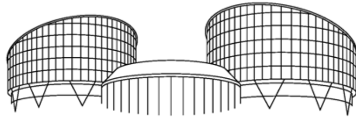

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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ECHR 048 (2019)
31.01.2019

Court judgment concerning the psychiatric treatment provided to a person in compulsory confinement since 2004

The case concerned the question of the psychiatric treatment provided to a sex offender who has been in compulsory confinement since 2004 on account of the danger that he poses and the lawfulness of his detention.

In today's **Grand Chamber** judgment[1] in the case of **Rooman v. Belgium** (application no. 18052/11) the European Court of Human Rights held:

- by sixteen votes to one, that from the beginning of 2004 until August 2017, there had been **a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights; and, by fourteen votes to three, that from August 2017 until the present date there had been **no violation of Article 3.**

- unanimously, that from the beginning of 2004 until August 2017, there had been **a violation of Article 5 (right to liberty and security);** and, by ten votes to seven, that from August 2017 until now there had been **no violation of Article 5.**

With regard to Article 3, the Court found in particular that the national authorities had failed to provide treatment for Mr Rooman's health condition from the beginning of 2004 to August 2017, and that his continued detention without a realistic hope of change and without appropriate medical support for a period of about thirteen years had amounted to particularly acute hardship, causing him distress of an intensity exceeding the unavoidable level of suffering inherent in detention. In contrast, the Court held that since August 2017 the authorities had shown a real willingness to remedy Mr Rooman's situation by undertaking tangible measures, and that the threshold of severity required to bring Article 3 into play had not been reached.

With regard to Article 5, the Court decided to refine its case-law principles, and to clarify the meaning of the obligation on the authorities to provide treatment to persons placed in compulsory confinement. The Court then held that Mr Rooman's deprivation of liberty during the period from the beginning of 2004 to August 2017 had not taken place in an appropriate institution which was capable of providing him with treatment adapted to his condition, as required by Article 5 § 1. In contrast, it found that the relevant authorities had drawn the necessary conclusions from the Chamber judgment of 18 July 2017 and had put in place a comprehensive treatment package, leading it to conclude that there had been no violation of this provision in respect of the period since August 2017.

Principal facts

The applicant, René Rooman, is a Belgian national who was born in 1957 and is detained in the Paifve social-protection institution (EDS) in Belgium.

In 1997 Mr Rooman was convicted, among other charges, of theft, indecent assault of a minor aged under 16 and rape of a minor aged under ten. The prison terms imposed were due to expire on 20 February 2004, but he committed further offences while in prison. In June 2003 the Liège Court of

1. 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.

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First Instance ordered that he be placed in compulsory confinement, and in January 2004 he was admitted to the Paifve EDS.

On various dates between 2005 and 2015 Mr Rooman submitted three requests for release, which were dismissed by the Social Protection Board (CDS) in 2006, 2010 and 2014 on the grounds that the conditions for discharge (namely an improvement in his mental health and guarantees for his social rehabilitation) had not been met. In its decisions, the CDS noted, among other points, that Mr Rooman had been unable to receive psychiatric treatment in the only language that he understood and spoke (German), that efforts ought to be made to find an institution where he could receive treatment in German, and that Mr Rooman had had very little contact with the other patients and members of staff, given that his command of French was poor.

In the meantime, in 2014 Mr Rooman brought urgent proceedings against the Belgian State on the basis of Article 584 of the Judicial Code, requesting his discharge or, in the alternative, that the authorities be ordered to take the measures required by his state of health. On 10 October 2014 the urgent-applications judge held that there had been a breach of his right of access to health care and that he had sustained inhuman and degrading treatment. That judge ordered the Belgian State to appoint a German-speaking psychiatrist and medical auxiliary, and to put in place the treatment routinely provided to French-speaking persons in compulsory confinement. In the same year Mr Rooman filed a compensation claim on the basis of Article 1382 of the Civil Code. On 9 September 2016 the French-language Brussels Court of First Instance found the Belgian State liable for negligence and ordered it to pay Mr Rooman 75,000 euros (EUR). Both parties lodged appeals. The proceedings are pending before the Brussels Court of Appeal.

