

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

FOURTH SECTION

DECISION

Application no. 20206/11
Ewa RYDZYŃSKA
against Poland

The European Court of Human Rights (Fourth Section), sitting on 7 March 2017 as a Committee composed of:

Nona Tsotsoria, *President,*
Krzysztof Wojtyczek,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 7 March 2011,

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

Having regard to the comments submitted by the Helsinki Foundation for Human Rights, who were granted leave to intervene as a third party (Article 36 § 2 of the Convention and Rule 44 § 3),

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ewa Rydzyńska, is a Polish national who was born in 1957 and lives in Warsaw.

2. The Polish Government ("the Government") were represented by their Agent, Mrs J. Chrzanowska of the Ministry of Foreign Affairs.

A. The circumstances of the case

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

1. Background of the case

4. On 29 October 2007 a fire broke out in the applicant's flat. The applicant suffered carbon monoxide poisoning and was admitted to the cardiology ward of Solec Hospital. Upon admission, however, the applicant behaved in an aggressive manner and the doctors diagnosed her with schizophrenia. On 30 October 2007 she was transferred to a psychiatric hospital in Warsaw. On arrival, the applicant was examined by a psychiatrist who decided to admit her to the hospital, despite the fact that she refused hospitalisation. In her decision, the doctor made note of the fact that the cause of the fire in the applicant's flat was unknown and referred to a possible suicide attempt.

5. The applicant was released from hospital on 10 January 2008.

2. Proceedings under the Mental Health Protection Act

6. On 30 October 2007 the Warsaw District Court was informed about the applicant's involuntary admission to the psychiatric hospital.

7. On 2 November 2007 the applicant was heard by a judge from the Warsaw District Court. On the same date the court ordered a psychiatric report in order to determine whether the conditions for the applicant's involuntary admission had been met at the time of her confinement in the hospital.

8. On 6 November 2007 an expert psychiatrist confirmed that the applicant had been suffering from paranoid schizophrenia and that it could not be excluded that she had caused the fire with the intent to commit suicide. The expert concluded that the conditions set out in section 23(1) of the Mental Health Act (see paragraph 24 below) had been met in the applicant's case.

9. On 5 February 2008 the Warsaw Family and Custody District Court gave a decision in the case. The court considered that the conditions for involuntary admission, as set out in section 23(1) of the Mental Health Act, had not been met in the applicant's case. While the psychiatrist had confirmed that the applicant had been suffering from paranoid schizophrenia, there had been no indication that the applicant's behaviour on 30 October 2007 had endangered her life or had been a threat to the life and health of others. The court pointed to the applicant's repeated statement that the fire had been caused by a faulty electrical installation and not by her, and to the findings of the police as to the cause of the fire. The court concluded that there had been no grounds to admit the applicant against her will to a psychiatric hospital on 30 October 2007.

3. Proceedings for compensation

10. On 7 April 2008 the applicant brought a civil action against the State Treasury represented by the psychiatric hospital in Warsaw, on the grounds

of a violation of her personal rights under Articles 24 and 448 of the Civil Code (see paragraphs 27 and 28 below). She sought 100,000 Polish zlotys (PLN) (approximately 25,000 euros (EUR)) in compensation for unjustified and involuntary confinement and for the lengthy proceedings before the Family and Custody Court.

11. On 11 May 2009 the Warsaw Regional Court dismissed the applicant's claim. The court held that while the applicant had indeed been deprived of her liberty and placed in involuntary confinement, the defendant hospital's conduct had not been unlawful within the meaning of Article 24 of the Civil Code as the hospital's actions had had a legal basis. The court further noted that both the applicant's initial mental condition and the unclear circumstances of the start of the fire in her flat meant that an earlier release from hospital had not been warranted. There were no grounds to believe that the actions of the judge from the Family and Custody Court, which had been in accordance with procedures in force at the time, had caused an infringement, let alone an unlawful infringement, of the applicant's personal rights.

