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

SECOND SECTION

DECISION

Application no. 14028/20
Jasna TEPAVAC
against Croatia

The European Court of Human Rights (Second Section), sitting on 13 December 2022 as a Committee composed of:

Pauliine Koskelo*, President*,
Lorraine Schembri Orland,
Davor Derenčinović*, judges*,

and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 14028/20) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 March 2020 by a Croatian national, Ms Jasna Tepavac ("the applicant"), who was born in 1965 and lives in Petrinja, and who was represented by Ms J. Trubelja, a lawyer practising in Zagreb;

the decision to give notice of the application to the Croatian Government, represented by their Agent, Ms Š. Stažnik;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the compliance with Article 8 of the Convention of proceedings in which the applicant, who suffers from a delusional disorder, was partly deprived of her legal capacity.

2. On 16 February 2017 the applicant was interviewed at the Slunj Social Welfare Centre (hereinafter "the Centre") and was informed that the Centre planned to institute proceedings to deprive her of her legal capacity on the basis of a recommendation by Vrapče Hospital, where she had previously been hospitalised.

3. On 24 February 2017 the Centre drew up an opinion, according to which the institution of proceedings for deprivation of legal capacity was warranted. The applicant was unemployed and had no income. She was in denial about her illness (a delusional disorder), perceived it unrealistically, and refused to take medication. She lived with her 83-year-old father, and his monthly pension in the amount of approximately 260 euros (EUR) was their only source of income. She had been treated as an inpatient at Vrapče Hospital on four occasions and had stopped her most recent treatment of her own will. Each time hospitalisation had been involuntary and had been carried out with police assistance. The Centre appointed the applicant a guardian *ad litem*.

4. On 16 March 2017 the Centre filed a proposal with the Karlovac Municipal Court (hereinafter "the Municipal Court") for the institution of proceedings to deprive the applicant of her legal capacity.

5. At the applicant's request, on 3 April 2017 the Croatian Bar Association appointed her a legal aid attorney to represent her in the proceedings.

6. On 26 April 2017 the applicant obtained a privately commissioned expert opinion from a psychiatrist, R.T., which stated that her psychotic disorder was not harmful and that the conditions for depriving her of her legal capacity had not been satisfied. She did not submit that opinion to the court.

7. On 12 December 2017 the court heard the applicant in the presence of her guardian *ad litem*. The applicant claimed to understand what legal capacity was and deemed herself capable of making her own decisions. She was feeling well, taking her medication and willing to undergo treatment in the event that her health deteriorated. She was taking care of her father and their household. According to her, she had been involuntarily hospitalised only once owing to problems at work. The applicant did not oppose obtaining an expert opinion. At the hearing her guardian *ad litem* stated that as a precaution she contested the applicant being partly deprived of her legal capacity, as was proposed.

8. On 28 March 2018 the Municipal Court ordered an expert witness evaluation and appointed a neuropsychiatrist, N.C.

9. On 21 May 2018 the expert N.C. submitted his report, having inspected the case file, all discharge summaries of the applicant's hospitalisations, and the applicant's social history compiled by the Centre. The expert also examined the applicant in person. According to him, the applicant was not able to look after herself or her personal needs, rights or interests. Although she had been in a relatively good state of remission during her interview, she nonetheless suffered from a chronic and severe mental illness, and she did not have the mental capacity to make decisions. The applicant received information, but was unable to fully understand it or assess it in terms of advantages or disadvantages, including information about her health, treatment or place of residence. She understood the value of money, but was

unable to look after finances on her own. The expert therefore recommended that she be partly deprived of her legal capacity, and specified the actions that the applicant was not capable of taking on her own.

10. On 17 September 2018 the applicant's guardian *ad litem* filed a submission with the court informing it that she was unable to attend the next court hearing. She had no objections to the expert report, but the applicant, whom she had informed of the report, had expressed her disagreement with it.

11. At a hearing held on 26 September 2018 the Municipal Court partly deprived the applicant of her legal capacity. She was prevented from making decisions about her health, medications and place of residence; from initiating actions before the courts and administrative and other bodies; from concluding legal transactions; and from taking out loans or disposing of property or cash worth more than 500 Croatian kunas (HRK – approximately EUR 75) per month.

12. The applicant's lawyer appealed against the first-instance decision, arguing that the expert report was theoretical, mostly based on the opinion of the Centre, and did not accurately reflect the applicant's actual condition. The court had relied too heavily on the expert opinion and given insufficient weight to the applicant's testimony.

13. On 22 February 2019 the Zagreb County Court upheld the first-instance decision, holding that the court had correctly established that the applicant suffered from a permanent disorder and was consequently incapable of looking after her rights and interests. The expert report had taken into account all of the applicant's medical documentation and social history, and the expert's personal examination and interview with her.

14. On 23 April 2019 the applicant lodged a constitutional complaint, arguing that the first-instance court had issued its ruling solely on the basis of the expert's opinion, instead of taking into account the facts and evidence presented by the Centre, by her and by her guardian *ad litem*. She also stated that neither of the lower courts had examined the expert report dated 26 April 2017 written by Doctor R.T.

15. On 18 September 2019 the Constitutional Court dismissed the applicant's constitutional complaint, finding that the courts had provided sufficient and objective reasons for partly depriving her of her legal capacity. The applicant had been represented by both a guardian *ad litem* and an attorney, and the Municipal Court had heard the applicant in the presence of her guardian and had based its conclusion on the findings of an expert witness, specifying the actions and tasks which the applicant was not capable of undertaking herself. Although the applicant's attorney had never been served with the expert report or summoned to the hearing at which the Municipal Court had given its ruling, the Constitutional Court noted that the attorney had failed to complain about those facts in the appeal. As regards the applicant's allegations that the courts had disregarded the opinion of

Doctor R.T., the Constitutional Court noted that the courts could not take it into account, since the applicant had only submitted it with her constitutional complaint, that is, after the proceedings to deprive her of her legal capacity had ended.

