Prison Litigation Network

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Trabelsi v. Belgium

Irreducible life sentence, a predictable consequence of the extradition to the destination country, leading the latter to consequently breach Article 3.

The ECHR has condemned Belgium for the extradition of the applicant to the USA, where he was prosecuted for acts of terrorism. The Court considers that, while these offences carry a life sentence penalty, none of the USA's legal procedures "*provided for amounts to a review mechanism requiring the national authorities to ascertain, on the basis of objective, pre-established criteria of which the prisoner had precise cognisance at the time of imposition of the life sentence, whether, while serving his sentence, the prisoner has changed and progressed to such an extent that continued detention can no longer be justified on legitimate penological grounds*" (§137).

As a result, the Court falls in with the GC *Vinter and Others v. the United Kingdom* judgment, which establishes the principle according to which a detainee convicted to a whole-life sentence is entitled to know, at the outset of his sentence, what he must do to be considered for release and under what conditions, including when a review of his sentence could be sought. Failing that, the incompatibility with Article 3 arises at the time of the imposition of a life sentence and not at a later stage of incarceration (*Vinter*, § 122).

Moreover, the Court renounces to the previous approach (*Babar Ahmad and Others v. the United Kingdom)* according to which, in case of a removal procedure, the examination under Article 3 of the treatment to which the detainee is exposed in the country of destination, meets more restrictive criteria that those applicable to the States Parties to the Convention (cf. the Ukrainian judge's concurring opinion).

Khoroshenko v. Russia (GC hearing)

Compatibility between Article 8 and the denial of conjugal visits imposed to inmates serving a life sentence

On September 3rd, the Court held a GC hearing on a case mainly dealing, from the perspective of Article 8 (right to respect to both private and family life), with the ban that applies to inmates convicted to life imprisonment from being granted long-term (3-days) family visits during at least the first 10 years of the execution of their sentence, according to Russian law. The government argues that such a provision falls within the margin of appreciation which the States enjoy for the implementation of the right guaranteed under Article 8. The applicant invokes the lack of reasonable justification given the indiscriminate nature of this measure, the right to a sexual life for convicts, the right to conceive (cf. *Dickson v. the United Kingdom*) and the superior interest of the child.

The GC judges focused on the relevance of the law (inc. the penitentiary code); on the short-visits' procedures (4 hours, phone booth, warder); on the procedures of appraisal of the interested parties' progresses which could allow them to leave the high-security conditions or being granted a parole.

It should be noted that the relinquishment in favour of the Grand Chamber is likely to initiate an evolution towards a recognition of a right to conjugal visits. In 2007, in the *Dickson v. the United Kingdom* case (pertaining to the access to artificial insemination during detention), the Grand Chamber had indicated that "*while the Court has expressed its approval for the evolution in several European countries towards conjugal visits, it has not yet interpreted the Convention as requiring Contracting States to make provision for such visits. Accordingly, this is an area in which the Contracting States could enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals.*"

In a very comparable case, *Trosin v. Ukraine*, which this time was related to short-term visits imposed on life-sentence convicts, the Court has without any difficulty pointed at the systematic imposition of the restrictive short-term visits regime to the interested parties, due to the absence of a proportionality test taking into account particular circumstances (§42). In the *Varnas v. Lithuania* case, the Court, while reasserting the Dickson's judgment position, had unanimously considered that the impossibility for the defendants to have access to conjugal visits that should be granted to the detainees constituted a breach of Article 14 in combination with Article 8 (in that sense, see also *Laduna v. Slovenia*).

Bljakaj and Others v. Croatia (application no. 74448/12)

Croatian authorities failed in their duty to protect the life of a lawyer killed by a mentally disturbed man

The applicants are the family members of the late M.B.B., a lawyer who was shot dead on 22 March 2002 in her office by the husband of a client she was representing in divorce proceedings.

