the Court to dismiss the complaint as manifestly ill-founded.

22. The Court observes that the domestic courts ordered the applicant to undergo compulsory medical treatment rather than hold him liable for a criminal offence. In that regard, the Court reiterates that even a minor interference with the physical integrity of an individual must be regarded as an interference with the right to respect for private life under Article 8 if it is carried out against the individual's will (see *Storck v. Germany*, no. 61603/00, § 143, ECHR 2005-V). An interference with the exercise of an Article 8 right will not be compatible with Article 8 § 2 unless it is "in accordance with the law", has an aim that is legitimate under that paragraph and is "necessary in a democratic society" for the aforesaid aim or aims.

23. The Court observes further that the initial imposition and continued application of the compulsory medical measure, which in the applicant's case lasted for a period of five years and six months in total, was based on sections 68-69 of the Criminal Law and section 592 of the Criminal Procedure Law (see paragraphs 15-16 above). Accordingly, the compulsory measure was applied "in accordance with the law" and, given the applicant's state of health, pursued a legitimate aim within the meaning of Article 8.

24. The case file shows that the continued application of the compulsory measure received regular automatic reviews, with the domestic courts looking at the necessity for continuing the order on the basis of fresh medical reports (see paragraphs 9 and 12 above; see also in this relation *O.G. v. Latvia (no. 2)*, cited above, § 11; see to the contrary *Shopov v. Bulgaria*, no. 11373/04, § 47, 2 September 2010).

25. Moreover, the Court notes that the domestic courts changed the compulsory measure from inpatient to outpatient treatment on the basis of medical requirements (compare and contrast with the case of *Shtukaturov v. Russia*, no. 44009/05, § 95, ECHR 2008, in which the domestic courts were prevented from applying a tailor-made response to the applicant's situation). In the present case, the measure was revoked as soon as the

medical experts had recognised that the applicant's condition had improved (see paragraphs 7 and 12 above).

26. In the light of the above, the Court considers that the compulsory measure was proportionate to the aim pursued. This part of the application is therefore manifestly ill-founded and there is no need to address the other inadmissibility grounds raised by the Government.

B. Complaints about the lack of procedural safeguards

27. Secondly, the applicant complained that he had not been present at the hearings where the requirement to proceed with the compulsory measure had been decided; he had been represented by counsel he had never met; he had only been served with the decision of 8 April 2013 after it had entered into force; and the appeal he had lodged had subsequently been disregarded.

28. The Government invited the Court to dismiss the above complaint as manifestly ill-founded on the grounds that the applicant himself had either stated that he did not require legal aid or had failed to attend the court hearings.

29. The Court considers that this complaint must be distinguished from the applicant's previous case *O.G. v. Latvia*, cited above, in which the Court found a violation of Article 5 § 4 of the Convention on account of the applicant having no possibility to directly and effectively challenge in court the lawfulness of his confinement in a psychiatric hospital. In the present case, however, the crux is the existence of procedural safeguards for the purpose of Article 8 of the Convention. In this regard the Court reiterates that whilst Article 8 of the Convention contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to ensure due respect for the interests safeguarded by that provision (see *Shtukaturov*, cited above, § 89).

30. The Court observes that the applicant was duly able to participate in the decision-making process concerning his compulsory measure (contrast with *Shtukaturov*, cited above, § 91 in which the applicant never took part in the proceedings and was unable to lodge an appeal). The case file shows that the applicant was represented at the court hearings by counsel appointed for him and a representative of the guardianship authority. The Court also notes that the applicant was himself present at most of the hearings held during the period when he was not receiving medical treatment at the hospital (see paragraphs 6 and 11 above). There is no proof attesting to the allegation that the applicant was prevented from communicating with the domestic court directly without his representatives (see paragraphs 13 and 14 above), or that his opinion was not duly taken into consideration. At the applicant's request and following the decision of 8 April 2013 by the Riga City Vidzeme District Court, the court scheduled the hearing and eventually revoked the compulsory medical measure (ibid.).

Accordingly, the interference in the applicant's case was carried out in a manner which ensured due respect for the interests safeguarded by Article 8 of the Convention.

31. In the light of the above, the Court finds that the complaint does not disclose any appearance of a violation of the rights guaranteed under Article 8 of the Convention. It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 28 September 2017.

Anne-Marie Dougin
Acting Deputy Registrar

André Potocki
President