THE EUROPEAN NPM PROJECT

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A COUNCIL OF EUROPE/ EUROPEAN COMMISSION JOINT PROGRAMME:
"Setting up an active network of national preventive mechanisms against torture, an activity of the Peer-to-Peer Network"

co-funded by the
HUMAN RIGHTS TRUST FUND

Implementing partner:

Strasbourg, 9 March 2010 LHRCB/NPM (2010)12 v2

1st Thematic NPM Workshop

"The role of NPMs in preventing ill-treatment in psychiatric institutions"

Padua (Italy), 24-25 March 2010

Outline paper

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A meeting co-organised with:

University of Padua
Interdepartmental Centre on
Human Rights and the Rights of Peoples

Université de Padoue
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Summary

Around 450 million people worldwide suffer from mental disorders[1], and this number is expected to increase globally, due to social and economic problems such as unemployment, crime, poverty, racial intolerance, substance abuse, homelessness and abuse.

It is a basic right to have effective access to the best available mental health care, which shall be part of the State's health and social care system. Every state should have different options available -including community-based services- for the treatment of mental problems, so that involuntary hospitalisation in a psychiatric hospital or any other mental institution should only apply when there are no other alternatives.

Mentally ill people are more vulnerable than the rest of the population, as they are more likely to find themselves in situations where they are often not able to stand up for their rights and thus risk being potentially submitted to exploitation, humiliation or some other violation of their basic rights.

As a result, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) is specially pertinent to those with mental disorders. The lack of financial or professional resources is not an excuse for inhuman and degrading treatment. Governments are required to provide adequate funding for basic needs and to guarantee the respect of individual dignity.

Given that there are a vast number of incidences that could amount to cruel inhuman and degrading treatment in mental health institutions (for example, the lack of a safe and hygienic environment, the lack of adequate food and clothing, the lack of adequate heat or warm clothing, the lack of adequate healthcare facilities, the lack of specialised staff, and the inadequate or unjustified use of restraints, amongst others), this Thematic Workshop will focus on the prevention of ill-treatment in this kind of establishment.

The first working session will work this theme from a substantive perspective. First of all, we will explore the legal framework and specific standards concerning mental health and social care placement in psychiatric institutions, with special regard to the international and regional standards.

Likewise, we will approach, from a legal point of view, the specific rights and guarantees concerned: procedures for consent to placement, guardianship procedures, safeguards for placement review, consent to treatment, etc.

Concerning the conditions in mental health facilities, we will discuss staff issues, security and use of force, and general conditions (including material conditions, access to outdoors, contacts with the outside, activities and supervision).

Following that, there will be an indepth discussion on a medical approach to psychiatric treatment and medication, stressing the safeguards surrounding the use of restraints, and aftercare.

[1] The World Health Organization reported in 2001 that about 450 million people worldwide suffer from some form of mental disorder.

To end the first working session, there will be a specific focus on mental health issues relating to certain vulnerable goups, such as children or migrants, in mental health facilities, with its consequent complicating factors.

The second working session will focus on the methodology and best practices on monitoring mental health issues in psychiatric institutions.

The monitoring methodology includes the preparatory work (collecting background information, analysing laws and regulations, etc), and the visit to the facility (visiting the installations, examinating medical documentation, interviewing patients and staff, etc).

In this respect, we will highlight the advantages of having a qualified medical NPM expert, as certain duties specifically require a qualified medical expert, for examples assessing the appropiateness of treatment and care of people with mental health needs, assessing the risk of ill-treatment, interviewing mentally-ill people, or dealing with the medical staff, amongst others.

The aim of the overall workshop is to create a forum as participative as possible in which discussions on this topic can be held openly by all participants. The workshop aims to explore the specific issues at hand in depth and to exchange practical experiences. SPT and former CPT experts, both medical and law professionals, academics, and practising medical experts, including specialised NPM experts, will make presentations and open the floor to an active participation and discussion among the participants.

Various basic documents, including key normative tests, legal instruments and articles realting to the prevention of ill-treatment in psychiatric institutions are listed below.

Background Documents list

1. UNITED NATIONS

I. Conventions

- The Universal Declaration of Human Rights

http://www.un.org/en/documents/udhr/

- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/a3bd1b89d20ea373c1257046004c1479/$FILE/G0542837.pdf

- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

http://www2.ohchr.org/english/law/cat-one.htm

- International Covenant on Civil and Political Rights (ICCPR)

http://www2.ohchr.org/english/law/ccpr.htm

- International Covenant on Economic, Social and Cultural Rights (ICESCR)

http://www2.ohchr.org/english/law/cescr.htm

- Convention on the Rights of the Child

http://www2.ohchr.org/english/law/crc.htm

- Convention on the Rights of Persons with Disabilities

http://www.un.org/disabilities/convention/conventionfull.shtml

- Convention relating to the Status of Refugees

http://www2.ohchr.org/english/law/refugees.htm

II. Other documents and soft law

- Principles for the protection of persons with mental illness and the improvement of mental health care (adopted by General Assembly resolution 46/119 of 17 December 1991).

http://www2.ohchr.org/english/law/principles.htm

- Basic Principles for the Treatment of Prisoners (adopted by General Assembly resolution 45/111 of 14 December 1990)

http://www.un.org/documents/ga/res/45/a45r111.htm

- Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution of14 December 1990)

http://www.un.org/documents/ga/res/45/a45r113.htm

- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by General Assembly resolution 43/173 of 9 December 1988)

http://www2.ohchr.org/english/law/bodyprinciples.htm

- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 37/194 of 18 December 1982)

http://www.cirp.org/library/ethics/UN-medical-ethics/

Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council in resolutions of 31 July 1957 and 13 May 1977). Rules 82 & 83.

http://www2.ohchr.org/english/law/pdf/treatmentprisoners.pdf

III. Bodies

- **Committee Against Torture (CAT)**

http://www2.ohchr.org/english/bodies/cat/index.htm

"Selected Decisions of the Committee against Torture (1993-2007)"

http://www.ohchr.org/Documents/Publications/SDecisionsCATVolIen.pdf

- **Subcommittee on Prevention of Torture (SPT)**

http://www2.ohchr.org/english/bodies/cat/opcat/index.htm

- **Office of the High Commissioner for Human Rights (OHCHR)**

http://www.ohchr.org/EN/Pages/WelcomePage.aspx

"Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" (1999).

http://www2.ohchr.org/english/about/publications/docs/8istprot.pdf

- **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

http://www2.ohchr.org/english/issues/torture/rapporteur/

- **World Health Organisation (WHO)**

www.who.int

"Trencín statement on prison and mental health" (2007)

http://www.scmh.org.uk/pdfs/Background_paper_Trencin_Statement.pdf

"WHO Resource book on mental health, human rights and legislation" (2005).

