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

SECOND SECTION

CASE OF GAJCSI v. HUNGARY

(Application no. 34503/03)

JUDGMENT

STRASBOURG

3 October 2006

FINAL

03/01/2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Gajcsi v. Hungary,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Mr J.-P. COSTA, *President*,
Mr A.B. BAKA,
Mr I. CABRAL BARRETO,
Mr R. TÜRMEN,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Ms D. JOČIENĖ, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having deliberated in private on 12 September 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34503/03) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr László Gajcsi ("the applicant"), on 16 September 2003.

2. The applicant, who had been granted legal aid, was represented by Mr Á.L. Szőcs, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr L. Höltzl, Agent, Ministry of Justice and Law Enforcement.

3. On 2 May 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1955 and lives in the Lad-Gyöngyöspuszta Social Home, Hungary.

5. On 4 November 1999 the applicant was taken by ambulance to the Psychiatric Department of Nagyatád Hospital. Pursuant to section 199 § 2 of the Health Care Act ("the Act"), the Hospital notified the Nagyatád District Court of this fact the next day.

6. In the opinion of an expert psychiatrist, dated 8 November 1999, it was observed that the applicant had been committed to hospital because of his erratic, pyromaniac behaviour, and was in a deranged state of mind which warranted his compulsory psychiatric treatment in a closed institution. On the same day the court heard the applicant and ordered his treatment under section 199 § 5 of the Act.

7. Between 21 January 2000 and 22 November 2002 the applicant's compulsory treatment was reviewed by the court at the statutory intervals.

8. On 21 January 2003 the District Court again reviewed the applicant's psychiatric detention. At the hearing he was represented by an *ad hoc* guardian (*eseti gondnok*). The judge in charge appointed an expert psychiatrist, specifying that his task was

> "to give an opinion as to whether or not the patient's (*eljárás alá vont személy*) admittance to, and prolonged treatment at, the psychiatric department was justified because of his pathological mental status (*kóros elmeállapot*)".

The expert confirmed the need to continue the applicant's treatment.

9. Based on that opinion, the court ordered the prolongation of the applicant's compulsory psychiatric treatment for an indefinite period, the necessity of which was to be reviewed within 60 days. It reasoned as follows:

> "The patient (*eljárás alá vont személy*) was admitted to the psychiatric department.
>
> Relying on the evidence taken and the expert opinion, the court has established that the patient's prolonged psychiatric treatment was justified and lawful.
>
> The patient is in need of further therapy; the court has therefore given its decision according to section 198(1) of Act no. 154 [on Health Care]."

10. The applicant's lawyer appealed to the Somogy County Regional Court, arguing that the first-instance decision was unlawful in that its reasoning was substantially deficient. He pointed out that section 198(1) did not provide any substantive ground for prolonging his compulsory treatment, which could only be authorised under sections 200(1) and 188(b) of the Act.

11. On 28 February 2003 the Regional Court upheld the District Court's decision, finding that it was in compliance with the relevant provisions of the Code of Civil Procedure. It noted that, according to the expert psychiatrist's opinion, no change had occurred in the applicant's condition as to warrant his release, and that his prolonged therapy was justified and necessary. It was satisfied that the first-instance proceedings were in compliance with section 201 of the Act. This decision was received at the District Court for despatch on 11 March, and was served on 17 March 2003.

12. On 15 May 2003 the applicant's lawyer filed a petition for review by the Supreme Court. He reiterated that the reasoning of the first-instance decision was insufficient, and argued that the lower courts' decision

infringed the applicant's constitutional right to a fair hearing. He pointed out that the Act provided no ground for compulsory psychiatric treatment because of a patient's "pathological mental status" – a criminal-law notion which had mistakenly been referred to when the expert psychiatrist had been appointed. The potential grounds for the applicant's psychiatric confinement were enumerated in section 200(1) of the Act. In his view, this element deprived the expert's opinion of any relevance. He stressed that the fairness of any proceedings which might result in coercive measures required detailed reasoning in the relevant decisions. Referring to the Court's conclusions in the case of *Van der Leer v. the Netherlands* (judgment of 21 February 1990, Series A no. 170-A), he also argued that the failure to inform a patient of the reasons for his involuntary psychiatric treatment might amount to a violation of his Convention rights.

13. On 27 October 2004 the Supreme Court rejected the petition for review as inadmissible. It held that it was incompatible *ratione materiae* with the relevant provisions of the Code of Civil Procedure.

14. Meanwhile, on 24 April 2003 the applicant was released from hospital.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of Act no. 154 of 1997 on Health Care read as follows:

Section 188

"... b) Dangerous conduct is constituted by a condition in which a patient, due to his disturbed state of mind, may represent a serious danger to his or others' life and limb or health, but, given the nature of the illness, 'urgent hospitalisation' [within the meaning of section 199] is not warranted (*a sürgős intézeti gyógykezelésbe vétel nem indokolt*)."

Section 197 – Voluntary treatment

"(1) The treatment may be considered voluntary if, prior to admission to the psychiatric institution, the [mentally] competent patient has consented to it in writing.

(2) A partly or fully incompetent patient may be subjected to treatment in a psychiatric institution at the request of the person referred to in sections 16(1) and 16(2)."

Section 198

"(1) In cases under sections 197(1) and 197(2), the court shall regularly review the necessity of hospitalisation. Such review shall take place every 30 days in psychiatric hospitals and every 60 days in psychiatric rehabilitation institutions."