Mr Rooman subsequently made a further request for discharge. In this context, in January and in May 2017 the Paifve EDS's psychological and welfare team and its director issued reports indicating that they were not in favour of Mr Rooman's release, and specifying, among other points, that he remained dangerous and was likely to reoffend. The public prosecutor also subsequently issued an opinion in favour of maintaining Mr Rooman in compulsory confinement. In November 2017 the Social Protection Division (CPS) at the post-sentencing court, which now had jurisdiction in matters of compulsory confinement, held a hearing, in private, at which Mr Roman, his lawyer and an interpreter were present. Then in December 2017 the CPS dismissed the main request for final discharge and held that it was also inappropriate to grant conditional discharge. In its judgment, the CPS stated, in particular, that Mr Rooman's detention was justified by his mental health, and the conditions of his detention made it possible both to provide him with treatment and to ensure his safety and that of others. The CPS also noted that Mr Rooman was now able to receive psychological and psychiatric treatment, and welfare assistance, from German-speaking staff and had one outing a month accompanied by a German-speaking nurse. An interpreter was now also present whenever required. Mr Rooman's appeal on points of law was dismissed in February 2018.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 5 § 1 (right to liberty and security) of the Convention, Mr Rooman complained that he had not received the psychological and psychiatric treatment required by his mental-health condition. He also alleged that the lack of treatment was depriving him of the prospect of an improvement in his situation and that, as a result, his detention was unlawful.

The application was lodged with the European Court of Human Rights on 1 March 2011.

In its Chamber judgment of 18 July 2017, the European Court held, unanimously, that there had been a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention. The Court held, however, by six votes to one, that there had been no violation of Article 5 § 1 (right to liberty and security) of the Convention.

On 16 October 2017 Mr Rooman requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber) and on 11 December 2017 the panel of the Grand Chamber accepted that request.

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

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Linos-Alexandre **Sicilianos** (Greece),
Ganna **Yudkivska** (Ukraine),
Vincent A. **De Gaetano** (Malta),
Kristina **Pardalos** (San Marino),
Helen **Keller** (Switzerland),
Paul **Lemmens** (Belgium),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Georgios A. **Serghides** (Cyprus),
Marko **Bošnjak** (Slovenia),
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),
Lado **Chanturia** (Georgia),

and also Françoise **Elens-Passos**, *Deputy Registrar.*

Decision of the Court

Article 3 (prohibition of inhuman or degrading treatment)

With regard to the treatment situation from the beginning of 2004 to August 2017, the Court noted that all the evidence in the case file indicated a failure to provide therapeutic treatment resulting from the fact that it was impossible for the medical staff and Mr Rooman to communicate. Both the psychiatrists who were in contact with Mr Rooman and the judicial authorities had acknowledged the lack of treatment. They had made it sufficiently clear from September 2005 onwards that the applicant was in particular need of long-term psycho-pharmacological and psycho-therapeutic treatment, to be administered in German, the only language that he spoke and understood. The language barrier had been the sole factor limiting Mr Rooman's effective access to the treatment that was normally available. On several occasions examination of his applications for discharge had been postponed on account of the difficulty in beginning therapy as a result of the language problem. Admittedly, Mr Rooman had been able to meet qualified German-speaking staff during the period in question; however, his contacts with those persons had not been in a therapeutic context. He had also had contact with an external German-speaking psychologist between May and November 2010 but, viewed in relation to the overall duration of the deprivation of liberty, these consultations could not be regarded as a real provision of treatment. In addition, the social-protection bodies had taken measures to find a solution to the problem, but these had been thwarted by the authorities' failure to take appropriate measures to bring about a change in the situation with regard to communication. It had not been until the Higher Social Protection Board's decision and the order by the president of the French-language Brussels Court of First Instance in 2014 that practical measures, which had nonetheless been recommended for years, were taken, such as the provision of a German-speaking psychologist. However, it appeared that this arrangement had ceased towards the end of 2015, and only resumed in August 2017. Thus, the delay in putting in place measures that would facilitate communication with Mr Rooman had had

