



Summaries of
Mental Disability
Cases Decided by
the European Court
of Human Rights



I was locked up for years, but I didn't do anything wrong. I wanted to live in my own apartment.



MDAC advances human rights.

We respect the privacy of our clients,
so we have chosen models, not clients, to appear in these photographs.

**Summaries of Mental Disability Cases
Decided by the European Court of Human Rights**

These case summaries were compiled and edited by Jan Fiala, Matthew Francis and Oliver Lewis. David Zahumensky provided comments on the drafts, and Alan Yoshioka prepared the copy for print. István Fenyvesi laid out the reports, and they were translated into Czech by David Zahumensky, Estonian by Eve Pilt and Hungarian by Marta Pardavi.

ISBN: 978-963-87395-2-0

Copyright © Mental Disability Advocacy Center, 2007

The opinions expressed in this document are the opinions of the authors and may not reflect the opinions of the European Commission or other donors. Responsibility for the information contained therein lies solely with MDAC. The Commission takes no responsibility for the content and for any use that may be made of the information contained therein.



Funded by the European Commission
(Directorate-General Justice, Freedom and Security),
'Actions in support of civil society in the Member States
which acceded to the European Union on 1st May 2004'

Foreword

This publication has been produced by the Mental Disability Advocacy Center (MDAC), an international non-governmental organisation which advances the human rights of adults and children with actual or perceived intellectual or psycho-social (mental health) disabilities. Focusing on Europe and central Asia, we use a combination of law and advocacy to promote equality and social integration. The **aim** of this publication is to help lawyers and judges across Europe apply the European Convention of Human Rights and the caselaw of the European Court of Human Rights in domestic proceedings. We also hope that people with intellectual or psycho-social disabilities will read the cases and use them to advocate for their rights.

The summaries have been written by MDAC staff, and are therefore not official summaries. We have summarised the cases, which means that some essential facts have been omitted. Although you can use the case summaries as a guide, you should rely only on the full cases, which you can find on the website of the European Court of Human Rights: www.echr.coe.int. MDAC's own website, www.mdac.info, contains these case summaries, which are updated with new judgments and decisions. Our website also contains links to the full decisions and judgments as well as other international legal instruments of importance to this subject area. Look at our website, sign up to receive updates, and please take the opportunity to make a donation to help us fight for human rights across Europe.

The **structure** of the publication is simple. Each case is summarised alphabetically by the applicant's surname or by the first initial if only initials are provided. Letter-by-letter alphabetisation of the applicant name is used, ignoring punctuation marks and accents; thus, for example, *H. v. France* precedes *Hénaf v. France*, which is eventually followed by *H.F v. Slovakia*. We have given each case one or more keywords, which are listed in index form.

A few words about the **content** of the summaries. We have selected cases based on their importance to people with actual or perceived intellectual or psycho-social disabilities. There are two stages in applying to the European Court of Human Rights. The first stage is called admissibility, where the Court looks at whether the case should be considered further. When the Court examines admissibility it produces a decision. This function used to be carried out by the European Commission of Human Rights, which no longer exists. These summaries contain some important admissibility decisions. When the Court examines the merits of the case, it produces a judgment. The summaries do not deal with exhaustion of domestic remedies, nor do they detail any compensation awarded (under Art. 41 of the Convention).

To find out more about the procedure and the case law of the European Court of Human Rights, look at its website, or consult a publication such as Peter Bartlett, Oliver Lewis and Oliver Thorold (2006) *Mental Disability and the European Convention of Human Rights*, published by Martinus Nijhof, the Netherlands.

Finally, we welcome your feedback on this publication and on our work as a whole. Please get in touch with us by visiting our website, www.mdac.info.

Oliver Lewis
MDAC Executive Director

Abbreviations

App	Applicant (the person who submitted the application to the ECtHR, or the now defunct ECmHR)
Apps	Applicants
Art.	Article of the ECHR
ECHR	European Convention on Human Rights
ECmHR	European Commission of Human Rights
ECtHR	European Court of Human Rights
Gov	Government
P-H	Psychiatric hospital
Vio	Violation

Thematic index

Access to court	Clunis v. the United Kingdom
	Egger v. Austria
	Guérin v. France
	Lutz v. France (No. 2)
	Osman v. the United Kingdom
	Rakevich v. Russia
	Stewart-Brady v. the United Kingdom
	Vodeničarov v. Slovakia
	X. and Y. v. the Netherlands
Access to records	Bouilly v. France
	Gaskin v. the United Kingdom
	Gialamas v. Greece
	McMichael v. the United Kingdom
	M.G. v. the United Kingdom
	M.S. v. Sweden
	Nakach v. the Netherlands
Admissibility	Bocsi v. Hungary
	Chave (née Jullien) v. France
	Clunis v. the United Kingdom
	Croke v. Ireland
	Egger v. Austria
	Guenat v. Switzerland

	Guérin v. France
	Hénaf v. France
	Powell (William and Anita) v. the United Kingdom
	Salkic v. Sweden
	Sentges v. the Netherlands
	Skjoldager v. Sweden
	Stewart.Brady v. the United Kingdom
	Warren v. the United Kingdom
	Wilkinson v. the United Kingdom
	X. v. the United Kingdom (6840/74)
	Zehnalová and Zehnal v. the Czech Republic
Alcoholism	Litwa (Witold) v. Poland
Child	Abbott v. the United Kingdom
	Andersson (Margareta and Roger) v. Sweden
	Bouamar v. Belgium
	D.G. v. Ireland
	Eriksson v. Sweden
	Glass v. the United Kingdom
	Johansen v. Norway
	Kutzner v. Germany
	McMichael v. the United Kingdom
	M.G. v. the United Kingdom
	Nielsen v. Denmark
	Olsson v. Sweden
	Sentges v. the Netherlands
	X. and Y. v. the Netherlands
Confidentiality	Andersson v. Sweden
	Chave (née Jullien) v. France
	Gaskin v. the United Kingdom
	J.T. v. the United Kingdom
	M.S. v. Sweden
Correspondence	Herczegfalvy v. Austria
	Peers v. Greece
CPT (Committee for the Prevention of Torture)	Aerts v. Belgium
	Dougoz v. Greece
Death	Akkoç v. Turkey
	Edwards (Paul and Audrey) v. the United Kingdom
	Keenan v. the United Kingdom

	Osman v. the United Kingdom
	Powell (William and Anita) v. the United Kingdom
	Slimani v. France
Defamation	Stewart-Brady v. the United Kingdom
Deportation	Bensaid v. the United Kingdom
	Dougoz v. Greece
	Salkic v. Sweden
Detention, authority for	Aerts v. Belgium
	Benjamin and Wilson v. the United Kingdom
	Brand v. the Netherlands
	Croke v. Ireland
	Enhorn v. Sweden
	Erkalo v. the Netherlands
	Gajcsi v. Hungary
	Guenat v. Switzerland
	H.L. v. the United Kingdom
	H.M. v. Switzerland
	Jabłoński v. Poland
	Kawka v. Poland
	Kepenerov v. Bulgaria
	Kolanis v. the United Kingdom
	Litwa (Witold) v. Poland
	Luberti v. Italy
	M.S. v. Bulgaria
	Nakach v. the Netherlands
	Nielsen v. Denmark
	Nikolova v. Bulgaria
	Nowicka v. Poland
	Rakevich v. Russia
	Reid (Hutchison) v. the United Kingdom
	Rutten v. the Netherlands
	Skjoldager v. Sweden
	Storck v. Germany
	Tám v. Slovakia
	Thynne v. the United Kingdom
	Van der Leer v. the Netherlands
	Varbanov v. Bulgaria

	Winterwerp v. Netherlands
	X. v. the United Kingdom (7215/75)
Detention, place of	Aerts v. Belgium
	Ashingdane v. the United Kingdom
	Bizzotto v. Greece
	Brand v. the Netherlands
	D.G. v. Ireland
	Morsink v. the Netherlands
Detention, pre-trial	Bouamar v. Belgium
	Jabłoński v. Poland
	Kudła v. Poland
	Mikheyev v. Russia
	Nikolova v. Bulgaria
	Pereira v. Portugal
Detention, review of	Benjamin and Wilson v. the United Kingdom
	Croke v. Ireland
	Delbec v. France
	D.M. v. France
	D.N. v. Switzerland
	Donnadieu v. France
	E. v. Norway
	Gorshkov v. the Ukraine
	Granata v. France
	Herczegfalvy v. Austria
	Herz v. Germany
	H.L. v. the United Kingdom
	Johnson v. the United Kingdom
	Kawka v. Poland
	Keus v. the Netherlands
	Koendjiharie v. the Netherlands
	Kolanis v. the United Kingdom
	Langlois v. France
	Megyeri v. Germany
	Morsink v. the Netherlands
	Musial v. Poland
	Nouhaud and others v. France
	Pereira v. Portugal

	Pereira v. Portugal (No. 2)
	Siedel v. France
	Tám v. Slovakia
	Varbanov v. Bulgaria
	Vermeersch v. France
	Vodeničarov v. Slovakia
	Warren v. the United Kingdom
	Wassink v. the Netherlands
	X. v. the United Kingdom (7215/75)
Disability, intellectual	Kutzner v. Germany
	Olsson v. Sweden
Disability, physical	Botta v. Italy
	Price v. the United Kingdom
	Sentges v. the Netherlands
	Zehnalová and Zehnal v. the Czech Republic
Education	D.G. v. Ireland
	Kutzner v. Germany
Fair trial	Abbott v. the United Kingdom
	Aslan v. Turkey
	Ballestra v. France
	Bernard v. France
	Bocsi v. Hungary
	D.N. v. Switzerland
	Guérin v. France
	H.F. v. Slovakia
	McMichael v. the United Kingdom
	Nikolova v. Bulgaria
	Stewart-Brady v. the United Kingdom
	Vaudelle v. France
	Wilkinson v. the United Kingdom
Family life	Andersson (Margareta and Roger) v. Sweden
	Bock v. Germany
	Eriksson v. Sweden
	Johansen v. Norway
	Kutzner v. Germany
	McMichael v. the United Kingdom
	M.G. v. the United Kingdom

	Nowicka v. Poland
	Olsson v. Sweden
Ill-treatment	Aerts v. Belgium
	Akkoç v. Turkey
	Assenov v. Bulgaria
	Bouamar v. Belgium
	Dougoz v. Greece
	H. v. France
	Hénaf v. France
	Ireland v. the United Kingdom
	Keenan v. the United Kingdom
	Kudła v. Poland
	Mikheyev v. Russia
	Peers v. Greece
	Price v. the United Kingdom
	Wilkinson v. the United Kingdom
	X. v. the United Kingdom (6840/74)
Incapacity	Bock v. Germany
	Bocsi v. Hungary
	Egger v. Austria
	H.F. v. Slovakia
	H.L. v. the United Kingdom
	Matter v. Slovakia
	Skjoldager v. Sweden
	Vaudelle v. France
	Winterwerp v. Netherlands
	X. and Y. v. the Netherlands
Information	Van der Leer v. the Netherlands
	Open Door and Dublin Well Woman v. Ireland
Intimidation	Akkoç v. Turkey
Investigation	Akkoç v. Turkey
	Assenov v. Bulgaria
	Edwards (Paul and Audrey) v. the United Kingdom
	Mikheyev v. Russia
	Osman v. the United Kingdom
	Powell (William and Anita) v. the United Kingdom
Slimani v. France	

Legal representation	Abbott v. the United Kingdom
	Bocsi v. Hungary
	Bouamar v. Belgium
	Edwards (Paul and Audrey) v. the United Kingdom
	Megyeri v. Germany
	Pereira v. Portugal
	Winterwerp v. Netherlands
Length of proceedings	Ballestra v. France
	Bock v. Germany
	Bouilly v. France
	Delbec v. France
	D.M. v. France
	Donnadieu v. France
	E. v. Norway
	Francisco v. France
	Gialamas v. Greece
	Granata v. France
	H. v. France
	Herczegfalvy v. Austria
	Jabłoński v. Poland
	Koendjibiharie v. the Netherlands
	Kudła v. Poland
	Laidin v. France
	Langlois v. France
	L.R. v. France
	Luberti v. Italy
	Lutz v. France (No. 2)
	Matter v. Slovakia
	Musiał v. Poland
	Nouhaud and others v. France
	Pereira v. Portugal
	Pereira v. Portugal (No. 2)
	Rutten v. the Netherlands
	Siedel v. France
	Tkáčik v. Slovakia
	Van der Leer v. the Netherlands
	Vermeersch v. France
	Vodeničarov v. Slovakia

Private institution	Storck v. Germany
Private life	Bensaid v. the United Kingdom
	Bocsi v. Hungary
	Botta v. Italy
	Chave (née Jullien) v. France
	Clunis v. the United Kingdom
	Gaskin v. the United Kingdom
	Glass v. the United Kingdom
	Grare v. France
	Herczegfalvy v. Austria
	J.T. v. the United Kingdom
	Matter v. Slovakia
	M.S. v. Sweden
	Sentges v. the Netherlands
	Stewart-Brady v. the United Kingdom
	Winterwerp v. Netherlands
	Worwa v. Poland
	X. and Y. v. the Netherlands
	Y.F. v. Turkey
	Zehnalová and Zehnal v. the Czech Republic
Psychiatric assessment	Bernard v. France
	Bock v. Germany
	Guenat v. Switzerland
	Herz v. Germany
	H.F. v. Slovakia
	Kepenerov v. Bulgaria
	Luberti v. Italy
	Matter v. Slovakia
	M.S. v. Bulgaria
	Musial v. Poland
	Nowicka v. Poland
	Pereira v. Portugal (No. 2)
	Reid (Hutchison) v. the United Kingdom
	Varbanov v. Bulgaria
Worwa v. Poland	
Restraint	Hénaf v. France
	Herczegfalvy v. Austria

Treatment	Bensaid v. the United Kingdom
	Glass v. the United Kingdom
	Grare v. France
	Herczegfalvy v. Austria
	Salkic v. Sweden
	Sentges v. the Netherlands
	Storck v. Germany
	Wilkinson v. the United Kingdom
	Winterwerp v. Netherlands
	Y.F. v. Turkey
Victim status	Skjoldager v. Sweden
Voting	Hirst v. the United Kingdom (no. 2)

ABBOTT V. THE UNITED KINGDOM

ECmHR, 15006/89, decision 10 December 1990

MDAC Keywords: child; fair trial; legal representation

Facts

App was detained in various institutions since he was 12 owing to troubled upbringing and violent behaviour. He was placed in secure accommodation after being made a 'ward of court'. Applicant was not a party to proceedings and was not represented. Alleged ill-treatment during detention.

Decision – friendly settlement

Arts. 3, 5(1) and (4), 6(1) and 14. Gov made ex gratia payment of £7,000, paid App's legal costs and promised to amend the legislation to provide for legal representation of wards in secure accommodation and restrict the maximum length of time for secure accommodation.

AERTS V. BELGIUM

ECtHR, 25357/94, judgment 30 July 1998

MDAC Keywords: CPT; detention, authority for; ill-treatment; detention, place of

Facts

App was charged with a crime and at court assessed to be mentally ill. App was detained for therapy (not punishment) in psychiatric wing of a prison. App complained that the prison was not appropriate for a person with mental illness as he did not receive regular medical attention and prison was not a therapeutic environment.

Judgment

Art. 5(1) – vio. App's detention did not comply with domestic law. There must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. 'In principle, the "detention" of a person as a mental health patient will only be "lawful" if effected in a hospital, clinic or other appropriate institution' (para. 46).

Art. 6(1) – vio. Refusal by the Legal Aid Board to pay for App's lawyer to appeal against App's detention was vio of Art. 6(1). Outcome of proceedings was decisive for App's civil rights and thus Art. 6(1) was engaged.

Art. 3 – no vio. Although general conditions in the prison were unsatisfactory, as evidenced by the CPT report, it was not 'conclusively established' that App suffered treatment falling within Art. 3 (para. 65).

AKKOÇ V. TURKEY

ECtHR, 22947/98, judgment 10 October 2000

MDAC Keywords: death; ill-treatment; intimidation; investigation

Facts

A State body blocked App's promotion as a penalty for a statement she had made to a newspaper. An unknown gunman killed her husband. Police officers arrested App at her home and detained her for 10 days. They allegedly ill-treated her and subjected her to torture. During her interrogation she was questioned about her application to the ECmHR. App complained about the disciplinary proceedings brought against her, the killing of her husband by an unknown perpetrator and the lack of an effective investigation.

Judgment

Art. 10 (freedom of expression) – no vio. App used the available and ordinary means of redress against the disciplinary sanction imposed on her and can no longer claim to be a victim.

Art. 2 – vio. It had not been established beyond reasonable doubt that a state agent was involved in the killing of App's husband. However, the 'authorities failed to take reasonable measures available to them to prevent a real and immediate risk to [his] life' (para. 94). Investigation of death was superficial and had limited scope, and thus violated Art. 2.

Art. 13 – vio. App was denied an effective remedy in respect of husband's death and therefore access to any other available remedies, including a claim for compensation.

