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

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Continued psychiatric detention of a man presenting risks of recidivism and dangerous conduct was justified

In its decision in the case of Maddalozzo v. Switzerland (application no. 19338/18) the European Court of Human Rights has unanimously declared the application inadmissible.

The case concerned an order for continued psychiatric detention after a prior five-year prison sentence. The order had been issued on 8 December 2016 by the post-sentencing court of the Canton of Geneva.

The Court considered, first of all, that the applicant had been provided with proper medical treatment suited to his condition, and that he had been detained in institutions tailored to the detention of delinquents suffering from mental disorders. Secondly, it noted that the possibility of releasing the prisoner had been considered at regular intervals, *ex officio* and on request. The detention in question was therefore not irreducible. The Court concluded that the order for the applicant's continued psychiatric detention had been based on a reasonable and regularly updated assessment of his dangerousness. His complaints were therefore inadmissible.

The decision is final.

Principal facts

The applicant, Giuliano Maddalozzo, is a French national who was born in 1954 and is being held in Bellevue Prison in Gorgier (Canton of Neuchâtel).

On 3 November 1998 the Assize Court of the Canton of Geneva found the applicant guilty of attempted rape accompanied by cruelty and while barred from Swiss territory. It sentenced him to five years' imprisonment, ordered that the sentence be suspended and replaced by psychiatric detention and ordered psychiatric treatment. The judgment was upheld by the Federal Court.

On 20 June 2011 the applicant applied for a review of his detention with a view to conditional release.

In a report of 15 November 2012 a doctor diagnosed the applicant with a paranoid personality disorder including elements of narcissistic perversion and a psychopathic component, with an organic mental disorder caused by an injury, a cerebral malfunction or a physical condition, and with immature psycho-sexual development. The expert noted that there were still serious reasons to fear that the applicant would commit further offences causing grave harm to other persons' physical, psychological or sexual integrity. He stressed that the applicant's psychiatric detention continued to be necessary and could not be replaced by an institutional therapeutic measure, still less by outpatient treatment.

On 22 April 2013 the post-sentencing court of the Canton of Geneva dismissed the applicant's application and ordered his continued detention. That judgment was upheld at cantonal and Federal level in 2013.

On 31 May 2016 the Court declared an application lodged by the applicant on 16 June 2014 inadmissible for failure to exhaust domestic remedies.

In January 2015 the Geneva public prosecutor's office also found that the applicant's psychiatric detention should continue.

In its opinion issued on 25 February 2015, the Commission responsible for assessing dangerousness noted that it had no new information enabling it to depart from the conclusions of the 15 November 2012 assessment, and that the applicant, who had failed to attend the Commission hearing on 26 March 2014, still presented a danger to society.

On 5 March 2015 the post-sentencing court ordered the applicant's continued detention.

On 30 September 2015 the applicant was transferred to Bellevue Prison, a high-security facility.

On 21 October 2016 the Director of Bellevue Prison issued a report stating that the applicant had had consultations with a psychologist once a month, but that there had been no change in his perception of his offence or in his state of denial.

At the 8 December 2016 hearing before the post-sentencing court the applicant still denied the offence of which he had been convicted, as well as the very existence of his psychiatric disorders. The court ordered the applicant's continued psychiatric detention, basing its decision on the expert report of 15 November 2012 and on the views set out in the file, since there had been no developments capable of fundamentally calling that evidence into question. By judgment of 24 February 2017 the Court of Justice dismissed the appeal.

On 19 October 2017 the Federal Court dismissed an appeal by the applicant.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 April 2018.

Relying on Article 5 § 1 (right to liberty and security), the applicant complained of the lack of a sufficient causal link between his initial conviction and the order of 8 December 2016 for his continued psychiatric detention. He also complained that the regime under which he is serving his sentence, in prison, is inappropriate.

Relying on Article 3 (prohibition of inhuman or degrading treatment), he complained of the imposition of a custodial sentence without any prospect of release and of a lack of psychotherapeutic treatment.