http://www.who.int/mental_health/policy/who_rb_mnh_hr_leg_FINAL_11_07_05.pdf

"Promoting Mental Health" (2005), *Chapter 7: Mental Health and Human Rights*, p.81-88.

http://www.who.int/mental_health/evidence/MH_Promotion_Book.pdf

"25 questions and answers on health and human rights" (2002).

http://whqlibdoc.who.int/hq/2002/9241545690.pdf

"Guidelines for the Promotion of Human Rights of Persons with Mental Disorders" (1996).

http://www.who.int/mental_health/media/en/74.pdf

"Mental Health Care Law:10 basic principles" (1996).

http://www.who.int/mental_health/media/en/75.pdf

"Preventing suicide in jails and prisons" (2007), SUPRE (the WHO worldwide initiative for the prevention of suicide).

http://www.who.int/mental_health/prevention/suicide/resource_jails_prisons.pdf

"Preventing suicide: a resource for prison officers" (2000), SUPRE (the WHO worldwide initiative for the prevention of suicide).

http://www.who.int/mental_health/media/en/60.pdf

2. COUNCIL OF EUROPE

I. Conventions

- European Convention in Human Rights (ECHR)

http://conventions.coe.int/treaty/EN/Treaties/html/005.htm

- European Social Charter

http://conventions.coe.int/Treaty/EN/Treaties/Html/163.htm

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)

http://www.cpt.coe.int/EN/documents/ecpt.htm

- European Convention for the Protection of Human Rights and Dignity of the Human Being, with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine.

http://conventions.coe.int/Treaty/EN/Treaties/html/164.htm

II. Committee of Ministers of the Council of Europe

- Recommendation Rec (2010) 2, on deinstitutionalisation and community living of children with disabilities

http://www.coe.int/t/e/social_cohesion/soc-sp/CMRec(2010)2E.doc

- Recommendation Rec (2006) 2, on the European Prison Rules (principle *47- Mental Health*)

http://wcd.coe.int/ViewDoc.jsp?id=955747

- Recommendation Rec (2004) 10, concerning the protection of human rights and dignity of persons with mental disorder (*Chapter III – Involuntary placement in psychiatric facilities, and involuntary treatment, for mental disorder*)

https://wcd.coe.int/ViewDoc.jsp?id=775685&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864

- Recommendation Rec (98) 7, concerning the ethical and organizational aspects of health care in prisons

http://www.coe.ba/pdf/Recommendation_No_R_98_7_eng.doc

- Recommendation Rec (83) 2, concerning the legal protection of persons suffering from mental disorder placed as involuntary patients.

https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=602308&SecMode=1&DocId=678490&Usage=2

III. Parliamentary Assembly

- Recommendation 1235 (1994) 1, on Psychiatry and Human Rights.

http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta94/EREC1235.htm

IV. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

- **General Reports on Activities**

CPT 19th General Report on activities (2008-2009), *Safeguards for irregular migrants deprived of their liberty, Health-related safeguards*, p.41

http://www.cpt.coe.int/EN/annual/rep-19.pdf

CPT 16th General Report on activities (2005-2006), *Means of restraint in psychiatric establishments for adults*, p.14-20.

http://www.cpt.coe.int/EN/annual/rep-16.pdf

CPT 15th General Report on activities (2004-2005), *Revision of the European Prison Rules*, p.17.

http://www.cpt.coe.int/EN/annual/rep-15.pdf

CPT 8th General report on activities (1997), *Involuntary Placement in psychiatric establishments*, p. 25-58.

http://www.cpt.coe.int/EN/annual/rep-08.htm#III

CPT 3rd General Report on activities (1992), *Health care services in prisons, psychiatric care*, p. 30-77.

http://www.cpt.coe.int/EN/annual/rep-03.htm#III.e

- **Other documents**

"The CPT Standards" (2000, revised 2009), *Involuntary placement in psychiatric establishments* (p.56-65), *Means of restraint in psychiatric establishments for adults* (p.66-71).

http://www.cpt.coe.int/en/documents/eng-standards.pdf

"Means of restraint in a psychiatric hospital" (2006).

http://www.cpt.coe.int/en/working-documents/cpt-2006-22-eng.pdf

"Institutionalisation versus timely discharge form a psychiatric institution (Factors that impede timely discharge)" (2005).

http://www.cpt.coe.int/en/working-documents/cpt-2005-91-eng.pdf

"Standards of the CPT on the use of restraints" (2005).

http://www.cpt.coe.int/en/working-documents/cpt-2005-24-eng.pdf

"Means of restraint" (2004).

http://www.cpt.coe.int/en/working-documents/cpt-2004-08-eng.pdf

V. Commissioner for Human Rights

http://www.coe.int/t/commissioner/default_en.asp

- "Opinion regarding family visits to persons deprived of their liberty" (2008).

  https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=899221&SecMode=1&DocId=1282766&Usage=2

- "Human Rights and disability: equal rights for all" (1998).

  https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBobGet&InstranetImage=1370848&SecMode=1&DocId=1318344&Usage=2

VI. European Court of Human Rights

http://www.echr.coe.int/echr/Homepage_EN

3. OTHER ORGANS, DOCUMENTS AND USEFUL LINKS

- **OSCE**

"OSCE commitments on torture prevention"

http://www.osce.org/documents/odihr/2003/10/743_en.pdf

- **The Association for the Prevention of Torture (APT)**

http://www.apt.ch/

"Visiting places of detention - What role for physicians and other health professionals?" (2008).

http://www.apt.ch/component/option,com_docman/task,cat_view/gid,121/Itemid,59/lang,en/

"Monitoring places of detention: a practical guide", *Specific health care for mentally ill prisoners*, p.200-203 (2004).

http://www.apt.ch/component/option,com_docman/task,cat_view/gid,58/Itemid,59/lang,en

- **World Medical Association (WMA)**

www.wma.net

"Statement on Ethical Issues Concerning Patients with Mental Illness" (adopted in 1995 and revised in 2006).

http://www.wma.net/en/30publications/10policies/e11/index.html

"The Declaration of Tokyo:Guidelines for Medical Doctors Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment" (1975).

http://www.wma.net/en/30publications/10policies/c18/index.html

- **World Psychiatric Association (WPA)**

www.wpanet.org

"Madrid Declaration on Ethical Standards for Psychiatric Practice" (adopted in 1996 and amended in 2002).

http://www.wpanet.org/content/madrid-ethic-engish.shtml

"WPA Statement and Viewpoints on the Rights and Legal Safeguards of the Mentally III" (1989).

http://www.wpanet.org/content/ethics-ill-rights.shtml

"Declaration of Hawaii", on ethical guidelines for psychiatrists (adopted in 1977 and amended in 1983).