Art. 3 – vio. During police detention App had been doused in hot and cold water, hit on the head, suffered from the psychological pressure inflicted on her by the threats and made to ill-treat her children. This had left her with long-term symptoms of anxiety and insecurity, diagnosed as post-traumatic stress disorder and requiring medical treatment. This could be classed as torture.

Former Art. 25 (existing Art. 34) – vio. Authorities intimidated App with respect to her application to the ECmHR.

ANDERSSON V. SWEDEN

ECtHR, 20022/92; judgment 27 August 1997. Available only in French

MDAC Keywords: confidentiality

Facts

Without App's permission, her psychiatrist contacted the local gov expressing concern about learning difficulties of App's son and his general state of health. App asserted that she had a right to prevent this communication.

Judgment

Art. 6(1) – no vio. Psychiatrist has wide discretion and had no duty to hear App's views before contacting the authorities.

ANDERSSON (MARGARETA AND ROGER) V. SWEDEN

ECtHR, 12963/87, judgment 20 January 1992
MDAC Keywords: child, family life

Facts

The social services authority took Roger, a child, into care., This decision was based on a report concluding that the behaviour of his mother (Margareta) seriously disturbed the child's health and development. Social services prohibited contact between mother and child, pending a court decision. A court upheld the prohibition of access. There was no access for about 1½ years. The mother challenged these decisions. Apps alleged that the restrictions on access, including restrictions on communications by correspondence and telephone, violated Art. 8.

Judgment

Art. 8 – vio. Interferences with right to respect for family life and correspondence were in accordance with the law and had a legitimate aim in that they were designed to protect the son's 'health or morals' and 'rights and freedoms'. The measures relating to this period were far-reaching and thus had to be supported by strong reasons, and aim towards reuniting the family. The aggregate of the restrictions on meetings and communications between the Apps was disproportionate to the legitimate aims pursued and, therefore, not 'necessary in a democratic society'.

ASHINGDANE V. THE UNITED KINGDOM

ECtHR, 8225/78, judgment 28 May 1985
MDAC Keywords: detention, place of

Facts

App had a diagnosis of a mental illness and was convicted of criminal offences and detained in Broadmoor Hospital, a high security P-H. After some years the Home Secretary authorised App's transfer to a hospital of lower security. The health authority for the second hospital refused to accept him, and the Home Secretary did not order the transfer. App complained that his continued detention in the high security P-H, and his legal inability to challenge the lawfulness of the refusal to transfer him, violated Art. 5.

Judgment

Art. 5(1)(e) – no vio. Art. 5 concerns detention, not the restrictions on the liberty to movement. Although the conditions in the second hospital would have been less restrictive, App would still have been detained. Art. 5 'does not guarantee a right to judicial control of the legality of all aspects or details of the detention' (para. 52). The Court noted 'the unfortunate fact that the applicant suffered, in human terms, an injustice in having to endure the strict regime at Broadmoor Hospital' for 19 months longer than his mental state required (para. 49).

ASLAN V. TURKEY

ECtHR, 59237/00, judgment 15 July 2005. Available only in French
MDAC Keywords: fair trial

Facts

Apps were tried by a State security court and given prison sentences for being members of, or having assisted, illegal armed organisations. They claimed that the proceedings were unfair and complained of the length of the proceedings (over 4½ years). Apps claimed that they had not been tried by an independent and impartial tribunal, as a military judge had sat as a member of the State security court.

Judgment

Art. 6(1) – vio. Civilians being tried for criminal offences had legitimate reason to fear that a State security court which included a military judge among its members might not be independent and impartial. No vio on length of the proceedings.

ASSENOV V. BULGARIA

ECtHR, 24760/94, judgment 28 October 1998
MDAC Keywords: ill-treatment; investigation

App alleged that the police had physically abused him. He complained that the Bulgarian authorities had not investigated his complaint sufficiently.

Judgment

Art. 3 – vio. ‘[W]here an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State’s general duty under [Art. 1] to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. This investigation ... should be capable of leading to the identification and punishment of those responsible (para. 102).

BALLESTRA V. FRANCE

ECtHR, 28660/95, judgment 12 December 2000. Available only in French
MDAC Keywords: fair trial; length of proceedings

Facts

App was arrested, taken to a police station, examined by a doctor and transferred to a P-H where he was detained. He complained about the duration of three sets of administrative proceedings, each of which had lasted more than 8 years: a preliminary demand for reimbursement of hospital fees, a claim for compensation against the Ministry of Interior, and a claim for compensation brought against the hospital.

Judgment

Art. 6(1) – vio. Length of time was excessive. Gov provided no explanation for those diverse delays.

BENJAMIN AND WILSON V. THE UNITED KINGDOM

ECmHR, 28212/95, decision 26 September 2002

MDAC Keywords: discharge, authority for; detention review of

Facts

App1 was in prison but developed mental illness and behavioural problems. The Secretary of State decided to transfer him to Broadmoor High Security Hospital. Secretary of State classed App1 as a 'technical lifer' (a person who was suffering from a mental disorder which influenced him to a significant extent at the time of the offence although the court had not made a hospital order on sentencing). In 1996 and 2001 App1's case for discharge was considered by the Mental Health Review Tribunal. On the second occasion the Tribunal recommended discharge.

App2 was also in prison. The court had psychiatric evidence that App2 had a mental illness. Expert psychiatrists recommended App2 should be made subject to a hospital order coupled with a restriction order without limit of time. In 1996 and 2000 the Mental Health Review Tribunal considered App2's case for discharge. On both occasions the Tribunal was not satisfied that App2 no longer required treatment in hospital for mental illness and did not recommend discharge.

The Apps alleged that the authority of the Tribunal fell short of the requirements of Art. 5(4)

Decision

Art. 5(4) – vio. Although the tribunal could recommend discharge to the Secretary of State, it did not have power to order discharge, as required by Art. 5(4). 'This is not a matter of form but impinges on the fundamental principle of separation of powers and detracts from a necessary guarantee against the possibility of abuse' (para. 36).

BENSAID V. THE UNITED KINGDOM

ECtHR, 44599/98, judgment 6 February 2001

MDAC Keywords: deportation; private life; treatment

Facts

App was Algerian national in the UK with a diagnosis of schizophrenia. He was due to be deported to Algeria. He complained that the deportation would constitute a vio of rights as he would receive no psychiatric medication in Algeria. He alleged that the deportation would have a severely damaging effect on his private life in the sense of his moral and physical integrity.

Judgment

Art. 3 – no vio. Art. 3 has a high threshold, particularly where the case does not concern the direct responsibility of the gov for the infliction of harm.

Art. 8 – no vio. 'Not every act or measure which adversely affects moral or physical integrity will interfere with the right to respect to private life guaranteed by Art. 8' (para. 46).

BERNARD V. FRANCE

ECtHR, 22885/93; judgment 23 April 1998

MDAC Keywords: fair trial; psychiatric assessment

Facts

App was accused of a crime. During the investigation a judge ordered psychiatric and psychological reports. The first report concluded that the applicant's 'chances of rehabilitation appear to be considerably compromised by both his criminal record and his personality'. The applicant requested a second opinion. The second opinion concluded, '[App] can never be rehabilitated. His allegiance to the world of organised crime seems irreversible. No sentence can be heavy enough to break his spirit; he will always try to escape from prison or strengthen his links with other criminals there. He is certain to re-offend, as is proved by his criminal record.' The judge refused App's request for a third opinion. App alleged that the comments made in the two reports had infringed his right to a fair trial and the principle of the presumption of innocence.

Judgment

Art. 6 – no vio. The purpose of the psychiatric examinations was to find out whether he had a mental or psychological disorder and, if so, whether there was a link between the disorder and the offences of which he was accused. They were also intended to assess how dangerous he was. The two specialists appointed by the investigating judge had to start from the working hypothesis that the applicant had committed the crimes. App did have an opportunity to challenge the reports but did not do so. App had failed to take opportunity to challenge the reports. The court had heard all of the App's witnesses, and his lawyers had had an opportunity to make observations after each witness had given evidence.

BIZZOTTO V. GREECE

ECtHR 22126/93, judgment 15 November 1996

MDAC Keywords: detention, place of

Facts

App was convicted of drug trafficking and sentenced to 8 years' imprisonment. An appeal court upheld the first decision and further ordered App to be placed in a facility to receive treatment for his drug addiction. This was not carried out and App applied to the ECmHR, alleging a vio of Art. 5(1) for failing to place him in such a facility.

Judgment

Art. 5(1) – no vio. The detention was the consequence of a criminal conviction for drug trafficking. The appeal court's decision to place App into a drug treatment facility did not in any way affect the main ground of the detention. Therefore, the detention could be examined only in relation to Art. 5(1)(a), where it followed a conviction by a competent court.

BOCK V. GERMANY

ECtHR 11118/84, judgment 29 March 1989

MDAC Keywords: incapacity; length of proceedings; psychiatric assessment; family life

Facts

App filed divorce proceedings because his wife had threatened to have him placed under guardianship on the ground of alleged mental illness. App underwent a psychiatric examination, which indicated no signs of mental illness. His wife brought guardianship proceedings, and a court deprived him of legal capacity and appointed a guardian. The court then committed the applicant to a mental hospital on 26 April 1974. Legal proceedings, involving allegations of mental illness, continued until 1983. App alleged that the time taken by the courts to hear his divorce action was not 'reasonable' within the meaning of Art. 6(1).

Judgment

Art. 6(1) – vio. The decisive of the protracted length of the proceedings was not so much a lack of judicial activity as an excessive amount of activity which focused on App's mental state. In principle, national courts have to proceed on the basis that an applicant has functional capacity and, should any reasonable doubt arise, they must clarify as soon as possible the extent to which the person is competent to conduct legal proceedings.

One after the other, proceedings based on Mr Bock's alleged mental ill health failed. By the time of the final divorce judgment, a total of 5 reports attested Mr Bock's soundness of mind. This case concerned matters central to the enjoyment of private and family life, namely relations between spouses, as well as between the parents and their children. The Court noted the personal situation of the applicant who, for some 9 years, 'suffered by reason of the doubts cast on the state of his mental health which subsequently proved unfounded. This represented a serious encroachment on human dignity' (para. 48).

BOCSI V. HUNGARY

ECmHR, 24240/94, decision 21 May 1998

MDAC Keywords: admissibility; fair trial; incapacity; legal representation; private life

Facts

App was detained in a P-H and was placed under guardianship. App tried to regain her legal capacity but failed. She applied to the ECmHR arguing that her right to a private life under Art. 8 had been violated.

Decision

Art. 8 – inadmissible. The interference with App's private life was lawful and justified.

Art. 6(1) – inadmissible. Rejecting all of App's complaints, ECmHR dismissed App's argument that the lack of legal representative provided to her for her appeal to the Supreme Court constituted a vio of Art. 6, stating that 'a refusal to appoint a guardian to a person not able to litigate in connection with a case which has no prospect of success does not interfere with the right, in civil cases, of access to court' (para. 3).

BOTTA V. ITALY

ECtHR, 21439/93, judgment 24 February 1998

MDAC Keywords: physical disability; private life

Facts

Due to App's physical disabilities he was not able to gain access to a private beach, contrary to domestic legislation requiring that private beaches be accessible to people with disabilities. App alleged a violation of his private life under Art. 8.

Judgment

Art. 8 – not applicable. ECtHR said that '[p]rivate life [...] includes a person's physical and psychological integrity; the guarantee afforded by Art. 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings' (para. 32). States have a positive obligation to respect private life, for example to adopt measures designed to secure respect for private life in the sphere of relations of individuals between themselves. A fair balance has to be struck between societal and individual interests, and the State has a margin of appreciation.

'The right asserted by the applicant, namely the right to gain access to the beach and the sea at a place distant from his normal place of residence during his holidays, concerns interpersonal relations of such broad and indeterminate scope that there can be no conceivable direct link between the measures the State was urged to take in order to make good the omissions of the private bathing establishments and the applicant's private life' (para. 35).

Art. 14 (non-discrimination) – not applicable. ECtHR explained that Art. 14 complements the other substantive Convention provisions and has no independent existence, since it has effect solely in relation to other rights. 'Although the application of Art. 14 does not presuppose a breach of one or more of those provisions – and to this extent it is autonomous –, there can be no room for its application unless the facts of the case fall within the ambit of one or more of the latter' (para. 39).

BOUAMAR V. BELGIUM

ECtHR, 9106/80, judgment 29 February 1988

MDAC Keywords: child; ill-treatment; legal representation; detention, pre-trial

Facts

App, a child, complained under Art. 5 of the lawfulness of his 9 periods in pre-trial detention within 1 year.

Judgment

Art. 5(1)(d) – violation. App was taken successively between prison and family. There was a lack of appropriate facilities and educational staff. Repetition of the placements did not further any educational aim and made them less and less 'lawful'.

Art. 5(4) – violation. The mere fact that App (who was very young at that time) appeared in person at the court did not provide necessary safeguards in the absence of the effective assistance of his lawyer. App's appeals had no practical effect.

BOUILLY V. FRANCE

ECtHR, 38952/97, judgment 7 December 1999. Available only in French.
MDAC Keywords: access to records; length of proceedings

Facts

App requested copies of her medical and administrative files relating to detention in psychiatric department of a hospital. The authorities approved access to the files except those prior to 1980 as these had been destroyed. The hospital refused to provide several documents which were personal notes by the doctors. A court annulled the hospital's decision to refuse access. Subsequently the applicant was issued with 138 complementary documents. App alleged violation of respect to her private life under Art. 8.

Judgment

Art. 6(1) – violation. Legal proceedings lasted more than 5 years. The case did not involve any particular complexity. However App herself contributed to the delay because she waited longer than 14 months before invoking proceedings at administrative tribunal. Gov was unable to provide explanations for over 2 years' inactivity.

BRAND V. THE NETHERLANDS

ECtHR, 49902/99, judgment 11 May 2004
MDAC Keywords: detention, authority for; detention, place of

Facts

App was serving a 15-month prison sentence and was assessed as having a mental disorder. A court ordered App to be transferred to a clinic. When App's prison sentence finished, the detention order took effect. App was not transferred to a clinic because there were no places available. He remained in an ordinary pre-trial prison.

Judgment

Art. 5(1) – violation. There must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. It would be unrealistic and too rigid an approach to expect the authorities to ensure that a place would be immediately available at a selected clinic. A certain friction between available and required capacity in custodial clinics is inevitable and must be regarded as acceptable.

A significant delay in admission to a custodial clinic and thus the beginning of the treatment of the person concerned will affect the prospects of the treatment's success within the time frame for the validity of a post-sentence detention order. The chances of having to prolong the validity of the post-sentence detention order would, correspondingly, be increased.

A reasonable balance had not been struck between the competing interests. Authorities were not faced with an exceptional and unforeseen situation. Even a delay of 6 months in transferring App to a clinic was unacceptable.

CHAVE (NÉE JULLIEN) V. FRANCE

ECmHR, 14461/88, decision 9 July 1991. Available only in French.
MDAC Keywords: admissibility; confidentiality; private life

Facts

App requested that her name and personal details be deleted from a register of persons diagnosed with psychiatric illness. The authorities refused this request.

Decision

Art. 8 – inadmissible. The retention of information concerning a person’s psychiatric detention after their discharge from hospital could amount to interference of right to respect for private life. However, this interference was justified since strict rules of confidentiality applied.

CLUNIS V. THE UNITED KINGDOM

ECtHR, 45049/98, decision 11 September 2001
MDAC Keywords: access to court; admissibility; private life

Facts

App had diagnosis of mental illness and attacked a fellow resident at a hostel. He was detained and released. Authorities noted that he was behaving aggressively and a psychiatrist requested that the local authority make a formal assessment of him, which was arranged on a non-urgent basis. Police reported that App had knives and spoke about devils. The psychiatrist advised that App be assessed as soon as possible. Shortly afterwards, App killed a stranger. He pleaded guilty to manslaughter on the basis of diminished responsibility.

An inquiry into the homicide concluded that significant errors had been made in App’s aftercare from hospital. At the ECtHR, App complained that he had been denied access to a court for a determination of his civil claim against the health authority, since his cause of action was struck out for reasons of public policy. App also complained of a vio of his Art. 8 rights in that the authorities had failed to comply with their positive obligation to ensure effective protection for his right to respect for his private life, in particular his psychological and psychiatric well-being.

Decision

Art. 6(1) – inadmissible. This extends only to disputes over rights and obligations which can be said are arguably recognised under domestic law; Art. 6(1) does not in itself guarantee any particular content for these rights. App could test the arguability of his claims under domestic law.

Art. 8 – inadmissible. ‘Private life’ includes a person’s physical and psychological integrity. While the essential object of Art 8 is to protect the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: there may be positive obligations inherent in respecting private life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. However, the concept of respect is not precisely defined. To determine whether such obligations exist, a fair balance has to be struck between

the general interest and the interests of the individual, while the State has, in any event, a margin of appreciation. There was no direct link between the measures which, in App's view, should have been taken by the authorities and the damage to his psychiatric well-being caused by the realisation of the gravity of his act, his conviction and subsequent indefinite psychiatric detention. On that account the complaint is inadmissible.