the effect of depriving him of the treatment required by his health condition. It followed that the national authorities had failed to provide treatment for Mr Rooman's health condition, and his continued detention in the Paifve EDS without a realistic hope of change and without appropriate medical support for a period of about thirteen years had accordingly to be viewed as particularly acute hardship, causing him distress of an intensity exceeding the unavoidable level of suffering inherent in detention. There had therefore been a violation of Article 3 of the Convention in respect of this period.

With regard to the treatment situation since August 2017, the Court noted that the situation had evolved: in particular, a German-speaking psychiatrist had apparently been contacted and had expressed her willingness to provide treatment at any time; arrangements had been made to ensure the presence of an interpreter for the monthly meetings with a general practitioner and for all the other treatment measures where this was considered necessary; and a multidisciplinary meeting of the care team, attended by Mr Rooman and an interpreter, had been held in November 2017. With regard to psychiatric treatment, it was true that a German-speaking psychiatrist had merely been made available, and the lack of more advanced initiatives by the authorities to propose a therapeutic schedule could be considered regrettable. However, neither the material in the case file nor the applicant's statements indicated that he had asked to take advantage of the proposed psychiatric consultation and that the medical authorities had refused to give effect to such a request. Although Mr Rooman was a vulnerable individual on account of his health condition and his detention, he had enjoyed, throughout the proceedings, effective legal assistance, and he had requested, over many years, access to German-speaking health professionals. Thus, assisted by a lawyer throughout the domestic proceedings, he could have shown himself open to the attempts by the authorities to respond to the Chamber's finding of a violation (18 July 2017) by proposing therapeutic measures in his language. In consequence, the Court considered that the authorities had shown a real willingness to remedy Mr Rooman's situation since the Chamber judgment, by undertaking tangible measures since August 2017. In this context, Mr Rooman's lack of receptivity to the proposed arrangements for psychiatric treatment could not be imputed to the authorities. Thus, the Court considered that, although there existed certain organisational shortcomings in the proposed package of measures, the threshold of severity required to bring Article 3 into play had not been reached in respect of Mr Rooman's allegations concerning the period subsequent to August 2017. There had been no violation of Article 3 in respect of that period.

The Court reiterated, however, that this finding did not release the Government from their obligation to continue to take all the necessary steps in order to put in place, without delay, the indicated medical support, on the basis of individualised and appropriate therapeutic care.

Article 5 (right to liberty and security)

Refining the case-law principles and clarification of the meaning of the obligation on the authorities to provide treatment: the Court specified that there existed a close link between the "lawfulness" of the detention of persons suffering from mental disorders and the appropriateness of the treatment provided for their mental condition. Accordingly, any detention of mentally ill persons had to have a therapeutic purpose, aimed specifically, and in so far as possible, at curing or alleviating their mental-health condition, including, where appropriate, bringing about a reduction in or control over their dangerousness. Thus, irrespective of the facility in which those persons were placed, they were entitled to be provided with a suitable medical environment accompanied by real therapeutic measures, with a view to preparing them for their eventual release.

With regard to the scope of the treatment provided, the Court considered that the level of care required for this category of detainees had to go beyond basic care. Mere access to health professionals, consultations and the provision of medication could not suffice for a treatment to be considered appropriate and thus satisfactory under Article 5. However, the Court's role was not to analyse the content of the treatment that was offered and administered. What was important was

that it could verify whether an individualised programme had been put in place, taking account of the specific details of the detainee's mental health with a view to preparing him or her for possible future reintegration into society. In this area, the Court afforded the authorities a certain latitude with regard both to the form and the content of the therapeutic care or of the medical programme in question.