The man who killed M.B.B. – A.N., who earlier on the same day attempted to kill his wife and later killed himself – was mentally disturbed with a background of committing acts of domestic violence, unlawful possession of firearms and alcohol abuse. On the day before the incident he was at a police station with his wife, who reported that he had threatened to kill her. On the morning of the day on which the shooting happened he was visited at his home by two police officers who had been contacted by the staff of a bank in whose presence A.N. had behaved strangely. The police later contacted a doctor at a hospital but left A.N. at his home. About an hour before the shooting, A.N. went to the police station demanding to know why the police had come to his home. He stated that he would solve his problems himself, and then left the police station. Following the shooting, criminal proceedings were brought against the commanding police officer on duty on 22 March 2002, who was eventually acquitted in 2006. In disciplinary proceedings, that officer and the officer in charge the previous day were found guilty of having failed to immediately report the respective situations. In particular, the disciplinary panel found that the officer in charge on the day of the shooting had falsified the report about the events as regards the time he had contacted the doctor at the hospital. Both officers were sentenced to a temporary reduction of salary. A civil action lodged by the applicants against the State, seeking damages for the authorities' failure to protect their relative's life, was eventually dismissed.

The applicants complained that M.B.B.'s death was attributable to the failure of the authorities to take all necessary measures to protect her. In particular, they submitted that on the day of the incident the police had only contacted the doctor when it was too late and that the police had all too easily discharged A.N. on the day before the shooting. The applicants further relied on Article 13, complaining that they were unable to obtain damages for the death of their relative.

Decision of the Court

Article 2

The Court observed that A.N., the man who killed the applicants' relative, had been previously convicted of violent offences. Although the evidence before the Court showed that his violent behavior had been associated with his alcohol abuse, there was no indication that the Croatian authorities had ever analysed that issue or that they had applied any measure compelling him to undergo treatment.

As regards the events on the day of the shooting, the Court noted in particular that A.N. had appeared to be mentally disturbed and dangerous to himself and/or others. As became evident

in the investigation subsequent to the incidents, the competent authorities had considered that his medical supervision was needed. Moreover, he had twice been under immediate police control on the morning of the incidents. Nevertheless, and although A.N.'s background had been known to the two police officers who came to his home on the morning before the shooting, they had not taken any further action, but had left A.N. under no form of control or supervision. In the disciplinary proceedings against the police officers in charge, the authorities had identified several shortcomings as to the manner in which they had dealt with the respective situations, in particular their failure to immediately report those situations. It had become clear that the belated action of the police had prevented the doctor at the hospital from taking the necessary measures to assess A.N.'s mental state.

While the Court could not conclude with certainty that matters would have turned out differently if the authorities had acted otherwise, it was important to consider that reasonable measures had failed to be taken, which could have had a real prospect of altering the outcome and mitigating the harm done. The Court concluded that this failure to deploy the necessary diligence required in the situation disclosed a breach of the State's obligation to safeguard the right to life by putting in place all reasonable measures.

Article 13

The Court underlined that, while Article 13 provided a general obligation on States to provide an effective remedy in respect of breaches of the Convention, it did not guarantee success in the application for the remedy sought. The Court observed that the applicants had had an opportunity to lodge a civil action for damages for the death of their relative under Croatian law. The existence of this opportunity and the examination of the application by the Croatian courts on the merits led the Court to conclude that there had been no violation of Article 13.

Just satisfaction (Article 41): 20,000 euros jointly in respect of nonpecuniary damage.

Separate opinion

Judges Lazarova Trajkovska and Pinto de Albuquerque expressed a joint partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

C.W. v. Switzerland (no. 67725/10)

Procedure governing the continued detention of a person of unsound mind

In 1989 C.W. was diagnosed with paranoid schizophrenia. In 1994 and 1999 he inflicted serious injuries on his mother with a hammer and an axe. After attacking a police officer in 2001 he was placed in an institution specialising in the treatment of offenders with psychiatric problems. In September 2001 he was sentenced to five years' imprisonment. The sentence was suspended subject to an "in-patient treatment order" issued on the basis of psychiatric

expert reports. In May 2007, when the duration of the treatment order expired, the authorities refused C.W.'s application for conditional release and sought the extension of the order for a further five years. The applicant requested a two-year extension. In July 2012 his detention was extended again, this time by three years.