Section 199 – Urgent hospitalisation

"(1) The doctor in charge shall directly make arrangements to commit a patient to an appropriate psychiatric institution, if the patient's conduct is imminently dangerous because of his psychiatric or addictive disease and can only be controlled by urgent treatment in a psychiatric institution. ...

(2) The head of the psychiatric institution shall, within 24 hours of the patient's admission, notify the court thereof and shall thereby initiate steps to establish the necessity of the patient's admission and the order of compulsory psychiatric treatment. ...

(5) The court shall order the compulsory treatment of a patient subjected to urgent hospitalisation if the patient's conduct is dangerous and his treatment in an institution necessary.

(6) Before deciding, the court shall hear the patient and obtain the opinion of an independent expert psychiatrist. ...

(8) The court shall review the necessity of the treatment every 30 days.

(9) The patient must be released from the psychiatric institution if his treatment in an institution is no longer necessary."

Section 200 - Compulsory treatment

"(1) The court shall order the compulsory institutional treatment of a patient whose conduct is dangerous because of his psychiatric or addictive disease but whose urgent treatment is not warranted. ...

(4) Before giving its decision, the court shall hear the patient and an independent ... forensic expert psychiatrist ... as well as the psychiatrist who has initiated the proceedings. ...

(7) The court shall review the necessity of compulsory institutional treatment at the intervals specified in section 198. ...

(8) A patient subjected to compulsory institutional treatment must be released once his treatment is no longer warranted. ..."

Section 201 - Common procedural rules

"(1) In the proceedings outlined in this chapter, the court shall proceed by way of non-contentious proceedings. Unless required otherwise by this Act or the non-contentious nature of the proceedings, the court shall apply the provisions of Act no. 3 of 1952 on Civil Procedure as appropriate. ...

(4) In the court proceedings, appropriate representation must be secured for the patient. ... ."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

16. The applicant complained that his involuntary psychiatric treatment had been unjustified, that it had not been ordered in a procedure "prescribed by law", and that he had not been given reasons for his confinement. He relied on Article 5 § 1 which provides as relevant:

> "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 for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; ..."

A. Admissibility

17. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The applicant maintained that his compulsory treatment had been subject to a review pursuant to section 200 of the Health Care Act. The reasoning of the court decision to prolong his psychiatric detention had been very superficial and insufficient to show that his conduct had been dangerous for the purposes of paragraph 1 of that provision. As such, therefore, it had been inadequate to meet the requirements of a procedure prescribed by law within the meaning of Article 5 § 1 of the Convention.

19. The Government were of the view that the applicant's detention had been susceptible to a review under section 199, rather than section 200, of the Act. However, in view of the superficial nature of the expert opinion at issue, they were not in a position to assess whether the applicant's potentially dangerous conduct had indeed warranted his prolonged compulsory treatment. They conceded that the Hungarian law governing the prolongation of compulsory psychiatric treatment had apparently not been applied in a manner fully reconcilable with the Convention's requirements.

20. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. While it is normally in the first

place for the national authorities, notably the courts, to interpret and apply domestic law, it is otherwise in relation to cases where, as under Article 5 § 1, failure to comply with that law entails a breach of the Convention. In such cases the Court can and should exercise a certain power to review whether national law has been observed (*Baranowski v. Poland*, no. 28358/95, § 50, ECHR 2000-III). Moreover, any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness (see, among many other authorities, the *Chahal v. the United Kingdom* judgment of 15 November 1996, *Reports of Judgments and Decisions* 1996-V, p. 1864, § 118).

21. In the present case, the Court notes that the relevant domestic law emphasises the prerequisite of dangerousness in order to justify compulsory hospitalisation and treatment. However, it finds that the domestic court decisions in the present case were devoid of any assessment of the applicant's alleged or potential "dangerous conduct", under either section 199 or section 200 of the Health Care Act. This has not been disputed by the Government. In these circumstances, the Court considers that the prolongation of the applicant's compulsory treatment was not prescribed by law.

There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 5 § 4 AND 13 OF THE CONVENTION

22. The applicant further complained that, since the first-instance decision had not been properly reasoned and the appellate court had not addressed all the arguments contained in his appeal, he had not had an effective remedy at his disposal, in breach of Articles 5 § 4 and 13. The Government did not address this issue.

23. The Court considers that this complaint falls to be examined under Article 5 § 4 alone, being the *lex specialis* in the field of deprivation of liberty, with stricter requirements compared to Article 13 of the Convention (see *De Jong, Baljet and Van Den Brink v. the Netherlands*, judgment of 22 May 1984, Series A no. 77, p. 27, § 60 *in fine*). Moreover, it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

24. However, having regard to its finding under Article 5 § 1 (see paragraphs 20-21 above), the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 5 § 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25. Lastly, the applicant complained that his compulsory treatment had been prolonged in unfair proceedings, in breach of Article 6 § 1 of the Convention.

26. However, again having regard to its finding under Article 5 § 1 (see paragraphs 20-21 above), the Court considers that, while this complaint is admissible, it is not necessary to examine separately whether, in this case, there has also been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

28. The applicant claimed 2 million Hungarian forints, the equivalent of 7,350 euros ("EUR"), in respect of non-pecuniary damage.

29. The Government found this claim reasonable.

30. The Court considers that the applicant has suffered non-pecuniary damage and awards him, on an equitable basis, the amount claimed in full.

B. Costs and expenses

31. The applicant made no claim under this head.

C. Default interest

32. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there is no need to examine separately the complaints under Articles 5 § 4, 6 § 1 and 13 of the Convention;

4. *Holds*
(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 7,350 (seven thousand three hundred and fifty euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 3 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

S. DOLLÉ J.-P. COSTA
Registrar President