http://www.codex.uu.se/texts/hawaii.html

- **International Council of Nurses (ICN)**

www.icn.ch

"Position Statement on Nurses and Mental Health" (adopted in 1995, revised in 2002 and 2008).

http://www.icn.ch/PS_A09_Mental%20Health.pdf

"Position Statement on Nurses' Role in the Care of Prisoners and Detainees" (adopted in 1998, revised in 2006).

http://www.icn.ch/PS_A13_NursesRole%20DetaineesPrisoners.pdf
"Position Statement on Torture, Death Penalty and Participation by Nurses in Executions" (adopted in 1998, revised in 2003 and 2006).

http://www.icn.ch/PS_E13_Torture%20Death%20PenaltyExecutions.pdf

- **University of Essex, Human Rights Centre**

"Medical Investigation and Documentation of Torture: A Handbook for Health Professionals", Michael Peel and Noam Lubell with Jonathan Beynon (2005).

http://www.essex.ac.uk/human_rights_centre/publications/midt.aspx

"Preventing Torture in the 21st Century: Monitoring in Europe Two Decades On, Monitoring Globally Two Years On - Part II", *Health Professionals in the Fight Against Torture,* Miriam Reventlow, Susanne Kjær and Helen McColl (2010).

http://projects.essex.ac.uk/ehrr/V6N2/ReventlowKjaerMcColl.pdf

"Preventing Torture in the 21st Century: Monitoring in Europe Two Decades On, Monitoring Globally Two Years On - Part II", *Evolution of the CPT's Standards Since 2001,* Marco Leidekker (2010).

http://projects.essex.ac.uk/ehrr/V6N1/Leidekker.pdf

4. SELECTED CASE-LAW ON MENTAL HEALTH CARE IN PLACES OF DETENTION

- **Muskhadzhiyeva and others v. Belgium, Chamber Judgment, 19 January 2010 –** *Detention of chechen children unlawful and conditions of detention unacceptable: violation*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=41442/07&sessionid=48492950&skin=hudoc-pr-en

The applicants, Aina Muskhadzhiyeva and her four children are Russian nationals of Chechen origin and live in a refugee camp in Debak-Podkowa Lesna (Poland). Having fled from Grozny in Chechnya they eventually arrived in Belgium on 11 October 2006, where they sought asylum. The Belgian authorities, on 21 December 2006, issued a decision refusing them permission to stay in Belgium and ordering them to leave the country. On 22 December 2006 they were placed in a closed transit centre run by the Aliens Office near Brussels airport, known as "Transit Centre 127 bis", where aliens (single adults or families) were held pending their removal from the country. Several independent reports drawn up in recent years have highlighted the unsuitability of the centre in question for housing children.

A request to release the applicants was rejected by the Brussels Court of First Instance on 5 January 2007 and again by the Brussels Court of Appeal on 23 January 2007. Between those two decisions the organisation "Médecins sans frontières" carried out a psychological examination of the applicants and found that the children in particular – and especially Khadizha – were showing serious psychological and psychotraumatic symptoms and should be released to limit the damage. On 24 January 2007 the applicants were sent back to Poland.

The Court recalled that it had already found the detention of an unaccompanied minor in "Transit Centre 127 bis" contrary to Article 3 and that the extreme vulnerability of a child was paramount and took precedence over the status as an illegal alien. It was true that in the present case the four children were not separated from their mother, but that did not suffice to exempt the authorities from their obligation to protect the children. They had nevertheless been held for over a month in a closed centre which was not designed to house children, as confirmed by several reports cited by the Court. The Court also referred to the concern expressed by independent doctors about the children's state of health. It found that there had been a violation of Article 3 in respect of the four children.

So far as the four children were kept in a closed centre designed for adults and ill-suited to their extreme vulnerability, even though they were accompanied by their mother, the Court found that there had been a violation of Article 5 § 1 in respect of the children.

- **Stanev v. Bulgaria and Mitev v. Bulgaria, Chamber Hearing, 10 November 2009 –** *Unlawful and arbitrary deprivation of liberty on account of their placement in care homes against their wil.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=36760/06&sessionid=48931138&skin=hudoc-pr-en

In both cases, the applicants were deprived of legal capacity and placed under guardianship against their will. They applied to the local municipality as well as the prosecutor's office to restore their legal capacity, these being the two mechanisms which have the discretion under Bulgarian law to apply to a court to have someone's legal capacity restored. The guardians in both cases refused to cooperate. Mr Mitev's guardian was his daughter who wanted his legal capacity to be deprived and wanted him to remain in an institution, while Mr Stanev's guardian was the director of the social care institution where he still resides. The municipality and the prosecutor's office refused to cooperate. In fact, despite numerous attempts, no Bulgarian court has ever considered the merits of restoring the legal capacity of either applicants.

Both of the men were ordered by their guardians to be placed in a social care institution. Mr Mitev's guardian arranged for a private security company to escort him to the Pravda institution. In December 2002 Mr Stanev was detained in the Pastra institution, which in 2003 was visited by the European Committee for the Prevention of Torture. The Committee's resultant report of their visit stated that "[t]he deficiencies in the living conditions and care of residents [...] created a situation which could be said to amount to inhuman and degrading treatment."

Under Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights, Mr Stanev complains about the living conditions in the Pastra care home. Both applicants rely on Article 5 §§ 1, 4 and 5 (right to liberty and security) in complaining of an unlawful and arbitrary deprivation of liberty on account of their placement in care homes against their will, the impossibility under Bulgarian law of having the lawfulness of those measures examined and the absence of a judicial procedure to seek compensation. Relying on Article 6 (right to a fair hearing) they further complain that they did not have access to a court to request the restoration of their legal capacity. Under Article 8 (right to respect for private and family life) they complain about the trusteeship and guardianship systems and allege that those measures were not subject to any periodic review. Finally, they complain that no effective remedy exists under Bulgarian law to complain of the alleged violations, as required by Article 13 (right to an effective remedy).

- **Trajče Stojanovski v. "the former Yugoslav Republic of Macedonia", Chamber Judgment, 22 October 2009 –** *Continued confinement in a psychiatric hospital unjustified: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Traj%u010De%20%7C%20Stojanovski%20%7C%20v.%20%7C%20%22%u201Cthe%20former%20Yugoslav%20Republic%20of%20Macedonia%u201D%22&sessionid=48931138&skin=hudoc-pr-en

In July 1998 the domestic court ordered that the applicant, who was deaf and mute, be detained indefinitely for compulsory psychiatric treatment in a closed medical institution. This measure was applied as a result of him having knocked down a person who died a few days later. Two medical reports were drawn up confirming that the applicant was mentally ill and needed medical treatment in a specialised psychiatric hospital.

