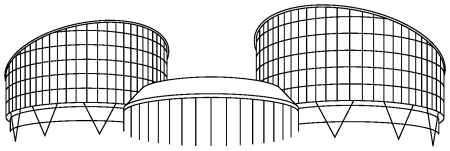

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

DECISION

Application no. 56619/15
Rasmus MALVER
against Denmark

The European Court of Human Rights (Second Section), sitting on 29 May 2018 as a Committee composed of:

Ledi Bianku, *President,*
Nebojša Vučinić,
Jon Fridrik Kjølbro, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to the above application lodged on 12 November 2015,

Having deliberated, decides as follows:

THE FACTS

The applicant in the case, Mr Rasmus Malver, is a Danish national who was born in 1984 and lives in Copenhagen.

The facts of the case, as submitted by the applicant, may be summarised as follows.

Prior to the events giving rise to the present application, in the summer of 2010, due to a risk of suicide, the applicant was twice admitted to a mental hospital for a few days.

On 15 October 2011, the applicant was taken by the police to the psychiatric emergency centre at around 12.25 a.m.

At 3.17 a.m. a consultant found that the applicant was a danger to himself and admitted him to hospital by virtue of section 5 (2) of the Mental Health Act (*Lov om anvendelse af tvang i psykiatrien/Psykiatriloven*).

At 7.37 a.m. he was subjected to forced sedative medication whereby he was injected with 10 mg of Serenase.

The applicant was discharged from hospital on 17 October 2011 at 9.30 a.m.

The applicant brought the case before the Psychiatric Patients Complaints Board (*Det Psykiatriske Patientklagenævn*), which on 4 November 2011 approved the administrative detention but disapproved the forced medication. As to the latter, having heard the applicant and consultant J.B. from the mental hospital, the Board found it established that the applicant had been very troubled, had struck the doors, had shown a provocative attitude, especially towards the staff, and that he needed to calm down in order to feel better. Nevertheless, since it did not appear from his journal that the staff had first attempted to "shield" him [calm him down, protect him], it did not find it substantiated that the applicant could not have been calmed down sufficiently without forced sedative medication. It noted that J.B. had not submitted by 3 November 2011, as promised, the nurses' daily notes (*Sygeplejekardex*) relating to the episode. Accordingly, the decision was taken on the basis of the material before it. In conclusion, the forced medication was found to be in violation of section 17, subsection 2, of the Mental Health Act, which sets out that a doctor may give sedative medication to a very troubled patient if it is of decisive importance to improve his condition, if necessary by force. It was also found to be in violation of section 4 of the same Act which sets out, *inter alia*, that coercive measures must be proportionate to the aim pursued, and not be used before an attempt has been made to obtain the patient's voluntary participation, in so far as this is possible.

The decision was not appealed against to the Psychiatric Patients Appeal Complaints Board.

On 24 November 2011 the applicant requested that the decision to detain him administratively be brought before the courts. By virtue of section 469, subsection 2, of the Administration of Justice Act (*Retsplejeloven*), the Patients Complaints Board shall bring the case before the courts within 5 days. It failed to comply with this time-limit and only brought the case before the courts on 12 December 2011, thus 12 days too late. In a judgment of 19 January 2012, the City Court (*Københavns Byret*) approved the administrative detention, a decision which was upheld on appeal by the High Court (*Østre Landsret*) on 11 April 2012. It does not appear that the applicant requested leave to appeal to the Supreme Court (*Højesteret*).

Subsequently, the applicant brought two sets of civil compensation proceedings.

In the first set of proceedings, he claimed compensation because the Patients Complaints Board had failed to comply with the procedural time-limit. By a City Court judgment of 5 December 2013, upheld on appeal by the High Court on 23 February 2015, the courts noted that it was undisputed that the Psychiatric Patients Complaints Board had failed to comply with the time-limit, a fact it had regretted publicly, and which had been criticised by the City Court in its judgment of 19 January 2012. However, the courts did not find it established that this failure entailed such

a violation of the applicant's rights that he should be awarded compensation. Leave to appeal to the Supreme Court was refused on 12 August 2015.

