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

FOURTH SECTION

DECISION

Application no. 54155/21
Tim Henrik Bruun HANSEN
against Denmark

The European Court of Human Rights (Fourth Section), sitting on 28 February 2023 as a Committee composed of:

Armen Harutyunyan*, President*,
Anja Seibert-Fohr,
Ana Maria Guerra Martins*, judges*,
and Veronika Kotek, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 54155/21) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 21 October 2021 by a Danish national, Mr Tim Henrik Bruun Hansen, who was born in 1965 and lives in Albertslund ("the applicant") and was represented by Mr Tobias Stadarfeld Jensen, a lawyer practising in Aarhus;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The background of the case was set out in *Tim Henrik Bruun Hansen v. Denmark* (no. 51072/15, 9 July 2019) and can be summarised as follows. In 1996 the applicant was convicted of deprivation of liberty, attempted rape in particularly aggravating circumstances and abandoning a 10-year-old girl. Having regard to the fact that he had previously been sentenced for similar crimes, he was sentenced to safe custody under article 70 of the Penal Code (ibid., §§ 40-41). He was placed in Institution X. Several times, in vain, he requested his release or a more lenient sentence. Based on medical reports issued by experts from Institution X, the requests were refused owing to a risk of his committing similar crimes unless he agreed to chemical castration, which he refused. In the above judgment, the Court found a violation of Article 5 § 1 of the Convention in that in the "2015 review proceedings", the

domestic courts, by failing at least to attempt to obtain fresh advice from an external medical expert on the necessity of the applicant's continuing safe custody, did not sufficiently establish the relevant facts in this respect.

2. In the "2016 review proceedings", having obtained an external expert opinion from the Medico-Legal Council on 22 August and 21 September 2016, the applicant's request for release was refused anew by the courts.

3. The present case concerns the "2017 review proceedings", also leading to a refusal to release the applicant. The facts of this case can be summarised as follows.

4. On 20 November 2017 the applicant requested his release or a more lenient sentence. While the case was adjourned before the District Court, *inter alia*, in the light of the outcome in *Tim Henrik Bruun Hansen* (cited above), new medical opinions were obtained.

5. By decision of 27 February 2020, the District Court refused to release the applicant. On appeal, that decision was upheld by the High Court on 20 May 2020 and by the Supreme Court on 21 April 2021.

6. During the 2017 review proceedings medical reports were issued by Institution X experts on 12 December 2017, 3 October 2018 and 10 October 2019. Those, together with all previous reports and judgments, were submitted to the Medico-Legal Council with a view to obtaining its opinion. The latter issued its report on 10 December 2019. It referred, *inter alia*, to its most recent report of 22 September 2016, the fact that the applicant had absconded in March 2017, that he had significant problems in controlling his emotions and impulses, and that he minimised his crimes. Against that background, the Medico-Legal Council found that the applicant continued to pose an imminent danger to the life, body, health or liberty of others, and that therefore it could not recommend that the applicant be released or that the sanction be amended. During the proceedings before the Supreme Court, an additional medical report of 11 June 2020 was issued by Institution X and an opinion of 30 October 2020 by the Medico-Legal Council, both to the same effect.

7. The applicant complained under Article 5 § 1 of the Convention that he had not been examined by an external medical expert. In his view, the Medico-Legal Council could not be considered as such since it had not examined him in person but only based its opinion on the assessments made by the Institution X experts. He also complained under Article 5 § 4 of the Convention that the length of the review had been protracted.

8. The Supreme Court, in line with the District Court and the High Court, dismissed the applicant's complaint under Article 5 § 1 of the Convention, finding that the Medico-Legal Council could be considered an "external expert" and that the case had been sufficiently clarified, in compliance with the provision relied on. It agreed with the applicant that the length of the 2017 review proceedings, amounting to 2 years and 3 months, was in contravention of Article 5 § 4 of the Convention. Nevertheless, the breach found could not result in the sanction being revoked or amended.

THE COURT'S ASSESSMENT

9. The applicant relied on Article 5 §§ 1 and 4 of the Convention as set out in paragraph 7 above.

10. The relevant principles were set out in, for example, *Tim Henrik Bruun Hansen* (cited above, §§ 61-64, with further references).