On two occasions, in October 1999 and in April 2003, the hospital in which Mr Stojanovski was interned requested the domestic court to release him on condition that he underwent compulsory psychiatric treatment. The hospital's request was

dismissed by the court both times. The court relied on reports by the police which indicated that the applicant had left the hospital several times and his visits to his village had been perceived as a threat by other villagers.

The Court observed that the hospital's 2003 request had been made with a view to securing the applicant's conditional release since, in its view, his mental disorder no longer required his confinement. The domestic courts, however, had dismissed this request on the basis of information provided by the police regarding the applicant's behaviour outside the hospital and the local inhabitants' perception of him. The Court found that the 2003 review of the applicant's state had not revealed any objective sign that he presented a danger to the community. The domestic court had relied solely on the perceived fears of the villagers. There had been no evidence before the courts of a risk that the applicant would reoffend if released. The Court therefore found that the applicant's mental disorder had not been of the kind or degree to justify his continued compulsory confinement. Consequently, the Court held unanimously that there had been a violation of Article 5 § 1 (e).

- **Slawomir Musial v. Poland, Chamber Judgment, 5 June 2009 -** *Detention in unsuitable establishment for the mentally-ill: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Slawomir%20%7C%20Musial%20%7C%20v.%20%7C%20Poland&sessionid=47932301&skin=hudoc-en

The Court observed that while maintaining the detention measure was not, in itself, incompatible with the applicant's state of health, having the applicant detained in establishments not suitable for incarceration of the mentally-ill, raised a serious issue under the Convention. The Court also expressed concerns about the living and sanitary conditions of the applicant's detention, considering it undisputed that all of those establishments, at the relevant time, had faced the problem of overcrowding. Moreover, the Court found that, despite the particular state of health of the applicant, he had mostly received the same attention as his other inmates, which showed the authorities' failure to make a commitment to improving the conditions of detention in compliance with the recommendations of the Council of Europe. In this connection the Court referred in particular to the judgment of the Constitutional Court which held that the overcrowding in itself could be qualified as inhuman and degrading treatment and, if combined with additional aggravating circumstances, as torture.

Having assessed in particular the cumulative effects of the inadequate medical care and inappropriate conditions in which the applicant had been held throughout his pre-trial detention, the Court found that these conditions had clearly had a detrimental effect on his health and well-being. The Court concluded that the nature, duration and severity of the ill-treatment to which the applicant had been subjected were sufficient to be qualified as inhuman and degrading, in violation of Article 3.

- **Kaprykowski v. Poland, Chamber Judgment, 3 February 2009 -** *Lack of adequate medical treatment to a mentally-ill inmate: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=mental%20%7C%20health%20%7C%20psychiatric%20%7C%20degrading%20%7C%20treatment&sessionid=48324127&skin=hudoc-pr-en

The applicant, who suffers from severe epilepsy, was detained for four years without adequate medical treatment or assistance. Throughout his incarceration several doctors stressed that he should receive specialised psychiatric and neurological treatment. Notably, in 2001 medical experts recommended that he should undergo brain surgery; and, in 2007, on his release from a stay in hospital, doctors clearly stated that he should be placed under 24-hour medical supervision.

In the Court's opinion the lack of adequate medical treatment provided to the applicant in Poznań Remand Centre which had effectively placed him in a position of dependency and inferiority vis-à-vis his healthy cellmates had undermined his dignity and had entailed particularly acute hardship that had caused anxiety and suffering beyond that inevitably associated with any deprivation of liberty.

In conclusion, the Court considered that the applicant's continued detention without adequate medical treatment and assistance had constituted inhuman and degrading treatment, in violation of Article 3.

- **Gulub Atanasov v. Bulgaria, Chamber Judgment, 6 November 2008 -** *Transfer to a psychiatric hospital of a person under house arrest without the requisite court order: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Gulub%20%7C%20Atanasov%20%7C%20v.%20%7C%20Bulgaria&sessionid=48492927&skin=hudoc-en

The applicant, Gulub Atanasov Atanasov, now deceased, was a Bulgarian national who suffered from schizophrenia. In July 1999 Mr Atanasov was arrested and placed in pre-trial detention on suspicion of robbery and murder. By an order of 6 July 2000 the Plovdiv Court of Appeal decided to place him under house arrest. On 3 August 2000 the investigator responsible for the case ordered that an expert examination be conducted and the applicant was admitted to a psychiatric hospital for that purpose from 8 August to 4 September 2000. In July 2001 the order placing the applicant under house arrest was lifted. The proceedings against him were closed on his death.

The Court considered that the applicant's transfer from his home to a psychiatric hospital had been illegal under domestic law, since it had not been based on a valid decision by the competent authorities. It therefore concluded unanimously that there had been a violation of Article 5 § 1 on account of the applicant's detention in a psychiatric hospital for 26 days.

The Court also noted that, although the applicant had challenged his house arrest during his detention in the psychiatric hospital, the courts which were called on to examine his appeal were not authorised to review the lawfulness of the investigator's order of 3 August 2000 and, consequently, the lawfulness of the applicant's detention in the psychiatric hospital. There had accordingly been a violation of Article 5 § 4.

- **Romanov v. Russia, Chamber Judgment, 24 July 2008** - *The applicant's conditions of detention, in the psychiatric ward of a detention facility, amounted to degrading tretament: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=16&portal=hbkm&action=html&highlight=mental%20%7C%20health%20%7C%20psychiatric%20%7C%20treatment&sessionid=48324127&skin=hudoc-pr-en

The applicant complained about the conditions and length of his detention in the psychiatric ward of the detention facility "Butyrskiy", in Moscow.

The Court proceeded on the assumption that the applicant was held in the psychiatric ward of the detention facility for a year, three months and 13 days (in a smaller cell for about four-and-a-half months and in a larger cell for 11 months). Concerning the conditions of detention in the bigger cell, at any given time there was between 1 and 1.6 sq. m of space per inmate in the applicant's cell and he did not always have a separate bed. Save for one short period a day of daily outdoor walks in exercise areas on the roof of the prison building, the applicant was permanently confined to his cell.

The Court observed further that, as regards the applicant's medical care and other conditions of his detention, including heating, artificial lighting and ventilation, for the most part neither party submitted evidence which could satisfy the Court "beyond reasonable doubt" whether they were acceptable from the point of view of Article 3. The Court also noted the applicant's assertion that, in addition to the usual bars, there were metal shutters on the windows, which were constructed so that inmates could not see out of them and very little light could come in. It appeared that those metal shutters had been removed throughout the "Butyrskiy" detention facility at the end of 2002.

The Court accepted that there was no indication that there had been a positive intention of humiliating or debasing the applicant. However, the absence of any such purpose could not exclude a finding of violation of Article 3. The Court considered that the conditions of detention, which the applicant had had to endure for at least 11 months, must have undermined his human dignity and aroused in him feelings of humiliation and debasement.