In the second set of proceedings, the applicant maintained that the forced medication on 15 October 2011 had been unlawful. He therefore claimed compensation. The City Court and, on appeal, the High Court found against him by judgments of 6 May 2013 and 15 April 2015. The applicant and J.B. were heard. Documentary evidence was also submitted, including various journals and the nurses' daily notes relating to the episode. The High Court agreed with the Psychiatric Patients Complaints Board that the applicant had been very troubled and that it had been necessary to calm him down in order for him to feel better. Moreover, it transpired from the various journals and the nurses' daily notes, *inter alia*, that the applicant had been offered sedative medication several times in vain, that at 3.45 a.m. he had been "shielded" by staff members in the common areas, and that at 4 a.m. he had been asked to go to his room to calm down. The High Court was therefore convinced that in the hours preceding the forced medication, less intrusive measures had been tried in vain. Accordingly, the forced medication had been lawful, and there was therefore no basis for granting the applicant compensation.

Before the City Court the applicant was exempted from paying costs. Before the High Court the applicant was ordered to pay costs in the amount of approximately 800 euros, covering his counsel's fee. In that decision, the High Court took into account that the applicant had requested an opinion from the Medical-Legal Council (*Retslægerådet*), but that he had failed to comply with the time-limits for submitting questions, for which reason, on 4 December 2014, the High Court considered his request to have been withdrawn.

The applicant's request for leave to appeal to the Supreme Court was refused on 12 August 2015.

COMPLAINTS

Relying on Articles 3, 5 and 8, the applicant complains about the circumstances of his admission to the mental hospital on 15 October 2011, notably the fact that he was administered medication against his will, and that the Psychiatric Patients Complaints Board had failed to respect the time-limit for bringing his complaint before the courts. Under Articles 6 and 13 he complains that the proceedings were unfair, very costly and that the courts failed to provide reasoned judgments.

THE LAW

The Court reiterates that it is the master of the characterisation to be given in law to the facts of a case (see, for instance, *Söderman v. Sweden* [GC], no. 5786/08, § 57, ECHR 2013).

It also reiterates that a medical intervention in defiance of the subject's will gives rise to an interference with respect for his or her private life, and in particular his or her right to physical integrity (see, among others, *Glass v. the United Kingdom*, no. 61827/00, § 70, ECHR 2004-II and *X v. Finland*, no. 34806/04, § 212, ECHR 2012 (extracts)).

The applicant's complaint about forced medication is therefore to be examined under Article 8 of the Convention alone.

Any interference with an individual's right to respect for his or her private life will constitute a breach of Article 8, unless it is "in accordance with the law", pursues a legitimate aim or aims under paragraph 2, and is "necessary in a democratic society" (see, *inter alia*, *Elsholz v. Germany* [GC], no. 25735/94, § 45, ECHR 2000-VIII).

In the present case, the Court is convinced that the interference was "in accordance with the law", namely section 17, subsection 2, of the Mental Health Act, which was accessible to the applicant, who must have been able to foresee its consequences for him, and compatible with the rule of law (see, for instance, *Herczegfalvy v. Austria*, 24 September 1992, § 88, Series A no. 244).

The Court is also satisfied that the interference pursued a legitimate aim within the meaning of paragraph 2 of Article 8, that is for the protection of health.

The question of whether the interference was "necessary in a democratic society" requires consideration of whether, in the light of the case as a whole, the reasons adduced to justify the measures were "relevant and sufficient". It is not for the Court to substitute itself for the competent domestic authorities but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation (see, for example, *Gard and Others against the United Kingdom* (dec.), no 39793/17, § 123, 27 June 2017).

It notes that the applicant, who was represented by counsel, was heard before the Psychiatric Patients Complaints Board and the domestic courts. Moreover, having examined the City Court's judgment of 6 May 2013 and the High Court's judgment of 15 April 2015, which became final when leave to appeal to the Supreme Court was refused, the Court finds that the domestic courts accorded weight to all the arguments raised and that the reasons relied upon were both relevant and sufficient to show that the interference complained of was "necessary in a democratic society". Finally, there are no elements suggesting that those judgments could amount to an arbitrary or disproportionate interference. Accordingly, this part of the

application is manifestly ill-founded and must be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

As to the remainder of the applicant's complaints, even assuming that he may be considered to have exhausted domestic remedies, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, this part of the application must also be rejected as inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 June 2018.

Hasan Bakırcı	Ledi Bianku
Deputy Registrar	President