Further, the assessment of whether a specific facility was "appropriate" had to include an examination of the specific conditions of detention prevailing in it, and particularly of the treatment provided to individuals suffering from psychological disorders. Thus, it was possible that an institution which was *a priori* inappropriate, such as a prison structure, could nevertheless be considered satisfactory if it provided adequate care, and conversely, that a specialised psychiatric institution which, by definition, ought to be appropriate could prove incapable of providing the necessary treatment. It followed that appropriate and individualised treatment was an essential part of the notion of "appropriate institution".

In conclusion, the deprivation of liberty contemplated by Article 5 § 1 (e) had a dual function: on the one hand, the social function of protection, and on the other a therapeutic function that was related to the individual interest of the person of unsound mind in receiving an appropriate and individualised form of therapy or course of treatment. The need to ensure the first function ought not, *a priori*, to justify the absence of measures aimed at discharging the second. It followed that, under Article 5 § 1 (e), a decision refusing to release an individual in compulsory confinement could become incompatible with the initial objective of preventive detention contained in the conviction judgment if the person concerned was detained due to the risk that he or she could reoffend, but at the same time was deprived of the measures – such as appropriate therapy – that were necessary in order to demonstrate that he or she was no longer dangerous. Lastly, the Court considered that potential negative consequences for the prospects of change in an applicant's personal situation would not necessarily lead to a finding of a breach of Article 5 § 1, provided that the authorities had taken sufficient steps to overcome any problem that was hampering his or her treatment.

With regard to Mr Rooman's deprivation of liberty from the beginning of 2004 until August 2017, the Court noted that in spite of the repeated findings by the medical and social protection authorities to the effect that it was essential for Mr Rooman to receive psychiatric treatment in German in order for him to have a chance of progressing and reintegrating into society, no measures had been taken to introduce such treatment. Thus, the failure to provide individualised therapy, adapted to his condition over a period of about 13 years had amounted to significant negligence, which impeded Mr Rooman's potential for positive change, assuming it existed. The Court thus considered, in view, firstly, of the indefinite nature of the length of the confinement measure and, secondly, of Mr Rooman's state of health and the requests that he had made to obtain appropriate psychiatric and psychological treatment that would allow him a hope of release, that the measures taken by the authorities had been inadequate in terms of providing him with therapeutic treatment. In addition, the failure to provide the applicant with treatment appeared all the more unjustifiable in that he was capable of communicating in a language that was one of the official languages of Belgium. It followed that the lack of treatment suited to the applicant's state of health and the absence of effective action by the authorities from the beginning of 2004 to August 2017 in order to guarantee such treatment had had the effect of severing the link between the aim of the detention of liberty and the conditions in which it took place in the Paifve EDS, an institution that could not therefore be regarded as appropriate. There had accordingly been a violation of Article 5 § 1 on account of the manner in which the compulsory confinement order had been executed from the beginning of 2004 until August 2017.

With regard to Mr Rooman's deprivation of liberty since August 2017, the Court considered that the relevant authorities had drawn the necessary conclusions from the Chamber judgment of 18 July 2017 and had put in place a comprehensive treatment package, leading it to conclude that there had been no violation of this provision in respect of the period since August 2017. However, the Court

emphasised that the authorities had to ensure, having regard to the applicant's vulnerability and his diminished ability to take decisions, and notwithstanding the fact that under domestic law he was considered formally capable of reaching his own decisions, that all the necessary initiatives were taken, in the medium and long term, to secure effective care, including psychiatric and psychological treatment and welfare assistance in accordance with the requirements of Article 5 § 1 (e) of the Convention, so as to provide him with the prospect of release.

Article 41 (just satisfaction)

The Court held, by fifteen votes to two, that Belgium was to pay the applicant EUR 32,500 in respect of non-pecuniary damage.

Separate opinions

Judge Lemmens expressed a partly concurring and partly dissenting opinion. Judge Nußberger expressed a partly dissenting opinion. Judges Turković, Dedov, Motoc, Ranzoni, Bošnjak and Chanturia expressed a joint partly dissenting opinion. Judge Serghides expressed a partly dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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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.