

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

# FOURTH SECTION

# DECISION

Application no. 49424/12
Helena SKOMOROCHOW
against Poland

The European Court of Human Rights (Fourth Section), sitting on 8 November 2016 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 27 July 2012,

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

Having regard to the declaration submitted by the respondent Government on 18 March 2016 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

## FACTS AND PROCEDURE

1. The applicant, Ms Helena Skomorochow, is a Polish national, who was born in 1957 and lives in Sanniki.

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

3. On 13 October 2015 the application was communicated to the Government.

## A. The circumstances of the case

4. The applicant was living alone in an apartment in Warsaw. She has not been legally incapacitated.

5. On 11 June 2010 the Praga Południe City Centre for Social Services ["The Centre"] (*Ośrodek Pomocy Społecznej Dzielnicy Praga Południe*) requested the Warsaw District Court to place the applicant, against her will, in a social care home. The Centre submitted that the applicant was suffering from schizophrenia, systematically abused alcohol and had been on numerous occasions hospitalised in psychiatric hospitals. The Centre further explained that the applicant refused to take medications, did not take care of her flat and had been neglecting the basic principles of hygiene and nutrition. During the previous year, her condition had worsened. She was repeatedly hosting alcoholic gatherings in her flat. She had also behaved in an aggressive manner towards her neighbours.

6. On 2 September 2010 the applicant was examined in her home by a court appointed expert psychiatrist. The expert referred to a recent incident when the applicant had threatened with a knife a group of playing children. As a result she was treated in a psychiatric hospital. The expert confirmed that the applicant was suffering from paranoid schizophrenia (*schizofrenia paranoidalna*) and that she was not able to attend to her basic needs. She required constant care. In particular, as she also suffered from diabetes, she had to take medications and have regular meals. However, in the expert's opinion, the applicant did not require hospital treatment.

7. On 18 November 2010 the Warsaw District Court decided to place the applicant in a social care home against her will. Shortly afterwards, the applicant was transported to a social care home in Sanniki.

8. On an unknown date in 2011 the applicant asked to be released from the social care home. She submitted that she owned a flat and was able to take care of herself on her own.

9. On 21 February 2012 the applicant was examined by an expert psychiatrist. The expert considered that the applicant was still distrustful, misinterpreted reality and had persecutory delusions. However, her condition had improved due to regular use of medications and proper care. The expert stressed that the applicant had suffered from paranoid schizophrenia which was a chronic condition with periods of remission. She further concluded that despite an improvement of the applicant's mental health she still required constant care.

10. On 22 May 2012 the Gostynin District Court refused the applicant's request to be released from the social care home.

11. At the date of the last information available to the Court (20 September 2016), the applicant was still detained in the social care home in Sanniki.

### B. Relevant domestic law and practice

12. The relevant domestic law and practice concerning the placement of persons in a social care home are set out in the Court's judgment in the case of *Kędzior v. Poland* (no. 45026/07, §§ 38-45, 16 October 2012).

## COMPLAINTS

13. The applicant complained under Article 5 § 1 of the Convention that her placement in the social care home had constituted an unlawful deprivation of liberty.

14. She further alleged that she did not have an effective procedure by which she could have challenged the necessity of her stay in the social care home.

## THE LAW

### A. Complaint under Article 5 § 1

15. The applicant complained about unlawfulness of her detention in the social care home. She relied on Article 5 § 1 of the Convention.

16. After the failure of attempts to reach a friendly settlement, by a letter of 18 March 2016 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by this part of the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention. The declaration provided as follows:

> "The Government hereby wish to express – by way of the unilateral declaration – their acknowledgement that the applicant was deprived of her liberty in breach of Article 5 § 1 (e) of the Convention. Simultaneously, they declare that they are ready to pay the applicant the sum of PLN 20,000 (twenty thousand Polish zlotys) which they consider to be reasonable in the light of the individual circumstances of the present case, as well as the Court's case-law in similar cases (...). The sum referred to above which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points ...

> The Government respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention ..."

17. By a letter of 5 May 2016, the applicant indicated that she was not satisfied with the terms of the unilateral declaration on the ground that the amount proposed by the Government was too low.

18. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application, or its part, out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

19. It also reiterates that in certain circumstances, it may strike out an application, or its part, under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

20. To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

21. The Court has established in a number of cases, including those brought against Poland, its practice concerning complaints about the violation of Article 5 § 1 of the Convention in context of a person placed in a social care home (see *Kędzior*, quoted above and *K.C. v. Poland*, no. 31199/12, 25 November 2014).

22. Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of this part of the application (Article 37 § 1 (c)).

23. Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 *in fine*).

24. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

25. In view of the above, it is appropriate to strike the case out of the list in so far as it relates to the complaint under Article 5 § 1 of the Convention.

### B. Complaint under Article 5 § 4

26. Without invoking any provisions of the Convention, the applicant also complained that she did not have an effective procedure by which she could have challenged the necessity of her stay in the social care home. The complaint falls to be examined under Article 5 § 4 of the Convention, which reads as follows:

> " 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."

27. The applicant maintained that the procedure by which she had challenged the necessity of her stay in the social care home had been ineffective.

28. The Government argued that under section 41 of the Psychiatric Protection Act the applicant could, at any time, request the court to change the decision to keep her in the social care home. The applicant was not legally incapacitated and thus was entitled to act on her own before the domestic courts. She could have lodged a request under section 41, following which judicial proceedings would have been opened and the applicant would have been examined by doctors in order to assess whether the grounds for her continued stay in the home still existed. The Government maintained that the applicant had failed to use this remedy.

29. The Court notes firstly that the applicant's placement in the social care home was ordered by a court (see paragraph 7 above).

30. The Court further observes that under domestic law there is no obligation to carry out an automatic judicial review of the lawfulness of admitting a person to, and keeping her in, an institution such as a social care home. However, the applicant in the present case, contrary to the applicant in the case of *Kędzior,* cited above, has not been legally incapacitated. Therefore, she may at any time request a review of the lawfulness of her detention and the need to remain in the closed facility (see, *a contrario*, *Kędzior,* cited above, § 77).

31. The Court notes in this respect that contrary to the Government's submissions, the applicant made use of the available procedure and she lodged a relevant request (see paragraph 8 above). In the judicial proceedings instituted on the basis of that request, she was examined by an expert psychiatrist on 21 February 2012 (see paragraph 9 above).

32. The Court has already concluded that the procedure provided for by the Psychiatric Protection Act fulfils the criteria required under Article 5 § 4 (see *K.C.*, cited above, §§ 79-83). It follows that this part of

the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

*Takes note* of the terms of the respondent Government's declaration under Article 5 § 1 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

*Decides* to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, in so far as it concerns the complaint under Article 5 § 1 of the Convention;

*Declares* the remainder of the application inadmissible.

Done in English and notified in writing on 1 December 2016.

Andrea Tamietti
Deputy Registrar

Nona Tsotsoria
President