16. The applicant complained under Articles 6 and 8 of the Convention that the domestic courts had misapplied the domestic law when deciding to partly deprive her of her legal capacity and that the proceedings had therefore been unfair.

THE COURT'S ASSESSMENT

17. The Government argued that in her application to the Court the applicant had not complained about the role of her lawyer in the domestic proceedings, or about the fact that the domestic courts had not taken Doctor R.T.'s opinion into account. She had also failed to raise the issue of her lawyer's representation in her appeal to the second-instance court, and she had failed to submit Doctor R.T.'s opinion to the first or second-instance court.

18. The Court observes that in her application the applicant explained how the proceedings against her had been conducted, and raised general complaints that the domestic courts had violated her right to respect for private life and her right to a fair trial because they had misinterpreted the domestic law in her case. In her subsequent observations, she expressly complained that the domestic courts had failed to take R.T.'s opinion into consideration, clarifying that she had been that doctor's patient for a long time, that he had been the most competent person to assess her medical condition, and that his opinion should have been taken into account when deciding her case.

19. The Court notes that it is true that the applicant, while represented by a qualified lawyer, never complained about the role of her lawyer during the domestic proceedings or at any stage of the proceedings before the Court. This particular point does not therefore form part of her complaint and falls outside the scope of the case before the Court (compare *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 121-122 and 126, 20 March 2018). As regards R.T.'s opinion, the Court will deal with it when examining the merits of the applicant's complaints below. Furthermore, having regard to the wording and substance of the applicant's complaints, the Court considers that they fall to be examined under Article 8 of the Convention alone (compare *Radomilja and Others*, cited above, § 126).

20. General principles related to the compliance with Article 8 of proceedings for deprivation of legal capacity have been summarised in *Ivinović v. Croatia* (no. 13006/13, §§ 35-37, 18 September 2014).

21. Depriving a person of his or her legal capacity, even in part, interferes with the right to respect for private life of the person concerned and is a very

serious measure which should be reserved for exceptional circumstances. For such a measure to be necessary in a democratic society, the Court requires the courts dealing with such cases to carefully examine all relevant factors to ensure that the requirements of Article 8 of the Convention notably relating to the fairness of the decision-making process have been complied with (see *Ivinović*, cited above, §§ 35-36 and 38).

22. As regards the relevance and sufficiency of the reasons adduced for partly depriving the applicant of her legal capacity, the domestic courts mainly relied on her illness and, in that respect, the findings of the expert psychiatrist N.C. That expert not only personally examined and interviewed the applicant, but also consulted her complete medical history, including her discharge summaries from various psychiatric institutions where she had been hospitalised (see paragraph 9 above). Moreover, while the applicant expressed her disagreement with N.C.'s opinion to her guardian, she did not reiterate such misgivings at the next court hearing (see paragraph 11 above), nor did she at any moment during the proceedings before the ordinary courts submit the privately commissioned report of R.T. (see paragraph 6 above).

23. Moreover, it appears from the case file that the Centre informed the applicant in advance of its intention to institute proceedings to partly deprive her of her legal capacity, and gave her an opportunity to comment (see paragraph 2 above, and contrast *M.S. v. Croatia*, no. 36337/10, §§ 102-103, 25 April 2013). Given her diagnosis, numerous previous hospitalisations and personal circumstances (in particular the fact that she had no close relatives who could take care of her), the Court is satisfied that the national court's decision carefully balanced all relevant factors in order to assess the proportionality of the measure to be taken, and provided adequate reasons for its conclusions.

24. Turning to the decision-making process, the Court notes that the applicant was represented by both a guardian *ad litem* and a legal aid lawyer. Unlike in previous cases against Croatia, the applicant's guardian was not merely an employee of the Centre which had instituted proceedings against her, nor did she remain completely passive in the proceedings (contrast *Ivinović*, cited above, § 45, and *M.S. v. Croatia*, cited above, § 104). While it is true that the guardian did not attend the last court hearing or lodge an appeal against the first-instance decision, it cannot be said that she failed to fulfil her legal role of effectively protecting the applicant's rights and interests in the proceedings, since she attended the hearing at which the applicant was heard, contested the proposal to deprive her of her legal capacity, and filed a court submission in reply to the expert opinion in which she also apologised for her absence from the subsequent hearing (see paragraphs 7 and 10 above).

25. The Court further notes that the applicant was also represented by a legal aid lawyer, who lodged an appeal against the first-instance decision on her behalf. She then appointed another lawyer of her own choosing, who lodged a constitutional complaint and an application with the Court on her

behalf. In that connection, the Court reiterates that, given the independence of the legal profession from the State, the handling of a case is essentially a matter between a defendant and his or her counsel, whether appointed under a legal aid scheme or privately financed, and as such cannot, other than in special circumstances, incur the State's liability under the Convention (see *Artico v. Italy*, 30 May 1980, § 36, Series A no. 37; *Rutkowski v. Poland* (dec.), no. 45995/99, ECHR 2000-XI; *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002; and *Siałkowska v. Poland*, no. 8932/05, § 99, 22 March 2007).

26. In view of the foregoing, the Court considers that the national courts, in depriving partially the applicant of her legal capacity, followed a procedure which was in conformity with the guarantees under Article 8 of the Convention.

27. It follows that this application is manifestly ill-founded and must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 January 2023.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President