CROKE V. IRELAND

ECtHR, 33267/96, decision 15 June 1999

MDAC Keywords: admissibility; detention, authority for; detention, review of

Facts

App had mental illness and was detained in a P-H. His period of detention had not been formally extended as required by the domestic legislation and he was consequently released by a court order. On the day of his discharge two doctors certified that App needed to be further detained and App was re-detained. App commenced habeas corpus proceedings arguing that legislation which regulated detention was unconstitutional. These were unsuccessful, and App argued at ECtHR under Art. 5 that no court had properly reviewed his detention and that the habeas corpus proceedings were not speedy.

Decision – admissible.

DELBEC V. FRANCE

ECtHR, 43125/98, judgment 18 June 2002. Available only in French.

MDAC Keywords: detention, review of; length of proceedings

Facts

App was arrested for a crime and was ordered by a mayor to be detained in a psychiatric. App applied to a tribunal and an administrative court in April 1998 for her immediate release. The proceedings before the tribunal resulted in App's discharge from hospital in August 1998. The administrative proceedings were concluded in September 1998.

Judgment

Art. 5(4) – vio. The purpose of the proceedings was to allow a rapid decision about App's liberty, but the judge failed to give a decision as quickly as possible.

D.G. V. IRELAND

ECtHR, 39474/98, judgment 16 May 2002

MDAC Keywords: child; detention, place of; education

Facts

App, a child, had been looked after since the age of 2 by the Irish authorities. He had a serious personality disorder and a history of criminal activity. He was considered a danger to himself and to others. He

had absconded from non-secure accommodation and failed to cooperate with the health authorities. On 5 occasions he asked the health authorities to provide proper accommodation to cater to his needs. The health authority decided to place App in a high-support therapeutic unit for teenagers, but no such unit existed in Ireland. The applicant sought judicial review for a declaration that he had been deprived of his constitutional rights requiring the State to provide suitable care and accommodation. In the meantime the High Court ordered the App to be detained in a penal institution for 3 weeks. App complained under Art. 5 that his detention in the penal institution was not ‘in accordance with a procedure prescribed by law’.

Judgment

Art. 5(1)(d) – vio. Whilst there may have been no statutory basis for the judicial decisions, the High Court was protecting a child’s rights. In the context of the detention of minors, the words ‘educational supervision’ must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned. In the penal institution App was subjected to its disciplinary regime. The educational services were entirely voluntary and App made no attempt to benefit from them. The detention was not considered to be an interim custody measure for the purpose of an educational supervisory regime which was followed speedily by such a regime. The detention orders were not based on any specific proposal for the applicant’s secure and supervised education.

Art. 5(5) – vio. The Convention has not been incorporated into Irish law, and there exists no enforceable right to compensation.

D.M. V. FRANCE

ECtHR, 41376/98, judgment 27 June 2002. Available only in French.
MDAC Keywords: detention, review of; length of proceedings

Facts

App was detained in P-H in May 1997. The following month he asked a court to review his detention and order his immediate discharge. One year and 20 days after receiving App’s application for immediate release, the tribunal struck it out. App complained of a vio of Art. 5 because of length of the proceedings.

Judgment

Art. 5(4) – vio. This length of proceedings did not comply with the requirement for detention to be decided ‘speedily’.

D.N. V. SWITZERLAND

ECtHR, 27154/95, judgment 29 March 2001
MDAC Keywords: detention, review of; fair trial

Facts

App was detained under mental health legislation. A psychiatrist who had treated the App acted as judge on the Administrative Appeals Commission hearing her case for discharge

from psychiatric detention. The other judges on the Commission were not psychiatrists and had to rely completely on the psychiatrist. App complained of vio of Art.5 because of lack of impartiality of tribunal.

Judgment

Art. 5(4) – vio. Proceedings under Art. 5(4) must be of a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question. Independence of the judiciary represents a vital element. Where deprivation of liberty of a person with mental disability is in question, such impartiality is essential.

DONNADIEU V. FRANCE

*ECtHR, 39066/97, judgment 27 February 2001. Available only in French.
MDAC Keywords: detention, review of; length of proceedings*

Facts

App was detained in a P-H in 1969. Believing that the detention was illegal, in 1994 he started judicial proceedings for his discharge. In June 1995 App made a separate claim for compensation before the civil courts. In 1997, App complained to the ECtHR alleging a vio of Art. 6(1) due to the length of the proceedings.

Judgment

Art. 6(1) – vio. The civil court procedure had lasted more than 5 years and 6 months, which seems in theory to be too long a duration for one instance only. What is more, the administrative proceedings took a total of 6 years and 8 months. The case was not so complex as to justify such a delay.

DOUGOZ V. GREECE

*ECtHR, 40907/98, judgment 6 March 2001
MDAC Keywords: CPT; deportation; ill-treatment*

Facts

App, a Syrian national, was found guilty of drug offences and ordered to be deported. Between June 1997 and December 1998 he was detained in overcrowded and dirty cells with insufficient sanitary and sleeping facilities, insufficient hot water, no fresh air or daylight and no exercise facilities. The European Committee for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment (CPT) corroborated App's evidence with a report on the conditions of the police cells.

Judgment

Art. 3 – vio. The inordinate length of the period during which he was detained in such conditions amounts to degrading treatment under Art. 3.

E. V. NORWAY

ECtHR, 11701/85, judgment 29 August 1990

MDAC Keywords: detention, review of; length of proceedings

Facts

App was convicted of several offences, had a diagnosis of ‘psychopathy’, and was detained in a secure P-H for an indefinite period. App applied to a court to review the detention. The court proceedings lasted 8 weeks: 5 weeks between lodging the application and hearing the case, and 3 weeks to deliver the judgment. App complained under Art. 5 of length of time of the court proceedings.

Judgment

Art. 5(4) – vio. Eight weeks was not ‘speedy’.

EDWARDS (PAUL AND AUDREY) V. THE UNITED KINGDOM

ECtHR, 46477/99, judgment 14 March 2002

MDAC Keywords: death; investigation; legal representation

Facts

Apps were parents of Edwards, a prisoner who was killed in prison by his cellmate. The defendant pleaded guilty to manslaughter so there was no criminal trial. An ‘inquiry after homicide’ was established to investigate how the death occurred. The inquiry panel consisted of five professionals chaired by a senior lawyer and met on 56 days over 10 months. It sat in private but heard around 150 witnesses, and a considerable number of others submitted written evidence. The final 388-page report reached numerous findings of defects and made recommendations for future practice.

Apps complained under Art. 2 that, as relatives of the deceased, they were denied the right to attend all of the inquiry as it was conducted in private. They were not legally represented, nor were they able to ask questions to witnesses. They also complained that the inquiry panel did not have the power to compel witnesses (2 prison officers refused to give oral testimony to the panel).

Judgment

Art. 2 – vio. The inquiry panel’s lack of power to compel witnesses detracted from its capacity to establish the facts relevant to the death, and thereby to achieve one of the purposes required by Art. 2. Apps had close and personal concern, so the inquiry should not have sat in private.

EGGER V. AUSTRIA

ECmHR, 15780/89, decision 11 October 1993

MDAC Keywords: access to court; admissibility; incapacity

Facts

App had mental disabilities and was under guardianship. He complained under Art. 6(1) that he had no access to court to dismiss or replace his guardian.

Decision

Art. 6(1) – inadmissible. Guardianship provided for the App’s representation by a guardian. Austrian law provided for regular reviews of the necessity of the guardianship. The restrictions imposed on the App’s legal capacity by the appointment of the guardian did not impair the very essence of the applicant’s right to access to a court.

ENHORN V. SWEDEN

ECtHR, 56529/00, judgment 25 January 2005

MDAC Keywords: detention, authority for

Facts

App had HIV virus and transmitted it to another man. He was detained in hospital to stop him from infecting others with HIV. After absconding from hospital he was diagnosed as having a paranoid personality disorder and was re-detained in hospital. His detention order extended over a period of almost 7 years. App complained that the compulsory isolation orders and involuntary placement in hospital had been in breach of Art. 5(1).

Judgment

Art. 5(1)(e) – vio. The purpose of the detention was to prevent App from spreading the HIV virus. The essential criteria when assessing the lawfulness of the detention of a person for the prevention of the spreading of infectious diseases are whether the infectious disease is dangerous for public health or safety, and whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest. When these criteria are no longer fulfilled, the basis for the deprivation of liberty ceases to exist. By extending the detention order over a period of almost 7 years, with the result that he was placed involuntarily in a hospital for almost 1½ years in total, the authorities failed to strike a fair balance between the need to ensure that the HIV virus did not spread and App’s right to liberty.

ERIKSSON V. SWEDEN

ECtHR, 11373/85, judgment 22 June 1989

MDAC Keywords: child; family life

Facts

App’s daughter was taken into care and placed in a foster home in 1978. In 1983, the authorities terminated the care order but decided that the child should remain in the foster home and that the child would gradually return to the App. She alleged that the decision to prohibit her for an indefinite period from removing her daughter from the foster home, the maintenance in force of this prohibition for more than 6 years and the restrictions imposed on her access to the child violated Art. 8. App also argued vio of Art. 6 for lack of remedy before a court with regard to the restrictions on her access to her daughter.

Judgment

Art. 8 – vio. The mutual enjoyment by parent and child of each other's company constitutes a fundamental element of family life. Family relationships are not terminated when a child is taken into public care. In this case, the restriction of access was not in accordance with domestic law nor proportionate to legitimate aims.

Art. 6 – vio. Inadequate legal remedies with regard to the restrictions on access.

ERKALO V. THE NETHERLANDS

ECtHR, 23807/94, judgment 2 September 1998

MDAC Keywords: detention, authority for

Facts

App was serving a prison sentence, which was to be followed by detention in a P-H. The authorities decided to commence treatment prior to the planned date. The prosecutor requested an extension of App's detention, but the request arrived with the court late. App argued a vio of Art. 5 for the delay between the expiry date of the initial detention and the subsequent decision of a court 2½ months later.

Judgment

Art. 5(1) – vio. Although the public prosecutor prepared the request for the extension in time and informed the applicant accordingly, the request did not reach the court until 2 months after the expiry of the statutory period. The onus for ensuring that a request for the extension of a detention order is made and examined on time rests on the authorities, not the detainee.

FRANCISCO V. FRANCE

ECtHR, 38945/97; judgment 29 August 2000. Available only in French.

MDAC Keywords: length of proceedings

Facts

App complained about the length of two sets of proceedings he brought for damages following his confinement in a P-H. The proceedings lasted for more than 7 years, 9 months and more than 3 years, 4 months.

Judgment

Art. 6(1) – vio. Gov admitted that the proceedings were not particularly complex.

GAJCSI V. HUNGARY

ECtHR, 34503/03, judgment 3 October 2006
MDAC Keywords: detention, authority for

Facts

App had been detained in a P-H for 3 years when a court conducted an annual review of the lawfulness of detention. The court renewed the detention, reasoning as follows: ‘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.’ App appealed that the court’s decision was substantially deficient. App appealed unsuccessfully. App argued that his detention had not been ordered in a procedure ‘prescribed by law’ and that he had not been given reasons for his confinement.

Judgment

Art. 5(1) – *vio.* 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 Art. 5, namely to protect the individual from arbitrariness. The relevant domestic law emphasises the prerequisite of dangerousness to justify compulsory hospitalisation and treatment. The domestic court decisions were devoid of any assessment of the App’s alleged or potential ‘dangerous conduct’, and the detention was therefore not prescribed by law.

GASKIN V. THE UNITED KINGDOM

ECtHR, 10454/83; judgment 7 July 1989
MDAC Keywords: access to records; confidentiality; private life

Facts

App wanted to bring proceedings against the local authority because he alleged he was ill-treated whilst in foster homes as a child. He tried to gain access to local authority files on his case. The authorities decided that the information in App’s file should be made available to him if the contributors to the file gave their consent to disclosure. He complained that the lack of direct access violated his right to respect for private life under Art. 8.

Judgment

Art. 8 – *vio.* Persons in the situation of the App have a vital interest, protected by the ECHR, in receiving the information necessary to know and to understand their childhood and early development. However, confidentiality of public records is important for objective and reliable information, and such confidentiality can also be necessary for the protection of third persons. A system which makes access to records dependent on the consent of the contributor, can in principle be considered compatible with the obligations under Art. 8, taking into account the State’s margin of appreciation. Under such a system the interests of the individual seeking access to records relating to his private and family life must be secured when a contributor to the records either is not available or improperly refuses consent. Such a system conforms with the principle of proportionality only if it provides that an independent authority finally decides whether access has to be granted in cases where a contributor fails

to answer or withholds consent. No such procedure was available to the applicant in the present case.

Art. 10 – no vio. Art. 10 does not embody an obligation for the Government to impart the information in question to the applicant.

GIALAMAS V. GREECE

ECtHR, 70314/01; judgment 21 October 2004. Available only in French.

MDAC Keywords: access to records; length of proceedings

Facts

App was admitted to hospital with the diagnosis of paranoia, and doctors signed a 'certificate of internment'. Later, App was transferred to a clinic where doctors agreed with him that he did not present any paranoid symptoms and that he did not require detention. App asked hospital to revoke the certificate, but it refused on the basis that it was a public document certifying state of health on the date it was issued. App appealed to court, which took more than 3 years to decide on the case. App alleged unreasonable length of time under Art. 6(1).

Judgment

Art. 6(1) – vio. The reasonableness of the length of proceedings depend on the facts, which in this case presented no particular difficulty.

GLASS V. THE UNITED KINGDOM

ECtHR, 61827/00, judgment 9 March 2004

MDAC Keywords: child; private life; treatment

Facts

App1 had several mental and physical disabilities and required 24-hour attention. Following an operation, he became critically ill. App2, his mother, opposed the use of morphine to alleviate her son's distress. His doctor considered that resuscitation would not be in App1's best interests. App2 asked to take her son home if he was dying, but a police officer advised her that if she attempted to remove him, she would be arrested. App1 was given a diamorphine infusion and a dispute broke out between the family and doctors. Family believed that App1 was being covertly euthanised and attempted to prevent the doctors from entering his room. A 'Do Not Resuscitate' order was put in the App1's medical notes without consulting his mother. The hospital could have sought the High Court's approval but did not. App1's condition deteriorated and his mother successfully resuscitated the applicant. His condition improved, and he was eventually discharged. Apps alleged a breach of Art. 8 private life rights, arguing that the law failed to guarantee the respect for physical and moral integrity.

Judgment

Art. 8 – vio. The decision to impose treatment on the son in defiance of his mother's objections gave rise to an interference with his right to respect for his private life, and in particular his right to physical integrity. The interference was in accordance with the law, and the action

taken by the hospital staff pursued a legitimate aim and it was not the doctors' intention to hasten App1's death.

In deciding whether the interference was necessary in a democratic society, it had not been explained to the Court's satisfaction why the hospital failed to seek the intervention of the High Court. The doctors at that time all shared a gloomy prognosis of App1's capacity to withstand further crises, and they were left in no doubt that their proposed treatment would not meet with the agreement of his mother. The onus was on the hospital to take the initiative to bring the matter before the High Court. The decision of the authorities to override App2's objection to the proposed treatment in the absence of authorisation by a court resulted in a breach of Art. 8.

GORSHKOV V. THE UKRAINE

ECtHR, 67531/01, judgment 8 November 2005

MDAC Keywords: detention, review of

Facts

App had been sent to a P-H by a criminal court. Some years later the P-H asked the court to place App under ordinary supervision because his behaviour had improved. A number of such requests were refused. Eventually App was discharged. He complained under Art. 5(4) that he had no effective remedies against the detention; in particular, he alleges that he was released almost 2 years after his condition had improved.

Judgment

Art. 5(4) – vio. Access to a judge should not depend on the good will of the detaining authority, activated at the discretion of the doctors or hospital administration. A patient must have the right to seek judicial review on his or her own motion. Ukrainian law as it stood, ensuring that a patient was brought before a judge automatically was insufficient on its own and did not eliminate the need for an independent right of individual application by the patient.

GRANATA V. FRANCE

ECtHR, 39626/98, judgment 19 March 2002. Available only in French.

MDAC Keywords: detention, review of; length of proceedings

Facts

App was detained in a P-H after a doctor issued a medical certificate indicating that this was necessary as a matter of urgency. App brought administrative proceedings challenging the lawfulness of the hospital order. He also instituted proceedings before the civil courts for compensation for the damages he sustained. He complained about the length of the civil proceedings (9½ years for two levels of jurisdiction).

Judgment

Art. 6(1) – vio. The delay was not reasonable.

GRARE V. FRANCE

ECmHR, 18835/91, decision 2 December 1992. Available only in French.

MDAC Keywords: private life; treatment

Facts

App was forcibly given psychiatric medication which had unwanted side effects. He alleged that this constituted inhuman and degrading treatment and also a breach of respect to private life.

Decision

Arts. 3 and 8 – not admissible. Even if the treatment had unpleasant side effects, it did not reach the minimum level of severity under Art. 3. The treatment was an invasion of private life, but it was justified by the need to preserve public order and protect health under Art. 8(2).

GUENAT V. SWITZERLAND

ECmHR, 24722/94; decision 10 April 1995. Available only in French.