The Court therefore found that the applicant's conditions of detention, in particular the severe overcrowding and its detrimental effect on the applicant's well-being, combined with the length of the period during which the applicant was detained in such conditions, amounted to degrading treatment. There had therefore been a violation of Article 3.

- **Shtukaturov v. Russia, Chamber Judgment, 27 March 2008 -** *Deprivation of legal capacity and confinement to a psychiatric hospital: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=3&portal=hbkm&action=html&highlight=mental%20%7C%20health%20%7C%20psychiatric%20%7C%20treatment&sessionid=48324127&skin=hudoc-pr-en
The applicant has a history of mental illness and was declared officially disabled in 2003. The applicant alleged that he was deprived of his legal capacity without his knowledge. He further alleged that he was unlawfully confined to a psychiatric hospital where he was unable to obtain a review of his status or meet his lawyer and he received medical treatment against his will.

The Court reiterated that, in cases concerning compulsory confinement, a person of unsound mind should be heard either in person or, where necessary, through some form of representation. However, the applicant, who appeared to have been a relatively

autonomous person despite his illness, had not been given any opportunity to participate in the proceedings concerning his legal capacity.

Given the consequences of those proceedings for the applicant's personal autonomy and indeed liberty, his attendance had been indispensable not only to give him the opportunity to present his case, but also to allow the judge to form an opinion on his mental capacity. The Court therefore concluded that the proceedings before Vasileostrovskiy District Court concerning the applicant's case had not been fair, in violation of Article 6 § 1.

Russian legislation only made a distinction between full capacity and full incapacity of mentally ill persons. It made no allowances for borderline situations. The Court referred, in particular, to a Recommendation issued by the Council of Europe's Committee of Ministers which outlined a set of principles for the legal protection of incapable adults in which it recommended that legislation be more flexible by providing a "tailor-made" response to each individual case.

The Court therefore concluded that the interference with the applicant's private life had been disproportionate to the legitimate aim pursued by the Russian Government of protecting the interests and health of others, in violation of Article 8.

No medical records had been provided concerning the applicant's mental condition on his admission to hospital, to prove for example that he had been examined by specialist doctors. It appeared then that the decision to hospitalise the applicant had been based purely on the applicant's legal status, as defined ten months earlier. The Court therefore considered that it had not been "reliably shown" that the applicant's mental condition had necessitated his confinement and concluded that his hospitalisation between 4 November 2005 and 16 May 2006 had not been "lawful", in violation of Article 5 § 1 (e).

Furthermore, Russian law did not provide for automatic judicial review of confinement in a psychiatric hospital in situations such as the applicant's. The applicant could not, in effect, pursue independently any legal remedy to challenge his continued detention as he had been deprived of his legal capacity. The Court found that the applicant's inability to obtain judicial review of his detention had amounted to a violation of Article 5 § 4.

The Court concluded that, by having prevented the applicant for a long period of time from meeting his lawyer and communicating with him, as well as by failing to comply with the interim measure, the Russian Federation had prevented the applicant from complaining to the Court and had therefore failed to comply with its obligations under Article 34 to not hinder the right to individual petition.

The Court noted that the applicant had not provided any evidence to prove that he had actually been treated with strong medication with unpleasant side-effects. Nor did he claim that his health had deteriorated as a result of such treatment. The Court therefore found that his allegations under Article 3 were unsubstantiated and rejected that part of the applicant's complaint.

- **Dybeku v. Albania, Chamber Judgment, 18 December 2007 -** *Violation of article 3, inappropriate conditions of detention for a mentally-ill inmate: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbkm&action=html&highlight=mental%20%7C%20health%20%7C%20psychiatric%20%7C%20treatment&sessionid=48324127&skin=hudoc-pr-en

From 1996 onwards the applicant has been suffering from chronic paranoid schizophrenia. For many years he has received in-patient treatment in various psychiatric hospitals in Albania. On 2002 criminal proceedings were brought against the applicant, who was arrested and charged with murder and illegal possession of explosives.

The Court observed that the parties agreed that the applicant was suffering from a chronic mental disorder, which involved psychotic episodes and feelings of paranoia. His condition had also deteriorated by the time he received in-patient treatment in Tirana Prison Hospital.

The Court also noted that all the complaints from the applicant's father and lawyer were disregarded. Indeed, the Court observed that the last assessment of the applicant's health dated back to 2002. The applicant's medical notes showed that he had repeatedly been prescribed the same treatment and that no detailed description had been given of the development of his illness.

The Court considered that the feeling of inferiority and powerlessness typical of those suffering from a mental disorder called for increased vigilance in reviewing whether the Convention had been complied with. While it was for the authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used to preserve the physical and mental health of patients who were incapable of deciding for themselves, and for whom they were therefore responsible, such patients nevertheless remained under the protection of Article 3.

The Court accepted that the very nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention might have exacerbated to a certain extent his feelings of distress, anguish and fear. The fact that the Albanian Government admitted that the applicant was treated like the other inmates, notwithstanding his particular state of health, showed a failure to comply with the Council of Europe's recommendations on dealing with prisoners with mental illnesses.

Many of those shortcomings could have been remedied even in the absence of considerable financial means. In any event, a lack of resources could not in principle justify detention conditions so poor as to reach the threshold of severity for Article 3 to apply.

The Court concluded that the nature, duration and severity of the ill-treatment to which the applicant was subjected and the cumulative negative effects on his health were therefore sufficient to be qualified as inhuman and degrading, in violation of Article 3.

- **Mocarska v. Poland, Chamber Judgment, 6 November 2007 -** *Prolonged detention in an ordinary remand centre pending admission to a psychiatric hospital:violation*.

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=26917/05&sessionid=48492927&skin=hudoc-en

In May 2005, Ms. Mocarska was arrested and charged with domestic violence and admitted to Warsaw Detention Centre. Her pre-trial detention was extended on numerous occasions on the ground that there was a reasonable suspicion that she had committed the offence and risked re-offending. In August 2005 the applicant's lawyer requested her release on account of her psychiatric condition and the fact that her prolonged detention had seriously affected her health. In September 2005, she was diagnosed as suffering from a delusional disorder and doctors recommended that she be placed in a psychiatric hospital. On 25 October 2005 Warsaw District Court discontinued the proceedings against her on the ground that she could not be held criminally responsible. However, she remained in the detention centre waiting for a placement in Pruszków Psychiatric Hospital to be recommended by a commission and a place to become available there. She was finally transferred on 30 June 2006 to that hospital.

Relying on Article 5 § 1 (right to liberty and security), Ms Mocarska complained that she had been unlawfully detained in an ordinary remand centre for eight months pending her admission to a psychiatric hospital.