12. The court further considered that the decision to admit the applicant for treatment in the hospital against her will had not been unlawful. Under section 23 of the Mental Health Act, the admission of patients to hospital against their will was possible if they suffered from a mental illness and represented a threat to themselves or others (see paragraph 24 below). In the present case the hospital had had the applicant's medical history, which had proved that she had suffered from paranoid schizophrenia. The circumstances surrounding the start of the fire in her flat had also not been clear at that time.

13. On 2 August 2009 the applicant appealed against that judgment to the Warsaw Court of Appeal.

14. The court scheduled a hearing for 17 February 2010 and the applicant received a summons on 28 January 2010.

15. On 17 February 2010, the Warsaw Court of Appeal dismissed the applicant's appeal against the first-instance judgment. The applicant did not appear at the appeal hearing.

16. On 11 December 2010, the applicant sent a letter to the Warsaw Court of Appeal asking about developments in her case. The court answered on 27 December 2010 that the proceedings had been terminated.

17. On 15 February 2011, in reply to a further letter from the applicant, the court sent her copies of the judgments of 11 May 2009 and 17 February 2010 (see paragraphs 11-12 and 15 above).

18. The applicant subsequently prepared and filed a cassation appeal herself. It was rejected by the Warsaw Court of Appeal on 21 March 2011 on the procedural grounds that it had not been prepared and filed by a lawyer.

19. On 30 March 2011 the applicant lodged an interlocutory appeal against that decision and asked to be appointed a legal aid lawyer.

20. On 31 May 2011 the Warsaw Court of Appeal granted the applicant's request for a legal aid lawyer in connection with the proceedings before the Supreme Court.

21. On 28 June 2011 the applicant's legal aid lawyer lodged an application to be able to make a request out of time for a copy of the judgment of 17 February 2010 and its written reasoning.

22. On 30 September 2011 the Warsaw Court of Appeal dismissed the lawyer's request.

B. Relevant domestic law and practice

1. Mental Health Act

23. Pursuant to the 1994 Mental Health Protection Act (*ustawa o ochronie zdrowa psychicznego*), the admission to a psychiatric hospital of a person who has a mental health disorder or who is mentally disabled and does not consent to treatment in the hospital must be approved by a civil court.

24. Section 23 of the Mental Health Protection Act provides, in so far as relevant:

> "1. A mentally ill person may only be admitted to a psychiatric hospital without his or her consent if the person's behaviour up to that point indicates that because of the illness he or she is a threat to his or her own life or to another person's health or life.
>
> A decision of the kind referred to under (1) shall be made by a doctor who has personally examined the patient and consulted another psychiatrist or a psychologist where appropriate.
>
> The doctor referred to under (2) shall be obliged to explain to the patient the reasons why he or she is being admitted to hospital without his or her consent and inform the person of his or her rights.
>
> ..."

25. If a person has been admitted to hospital against his or her will, the director of the hospital should inform the Family and Custody Court within seventy-two hours. Within forty-eight hours of receiving such a notification, the patient should be visited and interviewed by a judge. If the Family and Custody Court decides that there were no grounds for the involuntary admission of the patient, the hospital is obliged to release the patient immediately upon receiving the court's decision (sections 25, 27 and 45 (2) of the Mental Health Protection Act).

2. Liability for infringement of personal rights under the Civil Code

26. Article 23 of the Civil Code contains a non-exhaustive list of "personal rights" (*dobra osobiste*). This provision states:

> "The personal rights of an individual, such as, in particular, health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, inviolability of the home, scientific or artistic work, [as well as] inventions and improvements, shall be protected by the civil law regardless of the protection laid down in other legal provisions."

27. Article 24 § 1 of the Civil Code provides:

> "A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of infringement [the person concerned] may also require the party who caused the infringement to take the necessary steps to remove the consequences of the infringement ... In compliance with the principles of this Code [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest."

28. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. The relevant part of that provision reads:

> "The court may grant an adequate sum as pecuniary compensation for non-material damage (*krzywda*) suffered to anyone whose personal rights have been infringed. Alternatively, the person concerned, irrespective of a claim for any other relief that may be necessary to eliminate the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ..."