MDAC Keywords: admissibility; detention, authority for; psychiatric assessment

Facts

Police officers invited a man (App) whom they believed to be acting strangely to accompany them to the police station, which he did without opposition. In the police station he was not locked up but was free to walk around the premises. He was seen by a psychiatrist, who concluded that App constituted a danger for himself and for the people around him and consequently was in need of a special environment. The psychiatrist composed a note for non-voluntary confinement in a psychiatric establishment. Upon admission, the somatic examination of App revealed high blood pressure, and thus the applicant was immediately transferred to a cantonal hospital, where he was hospitalized until 1 Aug 1989 for three epileptic crisis. Invoking Art. 5(2), App complained that against his will he had been hospitalized abusively and irregularly in a P-H.

Decision

Art. 5 – inadmissible. App had not exhausted domestic remedies pertaining to Art. 5(2). The police had intervened for humanitarian reasons because of App's strange behavior. Because their intervention did not have any repressive characteristics, App was not deprived of his liberty in the sense governed by Art. 5(1).

GUÉRIN V. FRANCE

ECtHR, 25201/94, judgment 29 July 1998

MDAC Keywords: admissibility; fair trial; access to court

Facts

Although App had been told of the court date, he was not present when he was convicted and sentenced to 2 years' imprisonment, and an arrest warrant was issued. Independently of the court proceedings, he was admitted to a psychiatric institution, where he stayed until the day the police enforced the warrant for his arrest. The court declared App's appeal on points of law

inadmissible, on the ground that he had not complied with the warrant for arrest. App alleged a vio of Art. 6(1), arguing that the court's rationale for this decision had infringed his right of access to a court, one of the elements of the right to a fair trial.

Judgment

Art. 6(1) – vio. The right to a court is not absolute and may be subject to limitations permitted by implication, particularly regarding the conditions of admissibility of an appeal. These limitations must not restrict exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved.

H. V. FRANCE

ECtHR, 10073/82, judgment 24 October 1989

MDAC Keywords: ill-treatment; length of proceedings

Facts

App spent nearly 4 months in a psychiatric clinic in 1961. He sued the hospital for damages for the serious health problems that the treatment in the clinic had allegedly caused him. A first instance and an appeal court dismissed his claims. The total length of the proceedings was 7 years and 7 months. App alleged a vio of Art. 6(1) on length of proceedings

Judgment

Art. 6(1) – vio. Length of proceedings was excessive as no investigative measures were taken and the Government provided no evidence that the situation was a temporary one and that remedial action had been taken.

HÉNAF V. FRANCE

ECtHR, 65436/01, judgment 27 November 2003

MDAC Keywords: admissibility; ill-treatment; restraint

Facts

On failing to return to prison after a period of leave, App was assessed as having a psychological disorder that had impaired his powers of judgment and that prison “could not be therapeutic for him”, especially in view of his advanced age. On return to prison, App was transferred to hospital for an operation. App was handcuffed while being taken to hospital and remained handcuffed for the rest of the day. The night before the operation he was chained by the ankle to a bedpost. Complaining of the inhuman conditions of his stay in hospital, App refused to undergo the operation and was returned to prison. App lodged a criminal complaint against the police officers, which was declared inadmissible because App had not paid a court fee. App alleged vio of Art. 3, complaining, on account of his age and state of health, about the conditions of his stay in hospital.

Judgment

Art. 3 – vio. App had no convictions of violence. His failure to return to prison was a result of a ‘psychological disorder’ and had been non-violent. It had not been established that App posed a danger. The degree of danger he allegedly posed could not justify attaching him to his hospital bed the night before his operation, particularly as two police officers had remained on guard outside his room. Having regard to App’s age, state of health and the considerations mentioned above, the restrictions on his movement had been disproportionate to the security requirements.

HERCZEGFALVY V. AUSTRIA

ECtHR, 10533/83, judgment 24 September 1992

MDAC Keywords: correspondence; detention, review of; length of proceedings; private life; restraint; treatment

Facts

App was convicted of criminal offences and detained in a P-H. He complained: Under Art. 5(4), that court decisions reviewing the lawfulness of his detention had not been given speedily. The 3 court decisions about App’s detention were taken at intervals of 15 months, 2 years and 9 months. Under Art. 3, that he had been unnecessarily and involuntarily given sedatives, force-fed, and restrained with handcuffs to a hospital bed for weeks. Under Art. 8, that the hospital had force-fed him, imposed psychiatric treatment upon him, and refused to send on his correspondence. Under Art. 10, that he had been deprived of reading matter, radio and television for long periods of his detention.

Judgment

Art. 5(4) – vio. The first two decisions (15 months, then 2 years) cannot be regarded as having been taken at reasonable intervals, especially as the numerous requests for release submitted at that time by App brought no response.

Art. 3 – no vio. ‘The Court considers that the position of inferiority and powerlessness which is typical of patients confined in P-Hs calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used, if necessary by force, to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Art. 3, whose requirements permit of no derogation. The established principles of medicine are admittedly in principle decisive in such cases; as a general rule, a measure which is a therapeutic necessity cannot be regarded as inhuman or degrading. The Court must nevertheless satisfy itself that the medical necessity has been convincingly shown to exist’ (para. 82). In this case there was a ‘therapeutic necessity’ which cannot be regarded as inhuman or degrading treatment.

Art. 8 – vio. The law that gov relied on to interfere with App’s correspondence was vague and ‘did not specify the scope or conditions of exercise of the discretionary power which was at the

origin of the measures complained of. But such specifications appear all the more necessary in the field of detention in psychiatric institutions in that the persons concerned are frequently at the mercy of the medical authorities, so that their correspondence is their only contact with the outside world' (para. 91).

Art. 10 – vio. The law that gov relied on to justify restriction of access to information was vague.

HERZ V. GERMANY

ECtHR, 44672/98, judgment 12 June 2003. Available only in French
MDAC Keywords: detention, review of; psychiatric assessment

Facts

App was detained in a P-H. A psychiatric report concluded that App had paranoid psychosis and was dangerous. Subsequent examinations by a number of specialists led to differing conclusions as to whether detention was necessary. App was readmitted to a P-H. On the basis of a diagnosis received over the telephone, a court upheld the order for his provisional detention. App alleged a vio of Arts. 5(1), 5(4) and 6(1) complaining that his 2nd detention was unlawful as he did not have a mental disorder, and that he had been denied access to a court to have the lawfulness of his detention decided.

Judgment

Arts. 5(1) and 6(1) – no vio. The court was not at fault in failing to obtain psychiatric reports or hear App, as it had been under a duty to make a decision rapidly. It was not easy to reach a final conclusion on App's state of health, because there were conflicting psychiatric opinions.

Art. 5(4) – vio. Courts had dismissed App's applications on the ground that in the interim the detention orders had expired and App had escaped from hospital. In view of the gravity of such measures, even if only temporary, the mere fact that the detention order had expired could not deprive App of the right to a review of the lawfulness of his detention.

H.F. V. SLOVAKIA

ECtHR, 54797/00; judgment 8 November 2005. Available only in French
MDAC Keywords: fair trial; incapacity; psychiatric assessment

Facts

A court deprived App of her legal capacity on the basis that she had chronic paranoid schizophrenia and was incapable of entering into legal transactions or managing her affairs. The court had not heard evidence from App but relied in its decision on an old psychiatric report and on statements by App's former husband and his witnesses. App appealed, and without hearing evidence from her or ordering further psychiatric reports as her lawyer had requested, the court rejected her appeal. The applicant recovered her legal capacity in July 2001.

The applicant alleged a vio of Art. 6(1) complaining of the unfairness of the procedure by which she had been deprived of her legal capacity. She alleged that the courts had not properly

established the facts or given sufficient reasons for their decisions. She complained of failings on the part of the guardian appointed by the court to represent her.

Judgment

Art. 6(1) – vio. Slovak law required the courts to appoint a guardian to act on behalf of an adult whose legal capacity was at issue, but App had not been represented by a guardian at first instance and had been represented only on appeal. The psychiatric report could not be regarded as ‘up-to-date’, within the meaning of the Committee of Ministers Recommendation R(99)4 on principles concerning the legal protection of incapable adults. Furthermore, a further report would have enabled the district court to decide whether it should hear evidence from App.

The proceedings, the outcome of which was extremely important to the applicant, should have been surrounded by appropriate procedural safeguards that would have enabled her rights to be protected and her interests to be taken into account. The Slovakian courts had not acted with the necessary diligence or assembled sufficient evidence to make an assessment of the applicant’s faculties and to avoid any miscarriage of justice.

HIRST V. THE UNITED KINGDOM (NO. 2)

ECtHR, 74025/01, judgment 30 March 2004

MDAC Keywords: voting

Facts

App was serving a sentence of life imprisonment in prison. As a convicted prisoner, he was legally prohibited from voting in parliamentary or local elections. He alleged a vio of Art. 3 of Protocol No. 1 to the ECHR, and Art. 10, complaining that his voting rights were restricted as was his freedom of expression in that voting was a form of expression which was fundamental to a functioning democracy.

Judgment

Art. 3 of Protocol No. 1 – vio. Any devaluation or weakening of the right to vote threatened to undermine the democratic system and it should not, therefore, be lightly or casually removed. ECtHR doubted gov’s assertion that voting restrictions on prisoners were designed to prevent crime and punish offenders and to enhance civil responsibility and respect for the rule of law. The provision stripped ECHR right from over 70,000 people in a manner which was indiscriminate by imposing a blanket restriction on all convicted prisoners. A person sentenced to a week’s imprisonment for a minor infraction might lose the right to vote if detained over election day, whereas a prisoner serving years for a more serious crime might, by chance, avoid missing an election. A fair balance must be struck. It was for the legislature to decide whether any restriction on the right to vote should be tailored to particular offences, or offences of a particular gravity or whether, for instance, the sentencing court should be left with an overriding discretion to deprive a convicted person of his right to vote. There was no evidence that the legislature had ever sought to weigh the competing interests or to assess the proportionality of the ban as it affected convicted prisoners. An absolute bar on voting by any serving prisoner in any circumstances did not fall within an acceptable margin of appreciation. No separate issue arose under Art. 10.

H.L. V. THE UNITED KINGDOM

ECtHR, 45508/99, judgment 5 October 2004

MDAC Keywords: detention, authority for; detention, review of; incapacity

Facts

App was an autistic man, unable to speak and with a limited level of understanding. He lacked the capacity to consent (or object) to medical treatment. He lived with paid carers. Following an incident at a day-care centre, when he became particularly agitated, hitting himself on the head with his fists and banging his head against the wall, he was taken to a hospital, where a psychiatrist considered that he required in-patient treatment. The doctor considered that compulsory detention was not necessary. App's carers asked a court to discharge him, but the request was rejected on the basis that App had been informally admitted and had not been 'detained'. App alleged a vio of Art. 5(1) arguing that his treatment as an informal patient in a psychiatric institution amounted to unlawful detention and that the procedures available to him for a review of the legality of his detention did not satisfy the requirements of Art. 5(4).

Judgment

Art. 5(1) – vio. App was under continuous supervision and control and was not free to leave. It made no difference whether the hospital department in which he was being treated was locked or lockable. App was 'deprived of his liberty' in Convention terms. There were no procedural rules by which the admission and detention of a compliant patient lacking capacity was conducted. This is in contrast to the extensive network of safeguards applicable to people legally classed as detained. There was a lack of any formalised admission procedures indicating who could propose admission, for what reasons and on the basis of what kind of medical and other assessments and conclusions. There was no requirement to fix the exact purpose of admission and no limits in terms of time, treatment or care attached to that admission. There was no provision requiring a continuing clinical assessment of the persistence of a disorder warranting detention. App did not benefit from the nomination of a representative who could make objections and applications on his behalf, a procedural protection afforded to people detained. The absence of procedural safeguards failed to protect against arbitrary deprivations of liberty on grounds of necessity.

Art. 5(4) – vio. No procedure was available to App for having a court review the lawfulness of his detention.

H.M. V. SWITZERLAND

ECtHR, 39187/98, judgment 26 October 2004

MDAC Keywords: detention, authority for

Facts

App was placed in a nursing home against her will. She was not allowed to decide where she lived or to take decisions concerning her everyday life. She claimed that she could wash and dress herself, that her son could cook for her and that she did not want him to be left alone. App alleged she was unlawfully deprived of her liberty, since Art. 5(1)(e) cites only 'vagrancy', and not neglect, as a ground of detention. She contended that she did not meet the conditions of vagrancy, as she had a home and received a pension.

Judgment

Art. 5(1) – no vio. The applicant received care in her own home but she refused to cooperate. Her living conditions deteriorated as a result to such an extent that the authorities decided to take action. App’s placement into a nursing home was a responsible measure taken by the competent authorities in App’s own interests to provide her with the necessary medical care and adequate living conditions.

IRELAND V. THE UNITED KINGDOM

ECtHR, 5310/71, judgment 18 January 1978

MDAC Keywords: ill-treatment

Facts

12 people were arrested and moved to unidentified centres for interrogation in depth extending over several days. This involved interrogation techniques, known as disorientation techniques, such as wall-standing (forcing detainees to remain for periods of some hours in a position causing stress to the body), hooding, subjection to noise, deprivation of sleep and deprivation of food and drink. App (the Irish gov) alleged breaches of Arts. 3, 5 and 6, arguing that the British gov had failed on several occasions in their duty to furnish the necessary facilities for the effective conduct of the investigation.

Judgment

Art. 3 – vio. The five techniques were applied in combination, with premeditation and for hours at a stretch; they cause, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Art. 3. The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.

The distinction between torture and inhuman or degrading treatment is principally one of a difference in the intensity of the suffering inflicted. Although the techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not result in the particular intensity and cruelty implied by the word torture.

JABŁOŃSKI V. POLAND

ECtHR, 33492/96, judgment 21 December 2000

MDAC Keywords: detention, authority for; detention, pre-trial; length of proceedings

Facts

App was detained pre-trial and admitted to hospital following his hunger strike and subsequently placed in a ward for internal diseases. App appealed to be released but was unsuccessful. He complained about his pre-trial detention and the length of the proceedings.

Judgment

Art. 5(3) – vio. App was held in pre-trial detention for 4 years and 9 months. ECtHR did not accept gov's suspicion that the possibility of App committing serious offences could constitute a relevant and sufficient ground for being held in custody for the entire period. In principle, Art. 5(3) does not oblige national authorities to release a detainee on account of his state of health. Gov failed to consider, though, that with the passage of time and given the number and character of the App's acts of self-aggression in prison, it became obvious that keeping him detained no longer served the purpose of bringing him to trial within a reasonable time.

Art. 5(4) – vio. The procedure prolonging App's detention lasted 43 days. There needs to be a speedy decision determining the lawfulness of detention in cases where a trial is pending.

JOHANSEN V. NORWAY

ECtHR, 17383/90, judgment 7 August 1996

MDAC Keywords: child; family life

Facts

App was mother whose son and daughter were taken into care in view of App's inability to satisfactorily care for them. Eventually the App was not allowed contact with them. She alleged vio of Art. 8 arguing that the removal of her children and deprivation of her access to them infringed her right to respect for family life.

Judgment

Art. 8 – vio. National authorities enjoy a wide margin of appreciation in assessing the necessity of taking a child into care. However, a stricter scrutiny is called for any further limitations, such as restrictions placed by those authorities on parental rights and access, and of any legal safeguards designed to secure an effective protection of the right of parents and children to respect for their family life. Such further limitations entail the danger that the family relations between the parents and a young child are effectively curtailed.

JOHNSON V. THE UNITED KINGDOM

ECtHR, 22520/93, judgment 24 October 1997

MDAC Keywords: detention, review of

Facts

App had a mental illness, and was convicted of a serious crime. His detention was reviewed on several occasions by a Mental Health Review Tribunal, which ruled that he was no longer suffering from mental illness and therefore they recommended that he be transferred to a hostel. The Tribunal permitted the discharge to be delayed until arrangements could be made for suitable accommodation and psychiatric supervision. However, the authorities failed to find suitable accommodation, resulting in App's continued detention in the high security hospital. App complained that detention for 3½ years had been in vio of Art. 5(1).

Judgment

Art. 5(1) – vio. The lawfulness of App’s detention under domestic law was not in itself decisive. The Tribunal lacked powers to ensure App’s transfer to a hostel within a reasonable period of time. There was a lack of adequate safeguards including provision for judicial review to ensure App’s discharge from hospital was not unreasonably delayed.

J.T. V. THE UNITED KINGDOM

ECtHR, 26494/95, decision 26 February 1997

MDAC Keywords: confidentiality; private life

Facts

App was detained in a P-H for many years and had reviews by the Mental Health Review Tribunal. Various psychiatric and social work reports compiled during the App’s detention detailed her difficult relationship with her mother and referred to allegations that she had been sexually abused by her stepfather. As her ‘nearest relative’ (a term defined in English law), her mother had access to all of this information. App complained of a vio of Art. 8 to ECtHR that personal information was released to her mother and stepfather and that App had no right to change the identity of her ‘nearest relative’.