Relying on Article 5 § 1, the applicant alleged that his detention in the Rheinau centre did not have a valid legal basis, that the extension of the in-patient treatment order for five years was not justified and that the decision in question breached the principle of proportionality and was arbitrary, since it was ordered in the absence of an independent expert report enabling his dangerousness to be reviewed. He submitted, that because of the weakening of the temporal link between his initial conviction and the disputed extension of his detention, the judge should have ordered a complete re-evaluation of dangerousness, which should have been handled by an independent doctor.

The Court notes that the contested decision was taken by a District Court in 2012 and was based on the view that doctors had expressed in 2010. At the same time, those doctors had suggested to the District Court to order an external expertise in order to avoid giving the applicant impression of partiality.

It is true that the contested decision was based on the opinion Psychiatric Center Rheinau in which the applicant was under therapy, but that fact alone does not raise an issue under angle of Article 5. The applicant didn't argue that the bond of trust with their medical team was broken, or that the diagnosis regarding his illness was erroneous or that the medication he followed in the Centre was not suitable. Disagreements with the medical team did not address the merits of the in-patient treatment but essentially its lifetime. The Court also notes that, even at the last proceedings before the District Court of Baden, in July 2012, the applicant did not contest the measure as such, but only requested an extension of two years instead five (§48). In the Court's view, in the absence of a dispute characterized as to the scientific and ethical validity of the notice and psychiatric expertise reports, a third medical opinion was not necessary.

Therefore, the case differs from the judgment in the case of Ruiz Rivera c. Switzerland (No. 8300/06, February 18, 2014). In this case, the Court held that a refusal to release a person detained for psychiatric reasons in the absence of a recent third medical opinion violated the Article 5 § 4. In this case, the national court had based its decision on a psychiatric assessment that was over three years old and confirmed by two psychologists of the center where the applicant was detained. The applicant's refusal to follow the therapy that had been prescribed was due to the breakdown of trust with the staff of the institution that the hosted and deadlock that followed. The Court held that, under these conditions, and to learn with the best possible accuracy on the mental state at the time of his application for release testing, the prison administration and the District Court would due, at least, seek medical advice thirds (Ruiz Rivera, supra, § 64).

Related judgments: *Dörr v. Germany* (Dec., no 2894/08, January 22, 2013); *Ruiz Rivera c.*

Switzerland (No. 8300/06, February 18, 2014).

Carrella v. Italy (application no. 33955/07)

Health care wait times in the case of a prisoner with diabetes

This case concerned health care wait times in the case of a prisoner with diabetes. Mr Carrella was remanded in custody in July 2003. He was sentenced to 7 years imprisonment in 2004, before being acquitted and released in 2008.

While in detention he was diagnosed as diabetic and underwent regular medical check-ups and examinations. In 2006 he complained to the Naples public prosecutor's office that the treatment provided to him in prison was inadequate and insufficient. The appointed expert indicated that the pathologies of the applicant were not incompatible with detention and could be well treated in the medical facilities of the prison or short hospitalizations in external medical facilities.

Relying in particular on Article 3, Mr Carrella complained about the conditions of his detention, alleging in particular that he had not received adequate medical treatment in prison and that as a result of various errors and omissions, the operation he had needed to undergo had been delayed. He also complained that the authorities had not considered the possibility, in view of his state of health, of applying an alternative measure to detention in his case, and that they had taken no action on his complaint.

The principles applicable to the case are: diligence and frequency of care are two factors to be taken into account when measuring the compatibility of treatment with Article 3. In particular, these two factors are not measured in absolute terms, but in terms of health of the prisoner concerned (cf. *Iorgo v. Bulgaria*, No. 40653/98, § 85, *Rohde v. Denmark*, No. 69332/01, § 106, *Serifis v. Greece*, no 27695/03, § 35, and *Sediri v. France* (Dec., no 4310/05). In general, the degradation of the health of the prisoner does not play in itself a decisive role, the Court examining every time if the degradation was due to lacks of care (*Kotsaftis v. Greece*, no 39780/06, § 53, § 69).