3. Code of Civil Procedure

29. Parties to civil proceedings are not served *ex officio* with a copy of the judgment in their case. The only exception to this rule is provided by Article 327 § 2 of the Code of Civil Procedure. Pursuant to that provision, a court must serve notice of a judgment on a party who was not represented by a lawyer and was absent from the final hearing owing to imprisonment.

30. Pursuant to Article 328 of the Code, written grounds for a judicial decision must be prepared at the request of a party submitted within one week of the date of delivery.

COMPLAINTS

31. The applicant complained under Article 3 and Article 5 §§ 1, 2, 3 and 4 of the Convention about her involuntary confinement in a psychiatric hospital. She further complained under Article 5 § 5 of the Convention of the fact that she had not received any compensation.

THE LAW

32. The applicant complained under Article 3 and Article 5 §§ 1, 2, 3, 4 and 5 of the Convention about her allegedly unlawful detention in a psychiatric hospital and the fact that she had not received any compensation.

In so far as relevant, the provisions invoked by the applicant read as follows:

Article 3

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

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

(e) the lawful detention (...) of persons of unsound mind (...);

(...).

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

33. The Government argued that the applicant had failed to submit her case to the Court within the six-month time-limit provided for by Article 35 § 1 of the Convention. They submitted that the final judgment in the proceedings instituted by the applicant had been given on 17 February 2010 and that the applicant had lodged her application in 2011.

34. Secondly, they were of the view that the applicant had failed to exhaust domestic remedies as she had not lodged a cassation appeal against the Court of Appeal judgment in accordance with the procedural requirements. Referring to the case of *Gavril Yosifov v. Bulgaria* (no. 74012/01, § 42, 6 November 2008), they noted that since the applicant's complaint had been based on the alleged unlawfulness of her detention, an action for damages had become an effective remedy when that detention had come to an end.

35. The applicant disagreed with the Government's submissions. She maintained that she had not been aware that the Court of Appeal had delivered a judgment on 17 February 2010. She had been having health issues at the time and had not contacted the national court until December 2010, when she had become worried about the delay in the court proceedings. She confirmed that she had indeed been notified about the dates of hearings; however, she had not received any information that a judgment in her case had been delivered.

36. The Court does not find it necessary to examine the Government's objection of non-exhaustion of domestic remedies, the application being in any event inadmissible for the following reasons.

37. Pursuant to Article 35 § 1 of the Convention the Court may only deal with an individual application lodged within a period of six months of the date on which the final decision was taken. Where the domestic law does not provide for the serving of decisions, the Court considers it appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to find out about its content (see *Papachelas v. Greece* [GC], no. 31423/96, § 30, ECHR 1999-II, and *Jakelaitis v. Lithuania* (dec.), no. 17414/05, 16 December 2008).

38. In the instant case the Court observes that the Warsaw Court of Appeal's judgment was given at a hearing held on 17 February 2010. The applicant was duly informed about the date of the hearing; however, she did not appear before the court on that date (see paragraphs 14, 15 and 35 above).

39. The applicant alleged that she did not become aware of the judgment until December 2010 (see paragraph 35 above). However, the Court considers that that date cannot be taken as the start of the six-month time-limit. In this connection, it observes that it was due to the applicant's own negligence that she did not obtain information about the final judgment earlier. The Court is not convinced by the applicant's explanation for the delay and considers that she had failed to submit convincing and compelling reasons which could have justified it. In particular, the applicant only began to enquire about developments in her case more than a year and four months after she had lodged her appeal and more than ten months after she had been notified the date of the hearing scheduled for 17 February 2010 (see paragraphs 13, 14 and 16 above).

40. The Court considers that it is incumbent on applicants to show due diligence in obtaining copies of decisions deposited with court registries (see, *mutatis mutandis*, *Mıtlık Ölmez and Yıldız Ölmez v. Turkey* (dec.), no. 39464/98, 1 February 2005, and *Aramov v. Bulgaria* (dec.), no. 28649/03, 12 June 2012). Accordingly, the starting point of the six-month time limit in the present case should be fixed at 17 February 2010. However, the applicant did not lodge her application with the Court until 7 March 2011.

41. It follows that the application was lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 March 2017.

Andrea Tamietti	Nona Tsotsoria
Deputy Registrar	President