The decision was given by a Committee of three judges, composed as follows:

Paulo **Pinto de Albuquerque** (Portugal), *President*,
Helen **Keller** (Switzerland),
María **Elósegui** (Spain),

and also Stephen Phillips , *Deputy Registrar.*

Decision of the Court

Article 5 § 1

The Court observed that the domestic courts had extended the applicant's detention in order to prevent him from committing further offences similar to the ones of which he had been found guilty, given that the risk of recidivism and dangerousness which he posed had not decreased.

The Court noted that the courts had not based their decision solely on the expert report of 15 November 2012, which would not have been sufficiently recent on its own to justify continuing the applicant's detention. The post-sentencing court has also taken into account the multiple viewpoints set out in the case file, all of them in favour of continuing the psychiatric detention. The Court observed that the courts had taken into account a number of factors suggesting that the applicant would most likely reoffend if he were released, and that he was still dangerous to the

general public. The post-sentencing court's decision, upheld by the Federal Court, had therefore not been unreasonable. The Court also noted that over the years, numerous opinions and assessments had been drawn up on the applicant by medical experts, confirming that his condition had not changed.

As regards the applicant's place of detention and the regime under which he was detained, the Court observed that he had been detained under section 64 of the Penal Code, and not as an institutional therapeutic measure. In the instant case the applicant had spent more than eleven years in prisons specifically designed for preventive detention (the Champ-Dollon and La Croisée prisons); since October 2015 he has been detained in the Bellevue Prison for sentenced prisoners, a high-security facility. The Court observed that neither the 15 November 2012 expert assessment nor the various findings of the prison medical services had suggested moving the applicant to a more suitable institution. The initial judgment delivered by the Assize Court on 3 November 1998 had ordered psychiatric treatment, but it should be noted that the applicant had refused to undergo the treatment regularly.

The Court reiterated that a person subject to involuntary placement was not compelled to accept offers of treatment, and that it was important to attach weight to the applicant's repeated refusals. The authorities could not be expected to impose medical treatment on the applicant; nevertheless, they had to continue to offer him therapeutic measures suited to his individual situation. It transpired from the case file that the applicant had not been left without a choice of treatment. A sentence plan had been drawn up facilitating individualised provision accompanied by therapy, the frequency of his psychological consultations being decided on by the applicant himself.

The Court therefore considered that the applicant had been provided with consistent medical treatment suited to his condition, and that he had been detained in institutions tailored to the detention of delinquents suffering from mental disorders. It concluded that the decision to continue the applicant's detention had been based on a reasonable and sufficiently recent assessment of his dangerousness. The order for continued psychiatric detention had been compatible with the objectives of the initial conviction.

The applicant's complaints should therefore be rejected as manifestly ill-founded.

Article 3

The Court observed, at the outset, that the applicant had been sentenced to psychiatric detention, which, pursuant to section 64 of the Penal Code, entailed the possibility of release on licence, provided that the detainee could reasonably be expected to behave correctly outside prison. That possibility of release was assessed at regular intervals, *ex officio* and on request. The detention was therefore not irreducible. Again, the mere fact that the applicant's request for release on licence was rejected on the grounds that he still presented a danger to society was not, in itself, in breach of Article 3 of the Convention. Indeed, the Convention required Contracting States to take action to protect society from violent crime. A person convicted of a serious offence could be sentenced to indefinite detention where so required for the purposes of protecting the general public.

In reply to the applicant's allegation that the 15 November 2012 assessment had ruled out any prospect of release, the Court reiterated that the prognosis established on that date was not immutable and could change with any future assessment.

The Court, having already concluded that despite his lack of cooperation the applicant had been provided with consistent and appropriate medical treatment and that he had been detained in institutions tailored to the detention of delinquents suffering from mental disorders, rejected the complaint under Article 3 as manifestly ill-founded.

The decision is available only in French.

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