Judgment

Friendly Settlement – Gov promised to change legislation to provide the detainee with the power to make an application to court to replace the ‘nearest relative’.

KAWKA V. POLAND

ECtHR, 25874/94, judgment 9 September 2001

MDAC Keywords: detention, authority for; detention, review of

Facts

App was detained on a suspicion of manslaughter and a court prolonged his detention, which expired. App remained detained, but the prosecutor lodged an application to keep him detained only 5 days later.

Judgment

Art. 5 (1) – vio. App’s detention for these 5 days lacked any legal basis. Although the procedure was in accordance with Polish law, it breached Convention requirements. The ECtHR said, ‘where deprivation of liberty is concerned, it is particularly important that the general principle of legal certainty is satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic law should be clearly defined, and that the law itself be foreseeable in its application, so that it meets the standard of ‘lawfulness’ set by the Convention, a standard which requires that all law should be sufficiently precise to allow the person – if needed, to obtain the appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail’ (para 49).

Art. 5 (4) – vio

App had no chance to contest in court the reasons for his detention.

KEENAN V. THE UNITED KINGDOM

ECtHR, 27229/95, judgment 3 April 2001

MDAC Keywords: death; ill-treatment

Facts

Mark Keenan (App's son) was diagnosed with personality disorder. In prison he made threats of suicide. Nine days before his due release date he was disciplined for assault, his sentence was extended by an additional 28 days' imprisonment, and he was given 7 days' segregation. During segregation he killed himself. There were no medical notes for 10 days before his death. App (his mother) alleged vio of Art. 2 (right to life) and 3 (ill-treatment), that the punishment was not based on any medical decision, there were insufficient medical reasons to justify it, and as he was a suicide risk the punishment was inappropriate, segregation aggravated his self-harming behaviour.

Judgment

Art. 2 – no vio. Keenan was under daily medical supervision, and the prison doctors found him fit for segregation. ECtHR considered speculative App's arguments that the prison doctors were not psychiatrists, and that by placing Keenan in segregation the prison authorities deprived him of therapeutic care. Standard of care that he received before his death should be examined under Art. 3.

Art. 3 – vio. Placement of Mark Keenan in segregation and the addition of 28 days to his sentence only 9 days before his expected release may have threatened his physical and moral resistance, and in these circumstances was 'not compatible with the standard of treatment required in respect of a mentally ill person' (para.115), and was inhuman and degrading treatment and punishment. Deficiencies in his psychiatric treatment included lack of effective monitoring of his condition and lack of informed psychiatric input.

Art. 13 – vio. App had no effective remedy available. She should have been able to apply for compensation for her non-pecuniary damage and that suffered by her son.

KEPENEROV V. BULGARIA

ECtHR, 39269/98, judgment 31 July 2003

MDAC Keywords: detention, authority for; psychiatric assessment

Facts

App was the subject of an inquiry about whether he was harassing staff of local telephone service. A prosecutor ordered compulsory psychiatric examination and instructed the police to arrest him and take him to hospital. App was not informed about these decisions. He was detained in a P-H for 1 month. App complained that his detention violated Art. 5.

Judgment

Art. 5(1) – vio. Prosecutor did not have power to order detention and did not seek a prior medical assessment to establish necessity of detention. No independent review of lawfulness of detention was available to App. Prosecutor's order and instructions failed to specify length of detention. Detention had no basis in domestic law, which, moreover, did not provide the required protection against arbitrariness.

KEUS V. THE NETHERLANDS

ECtHR, 12228/86, judgment 25 October 1990

MDAC Keywords: detention, review of

Facts

App was sentenced to 4 years' imprisonment for murder and other offences. After serving his sentence, he was placed at the gov's disposal in a P-H for 2 years. Whilst in hospital he absconded, and a court prolonged the detention. The court heard the prosecutor and a member of the hospital staff, but neither App nor his lawyer was informed of this. App alleged vio of Art. 5, complaining of not being involved in the prolongation procedure and that he could not challenge the legality of his prolonged detention.

Judgment

Art. 5(1) – no vio. Complaints related to the proceedings should be examined under Art. 5(4).

Art. 5(2) – no vio. App had knowledge of the extension as soon as he contacted the hospital by telephone.

Art. 5(4) – no vio. The proceedings amounted to an automatic periodic review which complied with national legislation and was conducted with the aim to protect the App from arbitrariness. There actually were remedies available to App which he chose not to pursue.

KOENDJBIHARIE V. THE NETHERLANDS

ECtHR, 11487/85, judgment 25 October 1990

MDAC Keywords: detention, review of; length of proceedings

Facts

App was convicted of rape and sentenced to 9 months' imprisonment, to be followed by 2 years' placement at the gov's disposal. This placement could be prolonged for 1 or 2 years at a time at the request of the public prosecutor. App asked to be released. The prosecutor requested 1 year's prolongation of the detention, which a court granted. App alleged vio of Art. 5, complaining that detention should have terminated before the prosecutor's request was made, and that the court decided on the lawfulness of the prolongation neither within the statutory time limit nor speedily.

Judgment

Art. 5(4) – vio. In order to satisfy the Convention, reviews must comply with national legislation and be conducted in conformity with the aim of Art. 5: to protect the detainee against arbitrariness, in particular with regard to the speediness of a decision. The extension of the detention was granted more than 4 months after it was asked for. The gov offered no justification.

KOLANIS V. THE UNITED KINGDOM

ECtHR, 517102, judgment 21 June 2005

MDAC Keywords: detention, authority for; detention, review of

Facts

App was convicted of serious assault, had a mental illness, and was detained in a P-H. She applied for discharge to a Mental Health Review Tribunal, which decided on conditional discharge, the condition being that she should live at home with her parents, be supervised by a social worker and a psychiatrist and comply with her treatment. The authorities did not find a psychiatrist in the area who was willing to supervise App in the community. App alleged violation of Art. 5, arguing that her continued detention after the Tribunal ordered her discharge was no longer justified and failed to provide procedural safeguards.

Judgment

Art. 5(1) – no violation. App continued to have a mental illness which justified detention, and her detention fell within the exception of Art. 5(1)(e).

Art. 5(4) – violation. Even where there are difficulties in fulfilling a conditional discharge, App is entitled to a court review of the detention. For over a year App had no access to review of her detention.

Art. 5(5) – violation. At the time there was no enforceable right to compensation.

KUDŁA V. POLAND

ECtHR, 30210/96, judgment 26 October 2000

MDAC Keywords: detention, pre-trial; ill-treatment; length of proceedings

Facts

App was detained pre-trial for 3 years in a prison. He complained of lack of access to psychiatric treatment resulting in suicide attempts, that his right to trial within a reasonable time and to release pending trial were not respected, that the criminal procedure was unreasonably lengthy, and that an effective domestic remedy was not available.

Judgment

Art. 3 – no violation. '[T]he Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment' (para. 92). In this case it did not attain the minimum level of severity to be classed as ill-treatment within Art. 3. App was examined by psychiatrist at least once a month. Gov cannot be held responsible for App's suicide attempts despite one psychiatrist's opinion that his life was at risk if he were placed in continued detention.

Art. 5(3) – violation. Public interest did not justify the continued detention.

Art. 6(1) – violation. The complexity of the case could not justify the delay of 1 year and 8 months in holding a re-trial.

Art. 13 – violation. The applicant had no domestic remedy to enforce his right to a 'hearing within a reasonable time' guaranteed by Art. 6(1).

KUTZNER V. GERMANY

ECtHR, 46544/99, judgment 26 February 2002

MDAC Keywords: child; disability, intellectual; family life

Facts

Apps were parents with mild intellectual disabilities who lived with their two daughters, who were late developers, and who were receiving educational assistance and support. A court withdrew Apps' parental rights and ordered their placement with foster parents on the grounds that Apps did not have the intellectual capacity required to bring up their children. The girls were placed in separate, unidentified foster homes. Apps' visiting rights were sharply restricted. Apps alleged a breach of Art. 8, arguing that the withdrawal of their parental rights over their daughters and their placement with foster parents had infringed Apps' right to respect for family life under Art. 8.

Judgment

Art. 8 – vio. Although the authorities may have had legitimate concerns about the late development of the children, the ECtHR considered that both the care order itself and the manner in which it was implemented were unsatisfactory. Bearing in mind children's age, severing contact and limiting visiting rights could lead only to the children's increased 'alienation' from their parents and from each other. The interference was therefore not proportionate to the legitimate aims pursued.

LAIDIN V. FRANCE

ECtHR, 43191/98, judgment 5 November 2002. Available only in French

MDAC Keywords: length of proceedings

Facts

App was detained in a P-H. She complained to a prosecutor about the conditions of her detention and asked to be discharged. The procedure to consider discharging App from hospital lasted more than 5 weeks. App complained under Art. 5(4) about the length of time taken to consider her application for immediate discharge.

Judgment

Art. 5(4) – vio. By writing to the prosecutor, the applicant had not applied to the authority empowered to order her release. But the prosecutor could himself have applied for her discharge, and indeed had done so. The proceedings had therefore lasted more than 5 weeks. Moreover, the court hearing took place more than 1½ months after App had been discharged for a trial period. The authorities had thus not decided the matter 'speedily'.

LANGLOIS V. FRANCE

ECtHR, 39278/98, judgment 7 February 2002. Available only in French
MDAC Keywords: detention, review of; length of proceedings

Facts

App was hospitalised during the 1950s and later commenced proceedings before domestic courts contesting the legality of his detention and claimed damages. He alleged a breach of Art. 6(1), complaining of the length of civil proceedings (more than 15 years), which were still pending in June 2000.

Judgment

Art. 6(1) – vio. Proceedings were long and violated the Convention.

LITWA (WITOLD) V. POLAND

ECtHR, 26629/95, judgment 4 April 2000
MDAC Keywords: alcoholism; detention, authority for

Facts

Following a complaint by postal clerks that App was drunk and behaving offensively, police officers, believing he was under the influence of alcohol, arrested him. App was taken to a ‘sobering up centre’, an establishment in which Polish law permits an intoxicated person to be placed for a period not exceeding 24 hours. A doctor examined the App in the centre, assessed him as being ‘moderately intoxicated’ and decided that his state justified his confinement in the centre for 6 hours. No blood or breath tests were carried out before, during or after that examination. After 6½ hours App was permitted to leave the centre, subject to payment of fees for his transportation and lodging there. App complained under Art. 5(1) that his detention was unlawful as it had not fallen into any of the exceptions to the rule of personal liberty under Art. 5.

Judgment

Art. 5(1)(e) – vio. The detention of alcoholics permitted under Art. 5(1)(e) was not aimed at people in a clinical state of alcoholism but those whose behaviour under the influence of alcohol, whether or not they had been diagnosed as alcoholic, posed a threat to the public or themselves. App had doubtfully posed such a threat, doubts which were reinforced by the trivial factual basis for his detention and the fact that he is almost blind. Also, no consideration appeared to have been given to the alternative measures Polish law allows for dealing with intoxicated people, including taking them home or to a public-care establishment, detention in a sobering-up centre being the most extreme option.

L.R. V. FRANCE

ECtHR, 33395/96, judgment 27 June 2002. Available only in French
MDAC Keywords: length of proceedings

Facts

App went to a police station to complain against an unknown person. The police transferred her to a P-H where she was diagnosed as mentally ill. She was then detained in hospital by a prefectural decision. She applied to the prosecutor and to a court for immediate release. The court sent a letter to the hospital doctor asking him to inform App that the court would rule on her application soon, but 24 days passed between App's request for discharge and her actual discharge. App alleged a breach of Art. 5, complaining of the length of time it had taken for her request for immediate release to be examined.

Judgment

Art. 5(4) – vio. Delay of 24 days violated the Art. 5(4) requirement for detention to be decided 'speedily'.

LUBERTI V. ITALY

ECtHR, 9019/80, judgment 23 February 1984
MDAC Keywords: detention, authority for; length of proceedings; psychiatric assessment

Facts

App was convicted of murder. He appealed on the grounds that he was insane at the time of the commission of the killing. The appeal court ordered a psychiatric opinion from two experts who concluded that App had a mental illness which deprived him of the capacity to form an intention and that at the time when the opinion was made he was, in psychiatric terms, a dangerous person. A third expert was asked to provide an opinion. This expert confirmed that the psychosis had certainly also existed at the time of the killing. The appeal court acquitted App on the ground of mental disorder and directed that he be detained for 2 years in a P-H. During this detention, App applied 3 times to be discharged.

App argued a vio of Art. 5 in that when the appeal court gave its judgment he was no longer suffering from a mental disorder. He maintained that the appeal court had ordered his detention without having regard to his state of health on the date of judgment.

Judgment

Art. 5(1) – no vio. National authorities have a margin of appreciation. It was reliably established that App had been of unsound mind. It was not established that App's detention continued beyond the period justified by his mental disorder.

Art. 5(4) – vio. As was conceded by the gov, the courts did not give a decision 'speedily' on the lawfulness of the detention.

LUTZ V. FRANCE (NO. 2)

ECtHR, 49531/99, judgment 17 June 2003. Available only in French
MDAC Keywords: access to court; length of proceedings

Facts

App was made subject to a supervision order on mental health grounds. He challenged the order. It took 3 years and 9 months for the Court of Cassation to deal with the case. App complained under Art. 6 of the excessive length of the proceedings concerning the lawfulness of the supervision order, and also of a breach of Art. 13, in that there was no court to which he could submit that complaint.

Judgment

Art. 6(1) – vio. The time which it had taken to deal with the case was excessive, particularly as the proceedings had lasted 1 year and 4 months by the time it reached the Court of Cassation.

Art. 13 – vio. No effective remedy in domestic law would have enabled App to complain about the length of proceedings.

MATTER V. SLOVAKIA

ECtHR, 31534/96; judgment 5 July 1999
MDAC Keywords: incapacity; length of proceedings; private life; psychiatric assessment

Facts

A court deprived App of legal capacity. Four years later the court started proceedings with a view to determining whether App's legal capacity should be restored. The proceedings were still pending at the time of the ECtHR judgment, at which time they had lasted for more than 7 years since the former Czech and Slovak Federal Republic ratified the Convention and recognised the right of individual petition in March 1992. App complained under Art. 6 of the length of the proceedings concerning his legal capacity.

Judgment

Art. 6 – vio. The proceedings were decisive for the determination of App's civil rights and obligations. The case was of some complexity but this cannot, as such, justify the length of proceedings. App's conduct had contributed to the length of proceedings in that he was unwilling to cooperate with experts, by challenging the judges and by requesting that his case should be dealt with by another court. However, there were periods of inactivity for which gov had provided no satisfactory explanation, and the domestic courts had failed to act with the special diligence required by Art. 6(1).

Art. 8 – no vio. The forcible examination of App in a hospital amounted to a serious interference with his right to respect for his private life. However, it had a legal basis, pursued the legitimate aim of protecting App's own rights and health. Since it was justified to obtain an expert opinion of App's mental health and he refused to be examined on a voluntary basis, the ECtHR considered that the interference was not disproportionate to the legitimate aims pursued, and was therefore necessary in a democratic society.

MCMICHAEL V. THE UNITED KINGDOM

ECtHR, 16424/90, judgment 24 February 1995

MDAC Keywords: access to records; child; fair trial; family life

Facts

Apps were the natural parents of A. The mother had mental illness, and A was taken into care at age 2 weeks. Apps alleged a vio of Art. 6 and 8 in that they had been unable to examine several confidential documents submitted to the court which decided on A's placement. The father complained that he had no right to have legal custody of A or to participate in the relevant proceedings.

Judgment

Art. 6(1) – vio. Father did not try to obtain legal recognition of his status as the father of A, so Art. 6 did not apply to his complaint. As regards the court hearing, the lack of disclosure of such vital documents as social reports affected the mother's ability to influence the outcome of the hearing and to assess the prospects of making an appeal. The mother had not received a fair hearing.

Art. 8 – vio. Whilst Art. 8 contains no explicit procedural requirements, the decision-making process leading up to the measures of interference with family life (such as care, custody and access of children) must be fair and such as to afford due respect to private and family life.

MEGYERI V. GERMANY

ECtHR, 13770/88, judgment 12 May 1992

MDAC Keywords: detention, review of; legal representation

Facts

App was convicted of criminal offences and detained in a P-H as he had a mental illness. A court reviewed his detention, but he did not receive legal representation at the court hearings. He did not ask for representation, nor did the court appoint a lawyer. He complained that lack of legal representation constituted a vio of Art. 5.

Judgment

Art. 5 – vio. '[W]here a person is confined in a psychiatric institution on the ground of the commission of acts which constituted criminal offences but for which he could not be held responsible on account of mental illness, he should – unless there are special circumstances – receive legal assistance in subsequent proceedings relating to the continuation, suspension, or termination of his detention. The importance of what is at stake for him – personal liberty – taken together with the very nature of the affliction – diminished mental capacity – compels this conclusion' (para. 23).

M.G. V. THE UNITED KINGDOM

ECtHR, 39393/98, judgment 24 September 2002

MDAC Keywords: access to records; child; family life

Facts

As a child, App was voluntarily cared for by the local authority for 5 periods extending over a period of 6 years. During this time his mother received psychiatric treatment, and his father could not cope with the children on his own. As an adult, App requested access to his social service records, including specific information about the abuse he had suffered as a child. The local authority refused. App complained that inadequate disclosure of his social service records constituted a vio of Art. 8.