11. In respect of the applicant's complaint under Article 5 § 1 of the Convention that he had not been examined by an external medical expert, the Court notes that in the "2017 review proceedings" the Medico-Legal Council was heard twice (see paragraph 6 above). Both times, on 10 December 2019 and 30 October 2020, it found that the applicant continued to pose an imminent danger to the life, body, health or liberty of others, and that therefore it could not recommend that he be released or that the sanction be amended.

12. In this context, the Court reiterates that in *Tim Henrik Bruun Hansen* (cited above, § 75) it stated the following in respect of the Medico-Legal Council:

> " ... the Court has regard to the information that the Medico-Legal Council is an independent body which provides medico-forensic and pharmaceutical assessments for public authorities for the purpose of cases concerning the legal circumstances of individuals. It comprises up to 12 physicians. The applicant has not alleged that any of its members were affiliated to [Institution X], nor has he, in the Court's view, submitted any convincing arguments which could lead it to conclude that, in general, the Medico-Legal Council cannot be qualified as an external expert."

13. In addition, the Court notes that under Section 7 (1) (iii) of the Executive Order on Rules of Procedure for the Medico-Legal Council *(*see *Tim Henrik Bruun Hansen,* cited above, § 45), the Medico-Legal Council may examine the person involved in the case if it finds that the written submissions and evidence presented to it are deemed insufficient for assessing the matter. In the present case, however, the Medico-Legal Council found that there was sufficient basis for assessing the matter on the basis of the written material received. Accordingly, it did not deem it necessary to examine the applicant in person.

14. The Court is therefore satisfied that the domestic courts did obtain advice from an external medical expert on the necessity of the applicant's continued safe custody and sufficiently established the relevant facts in this respect. Their decision not to release the applicant, nor to apply a more lenient sentence than safe custody, was therefore based on an assessment that was reasonable in terms of the objectives pursued by the sentencing High Court on 1 May 1996 (compare *Tim Henrik Bruun Hansen,* cited above, § 83). On the same grounds the applicant's continued detention in safe custody cannot be considered arbitrary (see, for example, *Klinkenbuß v. Germany*, no. 53157/11, § 59, 25 February 2016 and *W.P. v. Germany*, no. 55594/13, § 67, 6 October 2016).

15. In respect of the applicant's complaint under Article 5 § 4 of the Convention that the 2017 review proceedings had been protracted, the Court reiterates that to deprive an applicant of his status as a "victim" for the purposes of Article 34 of the Convention, the national authorities must fulfil two conditions: to acknowledge, either expressly or in substance, a violation of the Convention and to provide the applicant with "sufficient redress" for it (see, for example, *Rooman v. Belgium* [GC], no. 18052/11, § 129, 31 January 2019).

16. The domestic courts acknowledged that the length of the 2017 review proceedings, amounting to 2 years and 3 months, was in contravention of Article 5 § 4 of the Convention (see paragraph 8 above). However, they did not make any award for non-pecuniary damage, nor did they find that the breach found could result in the sanction being revoked or amended.

17. The Court considers that the applicant's detention would have continued even if the procedural guarantees of a speedy judicial review under Article 5 § 4 of the Convention had been observed in his case and that, consequently, the non-pecuniary damage was adequately compensated by the finding of a violation of this provision by the domestic courts (see, for example, *Włoch v. Poland*, no. 27785/95, §§ 156-57, ECHR 2000-XI). In other words, the applicant was afforded sufficient redress for the breach of the Convention.

18. In conclusion, the Court finds that the applicant's complaint under Article 5 § 1 of the Convention is manifestly ill-founded and therefore inadmissible, pursuant to Article 35 §§ 3 (a) and 4 of the Convention. It further concludes that the applicant's complaint under Article 5 § 4 of the Convention is incompatible *ratione personae* with the terms of the Convention since the applicant can no longer claim to be a victim in accordance with Article 34.

19. It follows that the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 March 2023.

Veronika Kotek Acting Deputy Registrar	Armen Harutyunyan President