The Court found that an eight-month delay in the admission of the applicant to a psychiatric hospital and the resulting delay in her psychiatric treatment could not be regarded as acceptable. In the circumstances of the applicant's case, a reasonable balance had not been struck between her right to liberty and the risk that she represented to her family and others. Accordingly, the Court held unanimously that there had been a violation of Article 5 § 1 concerning her detention between 25 October 2005 and 30 June 2006.

- **Kucheruk v. Ukraine, Chamber Judgment, 6 September 2007 -** *Lack of adequate health care and unjustied use of force against a mentally-ill inmate: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Kucheruk%20%7C%20v.%20%7C%20Ukraine&sessionid=48327879&skin=hudoc-en

The applicant, Mr Kucheruk, was convicted in March 2001 of theft and hooliganism and sentenced to a year and a half suspended prison sentence. On May 2002 he was transferred to a psychiatric hospital, and a report concluded that he was suffering from an acute personal disorder which required compulsory in-patient psychiatric treatment.

At the beginning of June he was transferred back to an ordinary cell in the Kharkiv Regional Pre-trial Detention Centre SIZO no. 27 ("the SIZO"). He was examined by the prison psychiatrist who did not prescribe any medication. At the SIZO he showed signs of disturbed behaviour and was prone to aggressive violent outbursts.

On 5 July 2002 the district court found that the applicant's personal disorder made it impossible at that stage to consider punishment and committed him for compulsory psychiatric treatment. The criminal proceedings against him were suspended until such time as he had recovered.

On 8 July 2002 Mr Kucheruk, detained in the SIZO medical wing, became particularly agitated. The medical staff called three prison guards who ordered him to face the wall

and put his hands behind his back. When he failed to obey, the guards beat the applicant with truncheons, forced him to the floor and handcuffed him. On that same day, two prison officers and a doctor examined the applicant and reported that his shoulders and buttocks showed signs of injuries inflicted by truncheons. He was, however, declared apt to be placed in solitary confinement as ordered by the Prison Governor. He spent nine days there, confined to his cell at least 23 hours per day. For seven of those nine days – until 15 July – he was handcuffed at all times. On 10 July he was visited by a psychiatrist.

On 17 July 2002 Mr Kucheruk was transferred back to the psychiatric hospital for compulsory treatment as ordered by the decision of 5 July. In the context of te criminal proceedings, the district court ordered his psychiatric examination. The medical experts concluded that the applicant's mental disorder prevented him from understanding the consequences of his actions and controlling his behaviour and, on 2 September 2003, he was discharged from hospital to the care of his mother.

- Excessive use of force. In view of the applicant's earlier agitated behaviour, it could not be said that the prison authorities had been called upon to react to an unexpected development. The three guards involved had outnumbered the applicant. Furthermore, at no stage of the proceedings had witnesses stated that the applicant had attempted to attack, or that his behaviour had in any way endangered, the guards or his fellow inmates. The use of truncheons in the applicant's case had therefore been unjustified and amounted to inhuman treatment.

- Handcuffing. The Court found that the handcuffing for a period of seven days of the applicant, who was mentally ill, without psychiatric justification or medical treatment had to be regarded as constituting inhuman and degrading treatment.

- Lack of medical care and assistance. The report's recommendation that the applicant be given treatment in a specialised hospital was not immediately complied with. Indeed, he was transferred back to an ordinary cell in the SIZO, only having been examined once by a psychiatrist before he had ended up assaulting an inmate. In the Court's view, that could not be considered to be adequate and reasonable medical attention in the light of the applicant's serious mental condition. There had therefore been a violation of Article 3 concerning the lack of adequate medical care and assistance provided to the applicant.

- Lack of an adequate investigation. The Court observed that the initial inquiry into the applicant's complaints about ill-treatment had not satisfied the minimum requirement of independence since the investigating body – the SIZO governor – was a representative of the authority involved. The investigation had been limited to establishing the fact that the guards had acted in accordance with the relevant regulations and was only based on statements from the guards concerned and inmates present. The examination of the applicant's injuries had only been carried out 37 days after the use of force and was inconclusive. An independent investigation into the applicant's grievances had commenced on 1 October 2004, more than two years and two months after the incident, and this investigation had not remedied the failings of the initial stages of the proceedings. In the Court's opinion those failings, which the domestic courts highlighted on three separate occasions when quashing the authorities' decisions not to bring criminal proceedings, as well as the lack of independence, promptness, and public scrutiny provided a sufficient basis for the conclusion that the investigation, which was

still pending, had failed to meet the minimum standards of effectiveness. There had therefore been a procedural violation of Article 3.

- **Tarariyeva v. Russia, Chamber Judgment, 14 December 2006 -** *Alleged ill-treatment during detention in a psychiatric hospital and failure to conduct a thorough and effective investigation in this regard: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=4353/03&sessionid=48492927&skin=hudoc-en

The applicant complained that her son had died in custody as a result of inadequate and defective medical assistance and that those responsible had not been identified and punished. She also complained about the lack of medicines during her son's detention at the Khadyzhensk colony, his handcuffing at Apsheronsk Hospital, and the conditions of his transport from Apsheronsk Hospital to the prison hospital.

Mr Tarariyev's handcuffing at Apsheronsk Hospital. Having regard to Mr Tarariyev's state of health, to the absence of any cause to fear that he represented a security risk and to the constant supervision by armed police officers, the Court found that the use of restraints in those conditions amounted to inhuman treatment. It therefore held that there had been a violation of Article 3 on account of Mr Tarariyev's handcuffing at the civilian hospital.

- **Rivière v. France, Chamber Judgment, 11 July 2006 -** *The conditions of the applicant's detention were not appropriate for a person with a mental disorder: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=12&portal=hbkm&action=html&highlight=mental%20%7C%20health%20%7C%20psychiatric%20%7C%20treatment&sessionid=48324127&skin=hudoc-pr-en

The Court pointed out that prisoners with serious mental disorders and suicidal tendencies required special measures geared to their condition, regardless of the seriousness of the offence of which they had been convicted.

The Court considered that the applicant's continued detention without medical supervision appropriate to his current condition entailed particularly acute hardship and caused him distress or adversity of an intensity exceeding the unavoidable level of suffering inherent in detention. It accordingly concluded that he had been subjected to inhuman and degrading treatment on account of his continued detention in such conditions. The Court therefore held that there had been a violation of Article 3.

- **Wilkinson v. the United Kingdom, Decision, 28 February 2006 –** *Medication against will of the patient: inadmissible.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=6&portal=hbkm&action=html&highlight=wilkinson%20%7C%20v.%20%7C%20the%20%7C%20united%20%7C%20kingdom&sessionid=48492927&skin=hudoc-en

Following his conviction for rape of a minor, the appelant (App) was detained in a psychiatric hospital. Throughout his period of confinement, there has been considerable

debate as to whether he was mentally ill. There was a consensus that he suffered from a "psychopathic personality disorder", a condition not classed as a mental illness. However, there was disagreement as to whether he also suffered from a mental illness.

