



## Bulgaria breached human rights of man forced to live for years in inhuman conditions in psychiatric institution

Today's Grand Chamber judgment in the case [Stanev v. Bulgaria](#) (application no. 36760/06), which is final<sup>1</sup>, concerned a man forced to live for years in an unsanitary and dilapidated psychiatric institution with inadequate food and heating and no activities for residents.

The European Court of Human Rights held, unanimously, that there had been:

**A violation of Article 5 § 1** (right to liberty and security) of the European Convention on Human Rights, in that the applicant was illegally detained in the institution in question;

**A violation of Article 5 § 4** of the Convention, concerning the impossibility for him to bring proceedings to have the lawfulness of his detention decided by a court;

**A violation of Article 5 § 5**, concerning the impossibility for him to apply for compensation for his illegal detention and the lack of review by a court of the lawfulness of his detention;

**A violation of Article 3 (prohibition of degrading treatment)**, concerning the conditions in which he was forced to live;

**A violation of Article 13 (right to an effective remedy)**, concerning the impossibility for him to apply for compensation regarding his degrading living conditions; and,

**A violation of Article 6 § 1 (right to a fair hearing)**, in that he was denied access to a court to seek restoration of his legal capacity.

### Principal facts

The applicant, Rusi Kosev Stanev, is a Bulgarian national who was born in 1956 and lives in Pastra in the municipality of Rila, south-western Bulgaria.

In 2000 and 2001 the Bulgarian courts found Mr Stanev to be partially incapacitated, on the ground that he had been suffering from schizophrenia since 1975 and was unable to manage his own affairs adequately or realise the consequences of his actions. In 2002 he was placed under the partial guardianship of a council officer as his family did not wish to take on guardianship responsibilities for him.

Without consulting or informing Mr Stanev, on 10 December 2002 his guardian had him placed in the Pastra social care home for men with psychiatric disorders, in a remote mountain location near the village of Pastra. He has lived there ever since. The director of the home subsequently became his guardian. Mr Stanev was only allowed to leave the institution with the director's permission. On one occasion, when he did not return from

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<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

a period of organised leave, the director contacted the police, who located him. He was then returned by staff members.

Conditions in the institution, built in the 1920s, were considered to constitute inhuman and degrading treatment by Council of Europe's Committee for the Prevention of Torture and Degrading Treatment or Punishment (CPT) on its official visits in 2003 and 2004. The CPT noted that the buildings were dilapidated, there was no running water in the buildings and the toilets were decrepit and in an execrable state in the yard. The available heating was inadequate, as was the residents' diet, which contained no milk or eggs and rarely fruit and vegetables. No therapeutic activities were provided and residents led passive, monotonous lives. In addition, the home did not return clothes to the same people after they were washed. Improvements to the home were not carried out until 2009.

Mr Stanev tried to have his legal capacity restored in November 2004. In 2005 prosecutors refused to bring a case, finding that he could not cope alone and that the institution was the most suitable place for him, following a medical report of 15 June 2005 which stated that he showed signs of having schizophrenia.

Mr Stanev tried unsuccessfully to have his partial guardianship over-turned by asking the Mayor of Rila to bring a court case. His application for judicial review of the mayor's refusal was rejected on the ground that an application could be made by his guardian. Mr Stanev has made several oral requests to his guardian to apply for release which have all been refused.

On 31 August 2006 a private psychiatric report found that Mr Stanev had been incorrectly diagnosed as schizophrenic on 15 June 2005 but that he was prone to alcohol abuse, the symptoms of which could be confused with schizophrenia. It was also found that his mental health had improved and was not at risk of deteriorating and that the home's director thought he was capable of being reintegrated into society. On the other hand, his health was being damaged by his stay in the home, where he risked becoming institutionalised.

## Complaints, procedure and composition of the Court

Under Article 3 and Article 13, Mr Stanev complained about the living conditions in the Pastra care home. He also complained, under Article 5 §§ 1, 4 and 5, that he was deprived of his liberty unlawfully and arbitrarily as a result of his placement in an institution against his will and that it was impossible under Bulgarian law to have the lawfulness of his deprivation of liberty examined or to seek compensation in court. Relying on Article 6, he further complained that he could not apply to a court to seek release from partial guardianship. Lastly, he alleged that the restrictions resulting from the guardianship regime, including his placement in the institution, infringed his right to respect for his private life, relying on Article 8 (right to respect for private life) and Article 13.

The application was lodged with the European Court of Human Rights on 8 September 2006. A Chamber hearing on the admissibility and merits of the case was held in public, on 10 November 2009, and it was declared admissible on 29 June 2010.

On 14 September 2010 the Chamber dealing with the case relinquished jurisdiction in favour of the Grand Chamber. A Grand Chamber hearing was held in public on 9 February 2011.