In this case, the Court also observed that, on the eve of the angiographic examination, the hospital structure was deemed inadequate to accommodate the applicant for security reasons, another hospital structure was chosen and the examination date was set four months later. The Court noted the delays in the conduct of the examination of the applicant.

However, it considered that these disadvantages cannot, by themselves, be constitutive of treatment prohibited by Article 3 of the Convention, especially because when the examination has originally been requested, the medical conditions of the applicant were not worrying, the examination was not urgent and the delay did not have negative consequences for his health.

In this regard, the Court noticed that less than a month after the date of the canceled examination, the applicant was placed under house arrest. Soon after, he was able to pass the angiographic examination in a private hospital structure and at the end of this examination he has been subjected to surgery for coronary angioplasty.

The Court noted that the applicant's medical records show that since 2005 he has been examined by doctors inside and outside the prison and was under constant medical checks. In addition, he was placed under house arrest because of his health and was able to choose a hospital facility for this examination (§ 75). Despite some delays, the authorities have complied with the obligation to protect the physical integrity of the applicant by the administration of appropriate medical checks.

Finally, the Court noted that the steps taken by the authorities in charge of the preliminary investigation are not controversial. An investigation was initiated as a result of the complaint and the doctors were interviewed. The case was closed because the judges had considered adequate and sufficient the medical checks. There is no evidence that the acts of investigation summarized above were inappropriate or manifestly ineffective.

No violation of Article 3 (treatment)

No violation of Article 3 (investigation)

Other interesting judgments (outside of the scope of prison law)

S.B. v. Romania (no. 24453/04)

The case concerns alleged medical negligence for dental treatment and lack of opportunity to establish a medical negligence (expertise) and to obtain appropriate redress.

In September 2001 the applicant underwent dental treatment involving bridgework, which she alleges was not correctly carried out by the dentist given the various problems (infected gums, cuts and pain) it caused her. In March 2003 she lodged a criminal complaint, requesting a detailed medical expert report which would establish whether there had been medical negligence in her case and seeking compensation. An expert report was carried out and issued in December 2003 recommending the removal of the prosthetic dental work as it had been inadequately carried out by the dentist. Ultimately, however, in March 2011, the Bucharest District Court acquitted the dentist of medical negligence, concluding that the applicant was at fault as she had refused to have the dental prosthetics fixed permanently. This decision was subsequently upheld on appeal in October 2011.

The applicant complains under Article 6 § 1 and Article 8 about the lack of opportunity to establish within a reasonable time whether the dental treatment she had undergone constituted medical negligence and to obtain appropriate redress. She submits in particular that it was impossible in Romania in cases of medical negligence to obtain a medical expert report

without first having lodged a civil or criminal complaint.

Partners

Agamemnon v. France

A**uthorised external intervention of the OIP, with a view to challenging the geographical distance imposed between a life-sentence convict and his relatives**

The OIP has been authorised to intervene in favour of the request of a convict from Réunion who, on the basis of Article 8, has raised the issue of his incarceration in metropolitan France while he has no family or social ties there. The sentence enforcement courts have rejected his parole requests, while inviting the penitentiary administration to transfer him to Réunion in order to prepare a release project. The Conseil d'État ruled that denying a transfer to Réunion constituted a national measure that could not be appealed against, unless the fundamental rights of the interested party were at stake.

The Court asked the parties whether the geographical distance imposed on the interested party during a four-year period (to the exception of a one-year parole period) constituted a breach of his right to the respect of his family life and whether, in the perspective of the *Khodorkovskiy and Lebedev v. Russia* judgment, such an interference was lawful and proportionate.

In this Russian judgment, while acknowledging the practical difficulties faced by the States on this issue and recognising their margin of appreciation, the Court ruled that the distribution of the prison population is not entirely up to the discretion of the administrative bodies which somehow should take into account the convicts' interest to maintain at least a minimum of family and social ties. For failing to include an intelligible and foreordained inmates' distribution method throughout the prison institutions, the measures established by Russian law did not provide a legal protection against the public authorities' interferences and had incompatible effects with the applicants' right to the respect of their private and family life (§850). The defendant government had indeed produced a quota-and-region-based distribution plan, without specifying its elaboration conditions nor its ruling principles (§848).