Judgment

Art. 8 – vio. Social service records relate to App’s private and family life. App’s interest in obtaining the documents sought could be considered as particularly strong. One of the main reasons the applicant sought access to his records was his sincere belief that his father had physically abused him when he was a child, and his need to obtain as much information about that period as possible in order to come to terms with the emotional and psychological impact of any such abuse.

MIKHEYEV V. RUSSIA

ECtHR, 77617/01, judgment 26 January 2001

MDAC Keywords: detention, pre-trial; ill-treatment; investigation

Facts

App alleged that while in pre-trial detention he had been tortured by police officers to make him confess to a rape and murder. As a result, he attempted suicide by jumping out of the window of the police station and broke his spine. Alleging vios of Arts. 3 and 13, he complained that the investigation into those events had been ineffective.

Judgment

Art. 3 – vio. The gov refused to provide the ECtHR with the criminal case materials for which it asked. The gov also failed to provide any observations as to the substance of the case. The ECtHR drew inferences from the gov’s conduct. While in custody, App was seriously ill-treated by State agents, with the aim of extracting a confession or information. The ill-treatment inflicted on him caused such severe physical and mental suffering that it amounted to torture.

Art. 13 – vio. The investigation into serious allegations of ill-treatment must be thorough. Authorities must seriously attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. Investigations must be independent, speedy and able to establish the cause of the injuries or the identity of the persons responsible. App was denied a sufficiently effective investigation.

MORSINK V. THE NETHERLANDS

ECtHR, 48865/99, judgment 11 May 2004

MDAC Keywords: detention, place of; detention review of

Facts

App was convicted of criminal offences and sentenced to 15 months' imprisonment, and because he had a mental disorder and posed a danger to the public, the court ordered that he be detained in a custodial clinic for an initial period of 2 years once he had served his prison sentence. App was held in pre-placement detention in an ordinary remand centre while waiting for a place in the custodial clinic. He complained that his detention in a remand centre for 15 months was in vio of Art. 5(1).

Judgment

Art. 5(1) – vio. It would be unrealistic and too rigid an approach to expect the authorities to ensure that a place was immediately available in a custodial clinic. A reasonable balance must be struck between the competing interests involved. In striking this balance particular weight should be given to the right to liberty. A significant delay in admission to a custodial clinic and beginning treatment would affect the prospects of the treatment's success, and could jeopardise the chances of having to prolong the validity of the custodial clinic order will, correspondingly, be increased.

M.S. V. BULGARIA

ECtHR, 40061/98; judgment 4 July 2002

MDAC Keywords: detention, authority for; psychiatric assessment

Facts

App was arrested and taken to a P-H for examination 3 times. and was allegedly held incommunicado the third time. She complained that her detention was not in accordance with the law and constituted a violated of Art. 5.

Friendly Settlement

Gov paid App compensation for non-pecuniary damage and legal fees.

M.S. V. SWEDEN

ECtHR, 20837/92, judgment 27 August 1997

MDAC Keywords: access to records; confidentiality; private life

Facts

App's medical records were transferred from a clinic to the social insurance office without her consent. There was no possibility for a patient, prior to the measure, to challenge it before a court. She complained under Arts. 8 (private life) and 6 (access to court).

Judgment

Arts. 8 and 6 – no vio. The medical records in question contained highly personal and sensitive data. Although they remained confidential, they had been disclosed to another

public authority and therefore to a wider circle of public servants. However, the interference with App's private life had a legal basis and was foreseeable and was therefore carried out 'in accordance with the law'. The communication of data was potentially decisive for allocation of public funds which App herself had asked for and the measure was not disproportionate to the legitimate aim pursued.

MUSIAL V. POLAND

ECtHR, 24557/94, judgment 25 March 1999

MDAC Keywords: detention, review of; length of proceedings; psychiatric assessment

Facts

App was detained in a P-H, and his requests to be discharged were refused several times. App asked for an examination by university psychiatric experts, to which the court agreed. He was examined 3 months later and they prepared their report some 10 months later. In all there was a 1 year, 8 month and 9 day delay.

Judgment

Art 5(4) – vio. The review proceedings of detention were unreasonably long. App's request for a psychiatric examination by independent experts should not cause grounds for delay, and in doing so App did not waive his Art. 5(4) rights. Despite arguing so, gov failed to show that this case's alleged complexity justified the delay.

NAKACH V. THE NETHERLANDS

ECtHR, 5379/02, judgment 30 June 2005

MDAC Keywords: access to records; detention, authority for

Facts

A criminal court convicted App of an offence, and in the light of a psychiatric report which found App's mental powers to be deficient and the chance of his reoffending to be high, it sentenced him to 1 year's imprisonment and then detention in a P-H. App was detained in a P-H, and then his detention was prolonged. App's lawyer wrote to the Court of Appeal asking for a copy of the official recording of the hearing but was informed that no official records are usually made concerning prolongations of detention. App alleged a vio of Art. 5(1).

Judgment

Art. 5(1) – vio. The Court of Appeal's decisions are final, but the Code of Criminal Procedure specifies that there must be official records of such cases. The procedure prescribed by domestic law was not followed.

NIELSEN V. DENMARK

ECtHR, 10929/84, judgment 28 November 1998
MDAC Keywords: child; detention, authority for

Facts

App, aged 12, was placed by his mother (the sole holder of parental rights) into a child psychiatric institution. App alleged that the detention constituted a deprivation of liberty contrary to Arts. 5(1) and (4).

Judgment

Art. 5 – not applicable. Art. 5 clearly includes children. Family life encompasses a broad range of parental rights and responsibilities in regard to care and custody. Children in a school or other educational or recreational institution must abide by certain rules which limit their freedom of movement and liberty. Likewise a child may have to be hospitalised for medical treatment. The hospitalization of the applicant did not amount to deprivation of liberty but was a responsible exercise by the mother of her custodial rights in the interest of the child.

NIKOLOVA V. BULGARIA

ECtHR, 31195/96, judgment 25 March 1999
MDAC Keywords: detention, authority for; detention, pre-trial; fair trial

Facts

App was accused of a crime. Without hearing the App, a prosecutor confirmed the App's pre-trial detention. App alleged a breach of Art. 5(3), complaining that she had not been brought before a judge or other officer authorised by law to exercise judicial power whilst being detained for 3½ months. She also asserted that Art. 5(4) had been violated on account of the purely formal character of the judicial review of her detention, the inadequate procedure and the impossibility of obtaining a periodic court review.

Judgment

Art. 5(3) – vio. The body reviewing detention must be independent of the executive and of the parties. In this respect, objective appearances at the time of the decision on detention are material: if it appears at that time that the 'officer' may later intervene in subsequent criminal proceedings on behalf of the prosecuting authority, independence and impartiality may appear open to doubt. The officer must hear the individual brought before him in person and review, by reference to legal criteria, whether or not the detention is justified. If it is not so justified, the officer must have the power to make a binding order for the detainee's release.

Art. 5(4) – vio. Arrested or detained persons are entitled to a review bearing upon the procedural and substantive conditions which are essential for the 'lawfulness', in the sense of the Convention, of their deprivation of liberty. The competent court has to examine not only compliance with the procedural requirements set out in domestic law but also the reasonableness of the suspicion grounding the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention. A court examining an appeal against detention

must provide guarantees of a judicial procedure. The proceedings must be adversarial and must always ensure 'equality of arms' between the parties, the prosecutor and the detained person. Equality of arms is not ensured if counsel is denied access to those documents in the investigation file which are essential in order to effectively challenge the lawfulness of his client's detention.

While Art. 5(4) does not impose an obligation on a judge examining an appeal against detention to address every argument contained in the appellant's submissions, its guarantees would be deprived of their substance if the judge, relying on domestic law and practice, could treat as irrelevant, or disregard, concrete facts invoked by the detainee and capable of putting into doubt the existence of the conditions essential for the 'lawfulness', in the sense of the Convention, of the deprivation of liberty.

NOUHAUD AND OTHERS V. FRANCE

ECtHR, 33424/96, judgment 9 July 2002. Available only in French
MDAC Keywords: detention, review of; length of proceedings

Facts

App was detained in a P-H, and subsequently became a voluntary patient and was discharged on a trial basis. App sued the hospital for damages. There were several court hearings, which in total lasted almost 10 years for 4 levels of jurisdiction. App alleged a breach of Art. 6(1), complaining of the length of proceedings.

Judgment

Art. 6(1) – vio. The proceedings were excessive in length.

NOWICKA V. POLAND

ECtHR, 30218/96, judgment 3 December 2002
MDAC Keywords: detention, authority for; psychiatric assessment; family life

Facts

During criminal proceedings against App, a court requested information about her background and mental health. App failed to attend two psychiatric examinations ordered by the court. Court decided that she should be arrested and detained to secure her compliance. She was detained, and psychiatrists concluded that they could not make a diagnosis on a single examination and she was discharged. Later, the court ordered her detention. She was taken to prison, where her visiting rights were restricted to 1 visit per month from her daughter. Psychiatric examinations showed that App's intellectual ability was above average and she showed no signs of being mentally ill. She was released from prison and criminal proceedings were discontinued. App complained of vios of Arts. 5(1) and 8.

Judgment

Art. 5(1) – vio. App's 83-day detention was imposed in the context of a private prosecution. The gov's technical reasons for detaining App for 83 days before submitting her to a brief

examination were rejected. The authorities failed to draw a balance between the importance of investigating an alleged crime and the importance of the right to liberty. Detention had no Convention basis.

Art. 8 – vio. The restriction on App’s visiting rights while in detention did not pursue, and was not proportionate to, any legitimate aim under Art. 8.

OLSSON V. SWEDEN

ECtHR, 10465/83, judgment 24 March 1988

MDAC Keywords: child; disability, intellectual; family life

Facts

Apps, husband and wife, had spent some time in their youth at a home for people with intellectual disabilities and received support from a home therapist and a psychiatric team. Apps’ children were taken into care after a court decision based on a report suggesting that the children’s development was in danger since they were living in an environment which was unsatisfactory due to their parents’ inability to satisfy their need for care. Apps alleged vio of Art. 8 concerning the decision to take their children into care, the manner in which it had been implemented and the refusals to terminate care.

Judgment

Art. 8 – vio. The implementation of the care decision gave rise to a breach of Art. 8. The separation of the children and their placement at a long distance from their parents must have adversely affected the possibility of contacts between them. This situation was compounded by the restrictions imposed by the authorities on parental access. These measures were not supported by sufficient reasons justifying them as proportionate to the legitimate aim pursued.

OPEN DOOR AND DUBLIN WELL WOMAN V. IRELAND

ECtHR, 14234/88 and 14235/88, judgment 29 October 1992

MDAC Keywords: information

Facts

Apps were companies who were under a court injunction prohibiting them from providing information on abortion to pregnant women. Apps complained that the injunction violated their right to freedom of expression under Art. 10, and that it was a vio of two specifically identified women’s rights to respect for private life.

Judgment

Art. 10 – vio. Gov argued that two specifically identified women should not be considered as ‘victims’ under the Convention. ECtHR rejected this. They were directly affected by the injunction, which restrained the corporate Apps from providing information to pregnant women. The women belonged to a class of women of childbearing age which might be adversely affected by the restrictions imposed by the injunction. This was not an abstract application. The Apps sought to challenge the compatibility of Irish law with the Convention because they risked being directly prejudiced by the measure complained of.

The injunction interfered with the freedom to impart information. Under Irish law the injunction was ‘prescribed by law’. However, govts must govern in a manner which is compatible with their obligations under the Convention and subject to review by the Convention institutions. While the relevant restriction is limited to the provision of information, it is not a criminal offence under Irish law for a pregnant woman to travel abroad in order to have an abortion. Limitations on information concerning activities which, notwithstanding their moral implications, have been and continue to be tolerated by national authorities, call for careful scrutiny by Convention institutions as to their conformity with the tenets of a democratic society. The absolute nature of the injunction which imposed a perpetual restraint on the provision of information to pregnant women is broad and disproportionate.

OSMAN V. THE UNITED KINGDOM

ECtHR, 23452/94, judgment 28 October 1998

MDAC Keywords: access to court; death; investigation

Facts

A man killed App1’s husband (App2’s father). Apps alleged vio of Art. 2 because gov failed to protect the life of App1’s husband and App2 from the threat posed by the individual. Apps challenged lawfulness of restrictions on their right of access to a court to sue authorities for damage caused by such failure.

Judgment

Art. 2 – no vio. Apps failed to point to any decisive stage when it could be said that the police knew or ought to have known that lives were at real and immediate risk from the stalker. The police must discharge their duties in a manner which is compatible with the rights and freedoms of individuals. They cannot be criticized for attaching weight to the presumption of innocence or failing to use powers of arrest, search and seizure having regard to their reasonably held view that they lacked at relevant times the required standard of suspicion to use those powers or that any action taken would in fact have produced concrete results.

Art. 6(1) – vio. Apps’ claim never fully proceeded to trial in that there was never any determination on its merits nor on the facts on which it was based. Domestic courts must have regard to the presence of other public interest considerations which pull in the opposite direction to the application of an exclusionary rule which amounted to granting immunity to the police. Apps’ right of access to a court was therefore unjustifiably restricted.

PEERS V. GREECE

ECtHR, 28524/95, judgment 19 April 2001

MDAC Keywords: ill-treatment; correspondence

Facts

App was arrested on suspicion of criminal offences and placed in psychiatric wing of prison, later in segregation. He was detained with 1 other person in a very small cell that was very hot, lacked adequate ventilation and had no screen for its toilet.

Judgment

Art. 3 – vio. No evidence to positively humiliate or debase App, but the conditions in which he lived amounted to inhuman and degrading treatment as they caused feelings of anguish and inferiority capable of humiliating and debasing him.

Art. 8 – vio. His letters were opened by authorities, not always in his presence.

PEREIRA V. PORTUGAL

ECtHR, 44872/98, judgment 26 February 2002

MDAC Keywords: detention, pre-trial; detention, review of; legal representation, length of proceedings

Facts

App was in pre-trial detention and was assessed as having a mental illness and not criminally responsible. He was detained in a P-H. His lawyer, assigned by the court to represent him, allegedly played no part in the proceedings and did not attend a court hearing. An application made by the prosecutor for App's discharge was dismissed. App alleged a vio of Art. 5 that his detention was unlawful, that he had been given no legal assistance to allow him to appeal and that the authorities had taken too long to examine the lawfulness of detention.

Judgment

Art. 5(4) – vio. The first review took place 2½ years after App lodged his first application for discharge. There were no exceptional grounds to justify the length of time.

Art. 5(4) also requires giving the person concerned guarantees appropriate to the kind of deprivation of liberty in question. Regard must be had to the particular nature of the circumstances in which such proceeding takes place. Assigning counsel does not in itself ensure the effectiveness of the assistance he may afford someone. App did not have adequate legal assistance.

PEREIRA V. PORTUGAL (NO. 2)

ECtHR, 15996/02, judgment 20 December 2005. Available only in French

MDAC Keywords: detention, review of; length of proceedings; psychiatric assessment

Facts

App was in hospital after found not criminally responsible for an offence. During court proceedings examining whether App should be discharged, a judge ordered a psychiatric examination of App. The clinic's chief doctor clinic was unable to conduct such an examination due to staff shortages, and the Institute of Forensic Medicine declined to perform an examination as its annual limit of examinations had been exceeded. The assessment was finally carried out much later and the expert declared that App should be discharged. App alleged a vio of Art. 5(4), contending that the decision on the lawfulness of his confinement had not been made 'speedily'.

Judgment

Art. 5(4) – vio. The period in question lasted nearly 2 years. The delay had been caused purely by administrative problems. The authorities had failed to proceed with necessary diligence.

POWELL (WILLIAM AND ANITA) V. THE UNITED KINGDOM

ECtHR, 45305/99, decision 4 May 2000

MDAC Keywords: admissibility; death; investigation

The Court declared the case inadmissible. The complex facts are not summarised here.

Decision (key paragraph)

When discussing the procedural requirement under Art. 2, the Court emphasised that ‘the obligation at issue extends to the need for an effective independent system for establishing the cause of death of an individual under the care and responsibility of health professionals and any liability on the part of the latter’ (para. 1 of ‘the law’, on page 20 of the decision).

PRICE V. THE UNITED KINGDOM

ECtHR, 33394/96, judgment 10 July 2001

MDAC Keywords: ill-treatment; disability, physical

Facts

App was a wheelchair user and did not have the use of any of her limbs. She was sent to prison for 1 week and alleged that whilst in custody she was forced to sleep in her wheelchair, she could not reach the emergency buttons and light switches, and that she was unable to use the toilet. She alleged that she was lifted onto a toilet by a female prison officer but was then left sitting on the toilet for over 3 hours until she agreed to allow a male nursing officer to clean her and help her off the toilet. App alleged that her treatment constituted inhuman and degrading treatment, contrary to Art. 3.