The non-governmental organisation Interights submitted third-party comments in the case.

Judgment was given by the Grand Chamber of 17, composed as follows:

Nicolas **Bratza** (the United Kingdom), *President*,  
Jean-Paul **Costa** (France),  
Françoise **Tulkens** (Belgium),  
Josep **Casadevall** (Andorra),  
Nina **Vajić** (Croatia),  
Dean **Spielmann** (Luxembourg),  
Lech **Garlicki** (Poland),  
Khanlar **Hajiyev** (Azerbaijan),  
Egbert **Myjer** (the Netherlands),  
Isabelle **Berro-Lefèvre** (Monaco),  
Luis **López Guerra** (Spain),  
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),  
Zdravka **Kalaydjieva** (Bulgaria),  
Ganna **Yudkivska** (Ukraine),  
Vincent A. **de Gaetano** (Malta),  
Angelika **Nußberger** (Germany),  
Julia **Laffranque** (Estonia), *Judges*,

and also Vincent **Berger**, *Jurisconsult*.

## Decision of the Court

### Article 5 § 1

The Court observed that Mr Stanev's placement in the Pastra social care home was attributable to the Bulgarian authorities as it was a result of various steps taken by public authorities and institutions through their officials, from the initial request for his placement up until its implementation.

He was housed in a block which he was able to leave, but the time he spent away from the institution and the places where he could go were always subject to controls and restrictions. The Court considered that the system of leave of absence and the fact that management kept Mr Stanev's identity papers placed significant restrictions on his personal liberty. Although he was able to undertake certain journeys, he was under constant supervision and was not free to leave the home without permission whenever he wished. In addition, the Government had not shown that Mr Stanev's state of health put him at immediate risk or required the imposition of any special restrictions to protect him.

The duration of his placement in the Pastra social care home was not specified and was therefore indefinite, as he was listed in the municipal registers as being permanently resident there and is still living there today. As he had lived there for more than eight years, he must have felt the full adverse effects of the restrictions imposed on him.

Mr Stanev was not asked to give his opinion on his placement in the institution and never explicitly consented to it. Domestic law attached a certain weight to his wishes and it appeared that he was well aware of his situation. At least from 2004, he explicitly expressed his desire to leave the institution, both to psychiatrists and through his applications to the authorities to have his legal capacity restored. The Court was not convinced that he ever consented to the placement, even tacitly.

Taking into consideration the Bulgarian authorities involvement in the decision to place Mr Stanev in the institution, the rules on leave of absence, the duration of the placement and Mr Stanev's lack of consent, the Court concluded that Article 5 § 1 was applicable.

As the decision by Mr Stanev's guardian to place him in an institution for people with psychiatric disorders without having obtained his prior consent was invalid under Bulgarian law, his deprivation of liberty was in violation of Article 5.

In any event, that measure was unlawful within the meaning of Article 5 § 1 since none of the exceptions under that article applied, including Article 5 § 1 (e) - the lawful detention of a person of "unsound mind". The lack of a recent medical assessment alone would have been sufficient to conclude that his placement in the home was unlawful. In addition, it had not been established that he posed a danger to himself or to others. The Court also noted deficiencies in the assessment of whether he still suffered from a disorder warranting his confinement. Indeed, no provision was made for such an assessment under the relevant legislation.

The Court concluded that the applicant's placement in the home was unlawful and not justified by Article 5 § 1 (e) and the Bulgarian Government had not relied on any other exception in sub-paragraphs (a)-(f) of Article 5 § 1. There had therefore been a violation of Article 5 § 1.

#### Article 5 § 4

The Court observed that the Bulgarian Government had not indicated any domestic remedy capable of giving Mr Stanev a direct opportunity to challenge the lawfulness of his placement in the institution and the continued implementation of that measure. It also noted that the Bulgarian courts were not involved at any time or in any way in the placement and that Bulgarian legislation did not provide for automatic periodic judicial review of the placement in a home for people with mental disorders. Furthermore, since Mr Stanev's placement in the institution was not recognised as a deprivation of liberty in Bulgarian law, there were no national legal remedies available to challenge its lawfulness. In addition, the Court noted that the validity of the placement agreement could have been challenged on the ground of lack of consent only on the guardian's initiative. There had therefore been a violation of Article 5 § 4.

#### Article 5 § 5

The Court found that it had not been shown that Mr Stanev had or would have access either prior to today's judgment or subsequently to a right to compensation concerning his unlawful detention/loss of liberty, in violation of Article 5 § 5.

#### Article 3

The Court observed that Article 3 prohibited the inhuman and degrading treatment of anyone in the care of the authorities, whether detention ordered in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned.

The Court noted that it was not disputed that the building in which Mr Stanev lives was renovated in late 2009, resulting in an improvement in his living conditions. The Court therefore considered that his complaint should cover the period between 2002 and 2009.