In 1999, the responsible medical officer (RMO) proposed the new medication to the applicant and the applicant refused it. Since he was not consenting, the treatment had to be certified by a SOAD (a second opinion appointed doctor), who agreed with the treatment.

App usually became anxious and acted violently when faced with a threatening situation such as receiving psychiatric medication against his will. 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.

The Court does not acknowledge infringement of Article 3. '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.

- **Storck v. Germany, Chamber Judgement, 16 June 2005 -** *Placement in psychiatric institutions, allegedly without consent of person concerned: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=61603/00&sessionid=48516428&skin=hudoc-pr-en

The applicant was placed in a locked ward of a private psychiatric clinic from 29 July 1977 to 5 April 1979 at her father's request, following various family conflicts. The applicant, who had at that time attained her majority, had not been placed under guardianship and had never signed a declaration that she had consented to her placement in the institution. Neither had there had been a judicial decision authorising her detention in a psychiatric hospital. The applicant repeatedly tried to flee from the clinic, and was brought back by force by the police on 4 March 1979.

In 1994 an expert report found that the applicant had never suffered from schizophrenia and that her behaviour had been caused by conflicts with her family.

The Court found Germany to be responsible for that deprivation of liberty in three respects. Firstly, the authorities became actively involved in the applicant's placement in the clinic when the police, by use of force, had brought her back to the clinic from which she had fled. Secondly, the national courts, in the compensation proceedings brought by the applicant, had failed to interpret the provisions of civil law relating to her claim in the

spirit of Article 5. Thirdly, Germany had violated its existing positive obligation to protect the applicant against interferences with her liberty carried out by private individuals.

Consequently, the applicant's confinement to the private clinic from 1977 to 1979amounted to a breach of her right to liberty as guaranteed by Article 5 § 1.

As the applicant's confinement to the clinic for medical treatment had not been authorised by a court order, the interference with her right to respect for private life had not been lawful within the meaning of Article 8 § 2. Consequently, there had been a violation of Article 8.

- **H.L. v. the United Kingdom, Chamber Judgment, 5 October 2004 -** *Psychiatric confinement as "informal patient" of person incapable of giving or refusing consent: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=23&portal=hbkm&action=html&highlight=mental%20%7C%20health%20%7C%20psychiatric%20%7C%20treatment&sessionid=48324127&skin=hudoc-pr-en

For over 30 years, H.L. was cared for in Bournewood Hospital, a National Health Service Trust hospital. On 22 July 1997, while at the day-centre, he became particularly agitated, hitting himself on the head with his fists and banging his head against the wall. Staff could not contact his carers, so called a local doctor, who gave him a sedative. The applicant remained agitated and, on the recommendation of his social worker, was taken to hospital. A consultant psychiatrist diagnosed him as requiring in-patient treatment and he was transferred to the hospital's IBU as an "informal patient".

The Court observed that, between 22 July to 29 October 1997, the applicant was under continuous supervision and control and was not free to leave. It made no difference whether the ward in which he was being treated was locked or lockable. The Court therefore concluded that the applicant was "deprived of his liberty", within the meaning of Article 5 § 1, during this period.

The Court noted the 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 (for example, for assessment or for treatment) and, consistently, no limits in terms of time, treatment or care attached to that admission. Nor was there any specific provision requiring a continuing clinical assessment of the persistence of a disorder warranting detention.

The Court therefore found that this absence of procedural safeguards failed to protect against arbitrary deprivations of liberty on grounds of necessity and, consequently, to comply with the essential purpose of Article 5 § 1.

Finding that it had not been demonstrated that the applicant had available to him a procedure to have the lawfulness of his detention reviewed by a court, the Court held, unanimously, that there had been a violation of Article 5 § 4.

- **Kepenerov v. Bulgaria, Chamber Judgment, 3 December 2003 -** *Absence of legal basis for ordering of detention by a prosecutor for the purposes of psychiatric assessment – violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=39269/98&sessionid=48519053&skin=hudoc-en

On 8 February 1995 an inquiry was opened into allegations that the appelant had been harassing the director of the local telephone service and other employees. On 13 February 1996 a prosecutor ordered his forced psychiatric examination and instructed the police to arrest him and bring him to the local mental health centre. The applicant was not informed of those decisions. On 22 February 1996 he was brought to the Sofia mental health centre and, after a short examination, transferred to a psychiatric clinic. He was discharged on 22 March 1996 and lodged complaints on 1 September 1997 with the Chief Public Prosecutor's Office and the Minister of the Interior.

The Court noted that Mr Kepenerov had been detained on the orders of a prosecutor who had had no power to order his detention and had not sought a prior medical assessment of the need for his confinement. Nor had there been any possibility of obtaining an independent review of its lawfulness. Accordingly, the confinement had had no basis in domestic law which, moreover, did not provide the requisite safeguards against arbitrariness. The Court held unanimously that there had been a violation of Article 5 § 1 of the Convention

- **Herz v. Germany, Chamber Judgment, 12 June 2003 -** *Lawfulness of an urgent measure of provisional confinement: no violation/violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=44672/98&sessionid=48520052&skin=hudoc-pr-en

Between March 1995 and December 1997 the applicant was compulsorily detained in a psychiatric hospital on three occasions. On the first, a psychiatric report was issued which concluded that he was suffering from paranoid psychosis and was dangerous. The applicant was subsequently examined by a number of specialists, some of whom considered confinement necessary, while others took the view that he was not suffering from any mental disorder.

The applicant was readmitted to psychiatric hospital in October 1996 following a violent dispute with his former partner's father. On the basis of a diagnosis received over the telephone, the Ansbach Guardianship Court upheld the order for his provisional detention. The applicant escaped from the hospital on 18 November 1996. He made an unsuccessful appeal against the detention order.

The Court noted that the only basis for the guardianship court's order for the applicant's detention was a diagnosis obtained over the telephone. However, it considered that the guardianship court was not at fault in failing to obtain psychiatric reports or hear the applicant, as it had been under a duty to take a decision rapidly.

As to whether detention was justified, the Court considered that it was not easy to reach a final conclusion on the applicant's state of health, as a number of conflicting psychiatric opinions had been given. It was necessary to have regard to the context in which the

order for the applicant's detention had been made. The Court stressed that it had been a temporary measure aimed at establishing whether the applicant was suffering from a mental disorder and had been made on the basis of medical advice. In those circumstances, it held unanimously that there had been no violation of Article 5 § 1 (e). In the light of that finding, it considered that there was no need for any separate examination of the complaint of a violation of Article 6 § 1.