Judgment

Art. 3 – vio. The absence of any intention to humiliate or debase cannot conclusively rule out a finding of vio of Art. 3. App suffered because the conditions were not appropriate for someone with such a disability. The ‘minimum level of severity’ depends on the circumstances of the case, including the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and the state of health of the victim. In this case ‘to detain a severely disabled person in conditions where she is dangerously cold, risks developing sores because her bed is too hard or unreachable, and is unable to go to the toilet or keep clean without the greatest of difficulty, constitutes degrading treatment contrary to Art. 3’ (para 30).

RAKEVICH V. RUSSIA

ECtHR, 58973/00, judgment 28 October 2003

MDAC Keywords: access to court; detention, authority for

Facts

App was taken to a P-H and diagnosed with a mental disorder, which she denied. She was detained for 39 days before a judge authorised the detention. She argued that her detention had violated aspects of Art. 5.

Judgment

Art. 5(1)(e) and (4) – vio. There is no reason to doubt the accuracy of the reports, and the ECtHR was satisfied that App's condition presented an 'emergency', and no evidence to suggest that her detention was arbitrary. However, under Russian law a judge must grant or refuse a detention order within 5 days of the hospital's application for it, but this happened in App's case only 34 days later. Therefore the detention was not 'in accordance with a procedure prescribed by law'.

Art. 5(4) – vio. Art. 5(4) requires a specific remedy to protect the liberty of a detainee. App was not entitled to take proceedings to test the lawfulness of her detention by a court.

REID (HUTCHISON) V. THE UNITED KINGDOM

ECtHR, 50272/99, judgment 20 February 2003

MDAC Keywords: detention, authority for; psychiatric assessment

Facts

App, aged 17, was convicted of a crime, detained in a P-H for an unlimited time, and diagnosed with an antisocial personality disorder. The law allowed detention only where medical treatment was likely to alleviate or prevent deterioration of their condition. App was transferred to an open hospital and re-offended. He was sentenced to 3 months' imprisonment. He was recalled to the P-H and applied unsuccessfully to be discharged on a number of occasions. Within 5 years he obtained 18 reports from 6 psychiatrists concluding that he did not suffer from a mental disorder justifying his continued detention. App appealed unsuccessfully in the UK courts and alleged that he was wrongly detained in a mental hospital and he was not provided with a prompt or adequate review of the continued lawfulness of his detention.

Judgment

Art. 5(1) – no vio. There was nothing arbitrary in the decision not to release the applicant, given the unanimous medical evidence was that he had a mental disorder manifesting itself in abnormally aggressive behaviour. There was a sufficient relationship between the grounds of the detention and place and conditions of detention to satisfy Art. 5(1).

Art. 5(4) – vio. The authorities had the burden of proving that a detainee satisfies the conditions for compulsory detention, rather than the converse. Further, there were no exceptional grounds such as to justify the delay in determining App's application for release.

RUTTEN V. THE NETHERLANDS

ECtHR, 32605/96, judgment 24 July 2001

MDAC Keywords: detention, authority for; length of proceedings

Facts

App was convicted of a crime, diagnosed with a mental illness and sentenced to prison and post-prison detention in P-H which was extended for 2 years. App appealed the extensions, and the appeal court prolonged the detention by 1 year. App alleged a breach of Art. 5(1) and (4), claiming that the decision to prolong his post-sentence detention was not given speedily and under a procedure prescribed by law, in that, for 1 month there was no judicial decision authorising his detention.

Judgment

Art. 5 (1) – no vio. The law provided for the situation in which an applicant was detained despite the expiry of the post-sentence detention order. The law states that the order remained in force until a final decision on the request of prolongation had been taken.

Art. 5(4) – vio. The request for prolongation of the post-sentence detention order had been determined by a court more than 2 months and 17 days after the date on which the prolongation request was filed. Appeal court took more than 3 months to determine the appeal. App's detention had not been decided speedily.

SALKIC V. SWEDEN

ECtHR, 7702/04, decision 29 June 2004

MDAC Keywords: admissibility; deportation; treatment

Facts

Apps were Bosnians who had been refused refugee status in Sweden. They had come into contact with the Swedish mental health care system and argued that adequate treatment for them was not available in Bosnia-Herzegovina. Apps alleged a breach of Arts. 2 and 3 that if they were to be expelled it would cause irreparable damage to all members of the family due to their poor mental health and in particular to the children who might never recover from another trauma of being forced to move again.

Decision

Inadmissible. People who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State. However, in exceptional circumstances an implementation of a decision to remove an alien may, owing to compelling humanitarian considerations, result in a vio of Art. 3. In this case the fact that the mental health care standards in Bosnia-Herzegovina are less favourable than those enjoyed by the applicants while they were in Sweden cannot be regarded as decisive from the point of view of Art. 3.

SENTGES V. THE NETHERLANDS

ECtHR, 27677/02, decision 8 July 2003

MDAC Keywords: admissibility; child; disability, physical; private life; treatment

Facts

App, a child, had Duchenne Muscular Dystrophy, a disease characterised by progressive muscle degeneration. App's parents asked health insurance to provide him with a robotic arm specifically designed to give him more autonomy in handling objects. The request was rejected because robotic arms were not covered by the insurance or any other social insurance scheme. App complained under Art. 8 of a vio of his private life in the authorities' refusal to provide a robotic arm.

Decision

Art. 8 – inadmissible. Private life includes a person's physical and psychological integrity. Art. 8 is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. Art. 8 does not merely compel the State to abstain from such interfering with privacy: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves.

There must be a fair balance between the competing interests of the individual and the community as a whole and to the wide margin of appreciation enjoyed by the States in this respect. In the circumstances of the case it cannot be said that the gov exceeded the margin of appreciation afforded to it.

SIEDEL V. FRANCE

ECtHR, 31430/96, judgment 11 January 2000. Available only in French.

MDAC Keywords: detention, review of; length of proceedings

Facts

App was detained in a P-H and appealed to a court to be discharged. The judicial proceedings lasted 8 years and 2 months.

Judgment

Art. 6(1) – vio. The case was not complex and there was no justification for the length of proceedings.

SKJOLDAGER V. SWEDEN

ECmHR, 22504/93, decision 17 May 1995

MDAC Keywords: admissibility; detention, authority for; victim status; incapacity

Facts

App, a psychologist, visited a nursing home. He concluded that a number of patients were being locked up in their rooms without permission, and that some doors were locked. App brought his findings to the attention of the home's manager. App was temporarily suspended from his post, and the authorities ordered him to undergo a psychiatric examination prior to considering whether to reinstate him in office. In App's complaint to the ECmHR, he claimed that he represents the interest of 3 disabled patients in the nursing home. He argued that as none of the patients were detained in law, and that they were locked inside, that the 3 patients referred to were detained in vio of Art. 5(1).

App argued that the 3 patients referred to by him were unable to lodge an application on their own and that the authorities had refused to disclose information enabling him fully to identify all of them and to get powers of attorney. He nevertheless considered that he remained ethically and professionally responsible for the care of his patients and competent to bring an application on their behalf.

Decision

Inadmissible. The ECHR allows applications only from people, NGOs or organisations claiming themselves to be the victim of a vio of a Convention right. App does not claim that he himself is the direct victim of a vio. A representative should normally submit evidence showing that he is empowered to appear before the Convention organs on an App's behalf.

In exceptional circumstances it has been accepted that a third party can be accepted as an 'indirect victim' at least in the initial-stage proceedings, for instance if he has a valid personal interest in the welfare of the person on whose behalf he has lodged the application. A close connection is required, however, between the indirect and the direct victim as well as between them and the act complained of. The App failed to meet these requirements and the case is therefore inadmissible.

SLIMANI V. FRANCE

ECtHR, 57671/00, judgment 27 July 2004

MDAC Keywords: death; investigation

Facts

App's partner had a mental illness and was detained in prison. He refused to take medication, was taken ill and died. App was refused permission to take part in the inquiry. Her appeal to the investigating judge for an order requiring the inquiry papers to be sent to the public prosecutor with a view to the scope of the inquiry being enlarged to include voluntary homicide was dismissed. App alleged that there had been a vio of Art. 2 (that her partner had died as a result of serious failings on the part of the authorities), Art. 3 (conditions which he had been held in the detention centre) and Art. 13 (App had not been permitted to take part in the inquiry into the cause of death and the inquiry had been inadequate).

Judgment

Art. 2 – vio. The applicant had an accessible remedy under French law that was capable of affording her redress for her complaints under Art. 2 and 3 and provided reasonable prospects of success. Where a death occurs in suspicious circumstances, Art. 2 requires the authorities to start an investigation of their own motion. A requirement that the deceased's relatives be required to lodge a complaint with an application to be joined as civil parties if they wish to be involved in the inquiry contravened those principles, rendering the inquiry ineffective, and violating Art. 2.

STEWART-BRADY V. THE UNITED KINGDOM

ECmHR, 27436/95 and 28406/95, decision 2 July 1997

MDAC Keywords: access to court; defamation; admissibility; fair trial; private life

Facts

App had psychosis and was detained in a P-H after having been convicted for 3 murders. Another person published a number of articles alleging that she had been abused by App knowing that they were indeed untrue. App was prohibited from contesting these in the British courts. He alleged that he endured and was unable to prevent a widely publicised false attack upon his private life, and that his mental health deteriorated as a result.

Decision

Art. 3 – inadmissible. Minimum level of severity was not met.

Art. 6(1) – no vio. Art. 6(1) does not guarantee a right to free legal aid in all civil cases. The fact that people with mental disabilities are required to act through another person who must be represented by a lawyer does not constitute a denial of access to court. The refusal of legal aid for civil proceedings does not constitute a denial of access to the court when the proceedings have no prospect of success and the cost of funding the litigation is disproportionate to any likely damages to be awarded.

STORCK V. GERMANY

ECtHR, 61603/00, judgment 16 June 2005

MDAC Keywords: detention, authority for; private institution; treatment

Facts

App had spent almost 20 years in psychiatric institutions, including 2 years in a private clinic. App had not been placed under guardianship and never signed a declaration consenting to her detention. No judicial decision had been taken authorising her detention. App tried unsuccessfully several times to escape from the clinic. A psychiatric report concluded that App never had a mental illness, and App sued the private clinic for compensation for the damage caused by her detention and 'treatment'. Federal courts eventually refused to hear the case. App complained under Arts. 5, 6(1) and 8 concerning her detention and medical treatment in the private clinic and about the fairness of the ensuing proceedings.

Judgment

Art. 5(1) – vio. App had not agreed to her detention at the clinic and had therefore been deprived of her liberty within the meaning of Art. 5(1). As there had been no court order authorising the detention, her detention had not been lawful.

Art. 8 – vio. App’s medical treatment had been given without her consent and interfered with her right to respect for private life. As the detention had not been authorised by a court, the interference had not been lawful within the meaning of Art. 8(2).

Art. 6(1) – no vio. The compensation proceedings the App had brought in the domestic courts could not be considered unfair.

TÁM V. SLOVAKIA

ECtHR, 50213/99, judgment 22 June 2004

MDAC Keywords: detention, authority for; detention, review of

Facts

App was diagnosed with schizophrenia and was detained in a P-H. The law required a court to review the lawfulness of detention, which had not been done. App alleged a vio of Arts. 5(1) and (4) since his detention was unlawful and he was unable to obtain a review of the lawfulness of his detention by a court.

Judgment

Arts. 5(1) and (4) – vio. Detention was not in accordance with a procedure prescribed by law because the law was not followed (no court review, judge had not heard App or doctor and had not appointed a guardian). Art. 5(4) requires an independent legal mechanism by which a detainee can have the lawfulness of the detention reviewed by a judge. The Slovak courts made several mistakes, which cumulatively left App without adequate guarantees.

THYNNE V. THE UNITED KINGDOM

ECtHR, 11787/85, 11978/86 and 12009/86, judgment 25 October 1990

MDAC Keywords: detention, authority for

Facts

App was convicted of sexual offences and given a ‘discretionary life sentence’ instead of a determinate (fixed) sentence. Under this scheme, which deals with mentally unstable and dangerous offenders, the App would be released when there was adequate improvement in his mental condition. The Secretary of State (interior minister) was responsible for determining when the public interest would permit App’s release. There was no judicial procedure by which the App could challenge the continuing lawfulness of his detention and he therefore argued a violation of Art. 5(4), also that the lack of enforceable claim for compensation for an Art. 5(4) breach violated Art. 5(5).

Judgment

Art. 5(4) – vio. Discretionary lifers should have their release decided by judges, not politicians. The factors of mental instability and dangerousness are susceptible to change over the passage of time and new issues of lawfulness may arise. App should be entitled to take proceedings to have the lawfulness of his continued detention decided by a court at reasonable intervals and to have the lawfulness of any re-detention determined by a court.

Art. 5(5) – vio. There was no enforceable claim for compensation in UK courts.

TKÁČIK V. SLOVAKIA

ECtHR, 42472/98, judgment 14 October 2003

MDAC Keywords: length of proceedings

Facts

App was arrested for drunken driving and having a sword in his car. He was taken to the police station, examined by a psychiatrist and released. At the request of App's wife, a doctor issued a certificate requesting police assistance to take App to a P-H. In the hospital he was treated against his will and was forced to undergo psychiatric tests. After court hearings he was discharged. App complained that time limits had not been followed, and complained that the whole experience violated his right to respect for private life under Art. 8.

Judgment

Art. 5(1) – vio. The legal time limits were not respected. The district court was not informed of his detention within 24 hours and the court did not decide on the lawfulness of the detention within 5 days of his detention. The detention had therefore not been in accordance with a procedure prescribed by law. Not necessary to consider Art. 8.

VAN DER LEER V. THE NETHERLANDS

ECtHR, 11509/85; judgment 21 February 1990

MDAC Keywords: detention, authority for; information; length of proceedings

Facts

App was a voluntary patient in a P-H during which time a court, without holding a hearing, ordered her to be compulsorily confined for 6 months. She found out about the court order by accident some 5 months later. App's request for discharge was refused by the hospital. The district court ordered her discharge 6 months later. App complained under Art. 5 that the judge had failed to hear her before ordering her detention, also under Art. 5(2) that she was not informed of her detention or the reasons for it; and Art. 5(4) because the district court did not deliver its judgment until 5 months after the proceedings had been instituted and thus had not decided the issue 'speedily'.

Judgment

Art. 5(1) – vio. The judge failed to hear App before authorising her detention.

Art. 5(2) – vio. App was not informed of the court order of her confinement, but found out about the decision by accident a much later stage. Neither the manner in which she

was informed about it, nor the time it took to communicate it to her complied with the requirements of the Convention. The ‘arrest’ referred to in Art. 5(2) extends beyond the realm of criminal law measures.

Art 5 (4) – vio. The 5-month length of the proceedings was in this case excessive.

VARBANOV V. BULGARIA

ECtHR, 31365/96, judgment 5 October 2000

MDAC Keywords: detention, authority for; detention, review of; psychiatric assessment

Facts

A prosecutor, without input from psychiatrists, ordered involuntary psychiatric examination and detention of the App. The prosecutor’s power originated from an unpublished internal instruction which did not have the status of a legal rule. App alleged vios of Art. 5.

Judgment

Art. 5(1) – vio. Detention for mental grounds without a psychiatric opinion constitutes a vio as it cannot be maintained that the person has reliably been shown to be of ‘unsound mind’. Medical assessment must be based on actual state of the mental health of the person concerned and not solely on past events. A power to detain must be specified in a legal rule.

Art. 5(4) – vio. Detention must be reviewed by a court or court-like body. An appeal which falls to a more senior prosecutor does not constitute a court as it is not independent from the executive and from the parties.

VAUDELLE V. FRANCE

ECtHR, 35683/97, judgment 30 January 2001

MDAC Keywords: fair trial; incapacity

Facts

App was under guardianship of his adult son. App was accused of a crime, and a summons to attend the trial was sent only to App (who did not appear at the trial) and not the guardian. App was tried in his absence, as the court deemed him to have been lawfully informed of the hearing. He was sentenced to 12 months’ imprisonment and ordered to pay damages. App complained that the summons and notification of the judgment had been sent only to him, not his guardian. He had thereby been prevented from exercising his rights of defence afforded to him under Art. 6 because he was not mentally competent to exercise his defence rights.

Judgment

Arts. 6(1) and (3)(a) – vio. The authorities should take additional steps in the interests in the proper administration of justice and could have ordered the applicant to attend the appointment with a psychiatrist and to appear at the hearing and, in the event of his failing to comply, arranged for him to be represented by his guardian or lawyer.

VERMEERSCH V. FRANCE

ECtHR, 39273/98; judgment 22 May 2001. Available only in French
MDAC Keywords: detention, review of; length of proceedings

Facts

App was detained for approximately 5 months in a P-H. He brought legal action claiming reimbursement of his hospital expenses. These proceedings lasted almost 5 years, and he argued that the length of them was excessive, violating Art. 6.

Judgment

Art. 6(1) – vio. 5 years was not ‘reasonable’ for one single instance.