The Court found that the food was insufficient and of poor quality. The building was inadequately heated and in winter Mr Stanev had to sleep in his coat. He could shower only once a week in an unhygienic and dilapidated bathroom. The toilets were in an execrable state and access to them was dangerous, according to the findings by the CPT. In addition, the home did not return clothes to the same people after they were washed, which was likely to arouse a feeling of inferiority in the residents.

Mr Stanev was also exposed to all those conditions for a considerable period - approximately seven years. The CPT, after visiting the home, had concluded that the

living conditions there at the relevant time could be said to amount to inhuman and degrading treatment. Despite having been aware of those findings, during the period from 2002 to 2009 the Bulgarian Government did not act on their undertaking to close down the institution. The Court considered that the lack of financial resources cited by the Government was not a relevant argument to justify keeping Mr Stanev in the living conditions described.

Even though there was no suggestion that the Bulgarian authorities deliberately intended to treat Mr Stanev in a degrading way, taken as a whole, his living conditions for a period of approximately seven years amounted to degrading treatment, in violation of Article 3.

### Article 13

The Court observed that Mr Stanev's placement in the Pastra social care home was not regarded as detention under Bulgarian law. He would not therefore have been entitled to compensation for the poor living conditions in the institution, under section 1(1) of the State Responsibility for Damage Act 1988, which had been interpreted by the Bulgarian courts as being applicable to damage suffered by prisoners as a result of poor detention conditions. Moreover, that provision had never been found to apply to allegations of poor conditions in social care homes. The Court therefore concluded that the remedies in question were not effective within the meaning of Article 13. Also, even if Mr Stanev had been able to have his legal capacity restored and leave the institution, he would not have been awarded any compensation for his treatment during his placement there. There had therefore been a violation of Article 13, taken in conjunction with Article 3 concerning Mr Stanev's lack of access to compensation for his detention in degrading conditions.

### Article 6 § 1

The Court found that Mr Stanev was unable to apply for the restoration of his legal capacity other than through his guardian or one of the people listed in Article 277 of the Code of Criminal Procedure. It also noted that, under Bulgarian law, no legal distinction was made between those partially and fully deprived of legal capacity and that there was no possibility of automatic periodic review of whether the grounds for placing a person under guardianship remained valid. In addition, in Mr Stanev's case the measure in question was indefinite.

Although the right of access to the courts was not absolute and restrictions on a person's procedural rights, even where the person had been only partially deprived of legal capacity, might be justified, the right to ask a court to review a declaration of incapacity was one of the fundamental procedural rights for the protection of those who had been partially deprived of legal capacity. It followed that such people should in principle have direct access to the courts.

The Court observed that, according to a recent study<sup>2</sup>, 18 out of 20 national European legal systems allowed direct access to the courts for any partially incapacitated person wishing to have her or his status reviewed. In 17 countries such access was even open to those declared fully incapable. There was therefore a European trend towards granting legally incapacitated people direct access to the courts to seek restoration of their legal capacity. The Court also stressed the growing importance which international

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<sup>2</sup> Anyone deprived of legal capacity can apply directly to their national courts for discontinuation of the measure in the vast majority of Council of Europe member States, according to a recent comparative study. This is the case in 17 of the 20 countries studied - Croatia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Luxembourg, Monaco, Poland, Portugal, Romania, Slovakia, Sweden, Switzerland and Turkey - but not in Latvia or Ireland. In Ukraine, only those who had been declared fully incapable could not, although they could challenge before a court any measures taken by their guardian.

instruments for the protection of people with mental disorders were currently attaching to granting them as much legal autonomy as possible<sup>3</sup>.

Article 6 § 1 had therefore to be interpreted as guaranteeing in principle that anyone in Mr Stanev's position had direct access to a court to seek restoration of his or her legal capacity. As direct access of that kind was not guaranteed with a sufficient degree of certainty by the relevant Bulgarian legislation, there had been a violation of Article 6 § 1 regarding Mr Stanev.

### Other Articles

The Court considered that no separate issue arose under Article 8, taken alone and/or in conjunction with Article 13.

### Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Bulgaria was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage.

### Separate opinions

Judges Tulkens, Spielmann and Laffranque expressed a joint partly dissenting opinion. Judge Kalaydjieva expressed a separate partly dissenting opinion. Those opinions are annexed to the judgment.

*The judgment is available in English and French.*

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### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Emma Hellyer (tel: + 33 3 90 21 42 15)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Céline Menu-Lange (tel: + 33 90 21 58 77)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.

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<sup>3</sup> The United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities and Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe on principles concerning the legal protection of incapable adults, which recommend that adequate procedural safeguards be put in place to protect legally incapacitated persons to the greatest extent possible, to ensure periodic reviews of their status and to make appropriate remedies available.