As regards the applicant's complaint that he had been unable to challenge the lawfulness of his detention, the Court noted that the domestic courts had dismissed his applications on the ground that in the interim the detention orders had expired and the applicant had escaped from hospital. It considered that, particularly in view of the gravity of such measures – be they only temporary – the mere fact that the detention order had expired could not deprive the applicant of the right to a review of the lawfulness of his detention. Accordingly, the Court held unanimously that there had been a violation of Article 5 § 4.

- **Keenan v. the United Kingdom, Chamber Judgment, 3 April 2001 -** *Violation of art.3, lack of effective monitoring of a mentally-ill inmate who is a suicide risk: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?item=9&portal=hbkm&action=html&highlight=mental%20%7C%20health%20%7C%20psychiatric%20%7C%20article%20%7C%203%20%7C%20torture&sessionid=48324959&skin=hudoc-en

Mark Keenan had been receiving intermittent anti-psychotic medication from the age of 21 and his medical history included symptoms of paranoia, aggression, violence and deliberate self-harm. He died in HM Prison Exeter (England), at the age of 28, from asphyxia caused by self-suspension.

In deciding whether Mr Keenan had been subjected to inhuman or degrading treatment or punishment, within the meaning of Article 3, the Court was struck by the lack of medical notes concerning Mark Keenan, who was an identifiable suicide risk and undergoing the additional stresses that could be foreseen from segregation and, later, disciplinary punishment. From 5 May to 15 May 1993, there were no entries in his medical notes. Given that there were a number of prison doctors who were involved in caring for him, this showed an inadequate concern to maintain full and detailed records of his mental state and undermined the effectiveness of any monitoring or supervision process.

When his condition proceeded to deteriorate, a prison doctor, unqualified in psychiatry, reverted to Mark Keenan's previous medication without reference to the psychiatrist who had originally recommended a change. The assault on the two prison officers followed. Though Mark Keenan asked the prison doctor to point out to the governor at the adjudication that the assault occurred after a change in medication, there was no reference to a psychiatrist for advice either as to his future treatment or his fitness for adjudication and punishment.

The Court found that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) of the Convention; the lack of effective monitoring of Mark Keenan's condition and the lack of informed psychiatric input into his assessment and treatment disclosed significant defects in the medical care provided to a mentally-ill

person known to be a suicide risk. The belated imposition on him in those circumstances of a serious disciplinary punishment – seven days' segregation in the punishment block and an additional 28 days to his sentence imposed two weeks after the event and only nine days before his expected date of release – which may well have threatened his physical and moral resistance, was not compatible with the standard of treatment required in respect of a mentally-ill person.

- **Varbanov v. Bulgaria, Chamber Judgment, 5 October 2000 –** *Absence of legal basis for ordering of detention by a prosecutor for the purposes of psychiatric assessment: violation.*

http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696719&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649

The Court found thar the applicant's compulsory confinement in a psychiatric hospital during twenty-five days, between 31 August and 24 September 1995, constituted a "deprivation of liberty" that violated the paragraph 1 (e) of Article 5 of the Convention.

The Court recalled its established case-law according to which an individual cannot be considered to be of "unsound mind" and deprived of his liberty unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder.

The Court considered that no deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert.

The particular form and procedure in this respect may vary depending on the circumstances. It may be acceptable, in urgent cases or where a person is arrested because of his violent behaviour, that such an opinion be obtained immediately after the arrest. In all other cases a prior consultation is necessary. Where no other possibility exists, for instance due to a refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind.

Furthermore, the medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. A medical opinion cannot be seen as sufficient to justify deprivation of liberty if a significant period of time has elapsed.

In the present case the applicant was detained pursuant to a prosecutor's order which had been issued without consulting a medical expert. The purpose of the applicant's detention was precisely to obtain a medical opinion, in order to assess the need for instituting judicial proceedings with a view to his psychiatric internment. The Court was of the opinion, however, that a prior appraisal by a psychiatrist, at least on the basis of the available documentary evidence, was possible and indispensable. There was no claim that the case involved an emergency.

The Court recalled its established case-law according to which everyone who is deprived of his liberty is entitled to a supervision of the detention's lawfulness by a court. In some cases the judicial supervision may be incorporated in the decision ordering detention if it is taken by a body which constitutes a “court” within the meaning of Article 5 § 4 of the Convention: independent from the executive and from the parties, and must provide the fundamental guarantees of judicial procedure applied in matters of deprivation of liberty.

If the procedure of the competent body ordering the detention does not provide such guarantees, the State must make available effective recourse to a second authority which does provide all the guarantees of judicial procedure.

The Bulgarian law at the relevant time did not provide for an appeal to a court against detention ordered by a prosecutor in the framework of an inquiry with a view to instituting proceedings for psychiatric internment. The Court therefore found that there was a violation of Article 5 § 4 of the Convention in that the applicant was deprived of his right to have the lawfulness of his detention reviewed by a court.

5. SPECIFIC RECOMMENDED READINGS REGARDING THE THEMATIC ISSUES.

Issue 1: "Legal framework and specific standards concerning mental health and social care placement in psychiatric institutions"

Issue 1.1: "Overall framework of key international and regional standards concerning mental health in psychiatric placements"

- United Nations Convention on the Rights of Persons with Disabilities
- UN Principles for the protection of persons with mental illness and the improvement of mental health care (adopted by General Assembly resolution 46/119 of 17 December 1991)
- *Involuntary placement in psychiatric establishments*, "The CPT Standards"
- *Summary of legislation*, WHO Resource book on mental health, human rights and legislation" (2005)
- *Mental Health and Human Rights,* "WHO Resource book on mental health, human rights and legislation" (2005)

Issue 1.2: "Specific rights and guarantees concerned with mental health and social care placement"

- CoE Committee of Ministers Recommendation Rec (2004) 10, concerning the protection of human rights and dignity of persons with mental disorder (*Chapter III – Involuntary placement in psychiatric facilities, and involuntary treatment, for mental disorder*)
- CoE Parlamientary Assembly Recommendation 1235 (1994) 1, on Psychiatry and Human Rights
- *Competence, capacity and guardianship*, "WHO Resource book on mental health, human rights and legislation" (2005)
- *Voluntary and involuntary mental health care,* "WHO Resource book on mental health, human rights and legislation" (2005).
- *Oversight and review mechanisms*, "WHO Resource book on mental health, human rights and legislation" (2005)
- *Rights of the users of mental health services*, "WHO Resource book on mental health, human rights and legislation" (2005=

  <u>Case-law</u>

- Case of Stanev v. Bulgaria and Mitev v. Bulgaria, Chamber Hearing, 10 November 2009 – *Unlawful and arbitrary deprivation of liberty on account of their placement in care homes against their wil.*
- Case of Trajče Stojanovski v. "the former Yugoslav Republic of Macedonia", Chamber Judgment, 22 October 2009 – *Continued confinement in a psychiatric hospital unjustified: violation.*

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