VODENIČAROV V. SLOVAKIA

ECtHR, 24530/94, judgment 21 December 2000
MDAC Keywords: access to court; detention, review of; length of proceedings

Facts

App was detained in a P-H for examination in the context of criminal proceedings against him. He alleged that the procedure to review the lawfulness of his detention in a mental hospital did not meet the requirements of Art. 5(4) in that the court did not speedily examine his request for discharge.

Judgment

Art. 5(4) – vio. The review of the lawfulness of detention was not carried out speedily as required by Art. 5(4). App could not have been reasonably expected to file a Constitutional Court application while the proceedings concerning his ordinary remedy were pending before the Regional Court.

WARREN V. THE UNITED KINGDOM

ECtHR, 36982/97, decision 30 March 1997
MDAC Keywords: admissibility; detention, review of

Facts

App was detained in a P-H by a criminal court. A Mental Health Review Tribunal reviewed the lawfulness of his detention and ordered it to continue. The Court of Appeal dismissed App’s application for judicial review of the MHRT’s decision. App alleged a vio of Art. 5(1) and (4).

Decision

Art. 5(1)(c) – inadmissible. Successive tribunals found that App had a mental illness and that his continued detention was necessary for his own and other people’s health and safety. The mental disorder was of a kind or degree warranting compulsory confinement, and finally, the validity of the continued confinement depended upon the persistence of the disorder.

WASSINK V. THE NETHERLANDS

ECtHR, 12535/86, judgment 27 July 1990

MDAC Keywords: detention, review of

Facts

App was detained in a P-H, and a few days later a prosecutor sought to extend his detention. The prosecutor sent a file to a local judge, who then interviewed the treating psychiatrist in the presence of App's 'confidential counsellor'. The judge contacted the other people by telephone. He gave a summary of the information he received by these people to the 'confidential counsellor'. On the basis of these communications the judge ordered the continuation of App's detention. App complained under Art. 5 that the judge prevented him from commenting on evidence relied on by the court in its decision. App further complained that legal procedure of having a 'registrar' attend interviews and sign a record of the interview was not complied with in his case.

Judgment

Art. 5(1) – vio. Failure to comply with a 'procedure prescribed by law', by failing to provide a registrar.

Art. 5(4) – no vio. Although there are risks inherent in questioning the witnesses by telephone, the procedure took place on the initiative and under the responsibility of a judge. The judge gave the 'confidential counsellor' a summary of the telephone conversations and allowed him to comment on them. Even though the 'procedure prescribed by law' was not strictly followed as regards one non-crucial aspect, the App's detention was reviewed in compliance with Art. 5(4).

WILKINSON V. THE UNITED KINGDOM

ECtHR, 14659/02, decision 28 February 2006

MDAC Keywords: admissibility; fair trial; ill-treatment; treatment

Facts

App was detained in a P-H. He suffered a mild heart attack and was diagnosed as having minor coronary disease. Doctors wanted to treat his mental illness with antipsychotic medication, which App refused. App usually became anxious and acted violently when faced with a threatening situation such as receiving psychiatric medication against his will. A statutory 'second opinion appointed doctor' agreed with the treatment. Without warning, medication was administered against App's will and under restraint. App complained that the imposition of medical treatment against his will was a breach of Art. 3. He further argued that the authorities failed to provide suitable safeguards against the imposition of such treatment. Specific safeguards included the authorities' seeking approval from a court before imposing treatment; and the possibility of challenging such treatment, before it took place, in a court which would have been able to provide a suitable level of review.

Decision

Art. 3 – inadmissible. 'Medical necessity' is not limited to life-saving treatment, but can include antipsychotic medication, imposed as part of a therapeutic regime. The decision as to what

therapeutic methods are necessary is principally one for the national medical authorities: those authorities have a certain margin of appreciation in this respect since it is in the first place for them to evaluate the evidence in a particular case. In respect to the safeguards, given the role fulfilled by the statutory ‘second opinion appointed doctor’, this did not require a prior application to a court. The lack of advance warning of the first injection was compatible with the ECHR since such a warning was likely, on the facts of the present case, to have caused serious harm to the physical or mental health of the App and others.

WINTERWERP V. NETHERLANDS

ECtHR, 6301/73, judgment 24 October 1979

MDAC Keywords: detention, authority for; incapacity; legal representation; private life; treatment

Facts

A mayor ordered App to be detained in a P-H. App complained that whilst detained he was not allowed to be heard by various courts to review his detention, nor was he notified of their orders. He also objected to the fact that he had no legal assistance and that he had no opportunity to challenge the medical reports. He also complained under Art. 6(1) that he was denied the capacity to administer his property without proper access to judicial determination.

Judgment

Art. 5(1) – no vio.

‘The lawful detention of persons of unsound mind’

i. Meaning of ‘unsound mind’

There is no definitive interpretation of the term ‘persons of unsound mind’, but it is continually evolving as research progresses, treatment is developed and society’s attitude to mental illness changes. ‘Unsound mind’ does not simply mean that someone’s views or behaviour deviated from the norms prevailing in a particular society. Except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of ‘unsound mind’. The very nature of what has to be established before the competent national authority – that is, a true mental disorder – calls for objective medical expertise. Further, the mental disorder must be of a kind or degree warranting compulsory confinement. What is more, the validity of continued confinement depends upon the persistence of such a disorder.

ii. Meaning of ‘lawful’

Under Art. 5(1)(e), ‘lawfulness’ presupposes conformity with both the domestic law and with the purpose of the restrictions permitted by the Art. 5(1)(e). The term ‘lawful’ includes procedural as well as substantive rules. No detention that was arbitrary can be regarded as ‘lawful’.

iii. Role of national authorities and courts

In deciding whether an individual should be detained as a ‘person of unsound mind’, national authorities enjoy a certain discretion. The ECtHR’s task is to review, under the

Convention, the decisions of the domestic authorities. In this case, App's detention was justified as an 'emergency', and the emergency confinement which continued for 6 weeks was not so excessive as to render the detention 'unlawful'. App's detention constituted lawful detention of a person of unsound mind.

'In accordance with a procedure prescribed by law'

These words refer to domestic law and emphasise the need for compliance with the relevant procedure under that law. Domestic law itself must conform to the ECHR. The notion underlying the term was one of fair and proper procedure, i.e. any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary.

Alleged 'right to treatment'

A mental patient's right to treatment appropriate to his condition cannot as such be derived from Art. 5(1)(e) (para. 51).

Art. 5(4) – vio.

Initial direction to detain made by the mayor and the subsequent court orders

'The judicial proceedings referred to in Art. 5(4) need not, it is true, always be attended by the same guarantees as those required under Art. 6(1) for civil or criminal litigation. [...] Nonetheless, it is essential that the person concerned should have access to a court and the opportunity to be heard either in person or, where necessary, through some form of representation, failing which he will not have been afforded 'the fundamental guarantees of procedure applied in matters of deprivation of liberty'. [...] Mental illness may entail restricting or modifying the manner of exercise of such a right [...], but it cannot justify impairing the very essence of the right. Indeed, special procedural safeguards may prove called for in order to protect the interests of persons who, on account of their mental disabilities, are not fully capable of acting for themselves' (para. 60).

In this case, legislation did not require courts to hear the person whose detention was being sought; and the applicant was not allowed to take part in the proceedings at which the various detention orders were made: he was not notified of the proceedings or their outcome, nor was he heard or given an opportunity to argue his case.

App's requests to be discharged

An excessive interval between an application for discharge and the court hearing might constitute a restriction of access to the courts. Where the public prosecutor exercised his power of refusing to refer a detained person's application for discharge to the court, the person was denied the right to court proceedings embodied in Art. 5(4). A court's discretion, when an application had been referred by the public prosecutor, to decide whether or not to hear the detained person did not protect the fundamental guarantees of procedure which must be applied where liberty had been deprived (para. 63).

App's alleged failure to seek legal representation

It cannot be said that an App has failed to avail himself of the right set out in Art. 5(4) simply because he had never instructed a lawyer to represent him.

Art. 6(1) – vio.

Whether denial of capacity to administer property is a 'determination of civil rights and obligations'.

The capacity to deal personally with one's property involved the exercise of private rights and hence affected 'civil rights and obligations' within the meaning of Art. 6(1). Removing App's legal capacity amounts to a 'determination' of such rights and obligations. The court proceedings afforded the App no opportunity to be heard and in any case were concerned solely with his detention. There was therefore no 'fair hearing' on the question of his civil capacity within the meaning of Art. 6(1). This right must be respected whatever the justification for depriving a person of unsound mind of the capacity to administer his property. While mental illness might permit certain limitations on the exercise of the 'right to a court', it cannot be a justification for the total absence of that right (para. 75).

WORWA V. POLAND

ECtHR, 26624/95, judgment 27 November 2003
MDAC Keywords: psychiatric assessment; private life

Facts

During police investigations, App was arrested, and a court ordered, at very short intervals, psychiatric examinations. App complained that her Art. 8 rights to respect for private and family life had been breached.

Judgment

Art. 8 – vio. Ordering a psychiatric report in order to determine the mental state of a person charged with an offence remains a necessary measure and one which protects individuals capable of committing offences without being in full possession of their mental faculties. State authorities are required to make sure such a measure does not upset the fair balance that should be maintained between the rights of the individual, in particular the right to respect for private life, and the concern to ensure the proper administration of justice. In this case the balance was not preserved.

X. V. THE UNITED KINGDOM

ECmHR, 6840/74, decision 12 May 1977
MDAC Keywords: admissibility; ill-treatment

Facts

App was convicted of assaulting a police officer and detained in a P-H as he had a 'psychopathic disorder'. On suspicion of starting a fire, App was transferred to an intensive care unit where

he was kept in a secure single room with only limited opportunities for exercise and association with other persons. He also complained that he had been deprived of adequate furnishing and clothing and that the conditions in the room had been unsanitary and it had been inadequately lit and ventilated. He alleged that the conditions amounted to a vio of Art. 3.

Decision

Art. 3 – admissible.

X. V. THE UNITED KINGDOM

ECtHR, 7215/75, judgment 5 November 1981

MDAC Keywords: detention, authority for; detention, review of

Facts

App was convicted of a crime and sent to a P-H. Some years later the Home Secretary (interior minister) authorised his discharge from the hospital, but App was ‘recalled’ to hospital 3 years later. App applied for habeas corpus, which was refused. He complained that his recall was in vio of Art. 5, and that he had not had the opportunity to for a judicial review of his detention, as mandated by Art. 5(4).

Judgment

Art. 5(1)(e) – no vio. The Home Secretary’s powers to recall a patient in this context are not arbitrary powers. Where there is reason to believe that the liberty of a person discharged from hospital poses a danger to the public, recall as an emergency measure and for a short period may be justified.

Art. 5(4) – vio. Habeas corpus was limited to assessing whether the executive had conformed to the law. The procedure does not secure the right guaranteed by Art. 5(4). A court reviewing detention must be able to enquire whether the reasons which initially justified the person’s detention continue to exist, and such a court must have the authority to issue legally binding decisions.

X. AND Y. V. THE NETHERLANDS

ECtHR, 8978/80, judgment 26 March 1985

MDAC Keywords: access to court; child; incapacity; private life

Facts

App2, the intellectually disabled daughter of App1, was sexually assaulted in a privately run children’s home. App1, filed a criminal complaint. The public prosecutor did not open proceedings. App1’s appeal was rejected on the grounds that his complaint could not be regarded as a substitute for App2’s complaint, which the girl, being over 16, should have lodged herself, even though the police had regarded her as incapable of doing so. Apps alleged (among others) a vio of Art. 8.

Judgment

Art. 8 – vio. The choice of means calculated to secure compliance with Art. 8 in the sphere of the relations of individuals between themselves is in principle a matter that falls within a

State's margin of appreciation. This is a case where fundamental values and essential aspects of private life are at stake. Effective deterrence is indispensable and it can be achieved only by criminal-law provisions: indeed, it is by such provisions that the matter is normally regulated, but the Dutch law afforded the Apps no such practical and effective protection.

Y.F. V. TURKEY

ECtHR, 24209/94, judgment 22 July 2003

MDAC Keywords: private life; treatment

Facts

Following a period in custody, App's wife alleged that she was kept blindfolded, hit by police officers with truncheons, verbally insulted and threatened with rape. On her release from police custody, a doctor examined App's wife and reported that there were no signs of ill-treatment on her body. She was taken to a gynaecologist for further examination. Despite her refusal, she was forced to undergo the gynaecological examination. App alleged that the forced examination of his wife constituted a breach of Art. 8.

Judgment

Art. 8 – vio. There was no consent from App's wife, and in the circumstances she could not have been expected to resist submitting to such an examination in view of her vulnerability at the hands of the authorities who exercised complete control over her throughout her detention.

ZEHNALOVÁ AND ZEHNAL V. THE CZECH REPUBLIC

ECtHR, 38621/97, decision 14 May 2002

MDAC Keywords: admissibility; disability, physical; private life

Facts

App1, who is physically disabled, and App2 (her husband) complained that in their home town many public buildings are not equipped with access facilities for people with disabilities, contrary to Czech law. Apps unsuccessfully sought a remedy in the Czech courts. They complained under various ECHR provisions that they suffered discrimination in the enjoyment of their rights on account of App1's disability.

Decision

Art. 8 – not applicable. Art. 8 does not merely compel the State to abstain from interference since it may also give rise to positive obligations inherent in effective respect for private and family life. Such positive obligations exist where there is a direct and immediate link between the measures sought and the Apps' private and/or family life. Art. 8 cannot be taken to be generally applicable each time an App's everyday life is disrupted; it applies only in exceptional cases where the lack of access to public buildings and buildings open to the public affects her life in such a way as to interfere with the right to personal development and the right to establish and develop relationships with other human beings and the outside world. The ECtHR dismissed the Apps' complaint under Art. 14, as Art. 8 was found inadmissible.

Mental Disability Advocacy Center (MDAC)

The Mental Disability Advocacy Center (MDAC) advances the human rights of adults and children with actual or perceived intellectual or psycho-social disabilities. Focusing on Europe and central Asia, we use a combination of law and advocacy to promote equality and social integration. We have participatory status at the Council of Europe and are a cooperating organisation of the International Helsinki Federation for Human Rights.

Our vision is for a world that values emotional, mental and learning differences, and where people respect each other's autonomy and dignity.

Chair of the Board	Jan Pfeiffer (Czech Republic)
Board of Directors	Peter Bartlett (Canada and UK) * Lilla Farkas (Hungary) * Ivan Fišer (UK and Serbia) Clemens Huitink (The Netherlands) * Robert Kushen (USA) * Anna Lawson (UK) Dainius Puras (Lithuania)
Executive Director	Oliver Lewis
Staff	Csilla Budai (Projects Officer) * Barbora Bukovská (Legal Director) * István Fenyvesi (Publications Consultant) * Jan Fiala (Legal Officer) * Iain Giles (Finance Director) Gábor Gombos (Senior Advocacy Officer) * Anna Hornyik (Office Administrator) Dániel Kaderják (Programme Assistant and Researcher) * Sarolta Kozma (Accountant) Victoria Lee (Legal Officer) * Yuri Marchenko (Legal Officer) György Péchy Jr. (IT Consultant) * Orsolya Süveg (Office Cleaner)
Guardianship Researchers	Zuzana Benešová (Czech Republic) * Nina Dadalauri (Georgia) * Meder Dastanbekov (Kyrgyzstan) * Vidan Hadži-Vidanović (Serbia) * Slavka Nikolova Kukova (Bulgaria) Petar Sardelić (Croatia) * Anna Smorgunova (Russia)
Legal Monitors and Partner Organisations	Dmitri Bartenev, St. Petersburg, Russia * Aneta Mircheva, Sofia, Bulgaria (Bulgarian Helsinki Committee) * Eve Pilt, Tallinn, Estonia (Estonian Patients Advocacy Association) * David Zahumenský, Brno, Czech Republic (League of Human Rights)
Guardianship Advisory Board	Robert M. Gordon (Canada) * Georg Høyer (Norway) * Krassimir Kanev (Bulgaria) Mark Kelly (Ireland) * Jill Peay (UK)
Legal Advisory Network	Peter Bartlett (Canada and UK, Chair) * Paul Bowen (UK) * Ira Burmin (USA) * Luke Clements (UK) * Lilla Farkas (Hungary) * Yonko Grozev (Bulgaria) * Aart Hendricks (The Netherlands) Lovorka Kusan (Croatia) * Robert Kushen (USA) * Olivier De Schutter (Belgium) * Vessalina Vandova (Bulgaria)
Recent Volunteers and Interns	Priscilla Adams (USA) * Wendy Alexander (Trinidad and Tobago) * Jill Diamond (USA) Matthew Francis (UK) * Jana Glogárová (Czech Republic) * Sarah Green (UK) * Jana Hecová (Czech Republic) * Bogdan Maties (Romania) * Jill Roche (USA) * Nicholas Tsang (USA)

MDAC work is funded by Doughty Street Chambers, the European Commission, the Open Society Institute – Budapest, the Sigrid Rausing Trust, and individual donors

For additional information contact:

MDAC * Rákóczi út 27/B * 1088 Budapest * Hungary
Telephone: +36 1 413 27 30 * Fax: +36 1 413 27 39 * Email: mdac@mdac.info * Website: www.mdac.info

