[[GC] Rooman v. Belgium (no. 18052/11)](http://www.prisonlitigation.org/?email_id=99&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9mcmU%2FaT0wMDEtMTg5OTAy&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank)

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.

Facts

The applicant, who suffered from a severe mental disturbance rendering him incapable of controlling his actions, had been held in compulsory confinement since 2004 in a specialised institution where there were no German-speaking staff, although he himself spoke only German (one of the three official languages of Belgium). The social protection board indicated on numerous occasions that the communication difficulties had the effect of depriving the applicant of any treatment for his mental disorders (which, moreover, made it impossible to envisage his release), but its recommendations were only partially or belatedly followed by the authorities. The relevant judicial authorities reached similar findings in 2014.

By a judgment of 18 July 2017, a Chamber of the Court had concluded, unanimously, that there had been a violation of Article 3 on account of the failure to provide appropriate treatment over thirteen years, and, by six votes to one, that there had been no violation of Article 5 § 1, holding that the obstacle to providing appropriate treatment was unconnected with the actual nature of the institution. The case was referred to the Grand Chamber at the applicant’s request.

Since August 2017 various measures had been taken to assist the applicant: monthly meetings with the psychologist; the confirmed availability of a German-speaking psychiatrist; the involvement of an interpreter for the monthly meetings with the general practitioner. However, the applicant had not been particularly receptive (he had not pursued the opportunity for psychiatric consultations and refused to allow the external psychologist to share her findings with the internal psycho-welfare team).

In 2016 a new law on compulsory confinement entered into force; it emphasised the care path to be offered to persons in compulsory confinement.

Law

Article 3 (substantive head)

The purely linguistic element could prove to be decisive as to the administration (or availability) of appropriate treatment, but only where other factors did not make it possible to offset the lack of communication; in particular, treatment was subject to cooperation by the individual concerned.

(a) Period from 2004 to 2017 – Here, the Grand Chamber echoed in substance the Chamber’s findings and did not identify compensatory factors. To justify the lack of psychotherapeutic treatment, the authorities had merely noted that, on the one hand, the applicant’s dangerousness ruled out his placement in a less secure German-speaking facility, and, on the other, that no German-speaking staff were available in the institution in question, without exploring other possibilities.

Conclusion: violation (sixteen votes to one).

(b) Period since August 2017 – Firstly, the authorities had shown a real willingness to remedy the situation after the Chamber judgment by undertaking tangible measures, which a priori corresponded to the concept of “appropriate treatment”.

Secondly, the applicant had not cooperated sufficiently and had not been receptive to the proposed treatment (namely, an external psychiatrist who was “available” for him). While the lack of a therapeutic schedule was certainly regrettable, it remained the case that the applicant had not even asked to take advantage of the proposed psychiatric consultation. Admittedly, as the applicant was a vulnerable individual, his cooperation was only one factor to be taken into account in assessing the effectiveness of the required treatment; nonetheless, having been assisted by a lawyer throughout the domestic proceedings, the applicant could have shown himself open to the attempts by the authorities to respond to the Chamber’s findings. The applicant was admittedly entitled to refuse to accept the treatment proposed to him; in that case, however, he risked reducing his prospects of discharge.

Thirdly, the short period which had elapsed since this change made it impossible to evaluate the impact of these new arrangements.

Thus, in spite of certain organisational shortcomings, the threshold of severity required to bring Article 3 into play had not been reached in respect of this period.

Conclusion: no violation (fourteen votes to three).

Article 5 § 1

(a) Refining the principles concerning the obligation to provide treatment to persons in compulsory confinement – Even as currently interpreted, Article 5 did not contain a prohibition on detention on the basis of impairment (in contrast to what was proposed by the UN Committee on the Rights of Persons with Disabilities). However, the deprivation of liberty under Article 5 § 1 (e) of the Convention had to fulfil a dual function: on the one hand, the social function of protection; and, on the other, a therapeutic function, in the interest of the person of unsound mind.

The first function ought not, a priori, to justify the absence of measures aimed at discharging the second. Irrespective of the facility, any detention of mentally-ill persons had to have a therapeutic purpose, aimed, 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, with a view to preparing them for their eventual release.

The provision of appropriate and individualised treatment was an essential part of the notion of “appropriate institution”: 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. Mere “access” to health professionals, consultations and the provision of medication could not suffice here.

However, the Court’s role was not to analyse the content of the treatment that was offered and administered; what was important was that the Court 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.

Lastly, in the event of a problem that was hampering the applicant’s treatment, the 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 it.

The intensity of the Court’s scrutiny could differ depending on whether a complaint was submitted under Article 3 – which presupposed a particular threshold of gravity, where the assessment was relative and depended on all the circumstances of the case – or Article 5 § 1 – where the question of the appropriateness of the institution would predominate (necessary for preserving the link between the compulsory confinement and its declared purpose). A finding that there had been no violation of Article 3 did not automatically lead to a finding that there had been no violation of Article 5 § 1; although a finding of a violation of Article 3 on account of a lack of appropriate treatment could also result in a finding that there had been a violation of Article 5 § 1 on the same grounds.

Admittedly, Article 5 § 1 (e) did not guarantee to an individual in compulsory confinement the right to receive treatment in his or her own language. However, the need for personalised and appropriate treatment of persons in compulsory confinement had been emphasised by the [United Nations Convention on the Rights of Persons with Disabilities](http://www.prisonlitigation.org/?email_id=99&user_id=140&urlpassed=aHR0cHM6Ly93d3cub2hjaHIub3JnL0VOL0hSQm9kaWVzL0NSUEQvUGFnZXMvQ29udmVudGlvblJpZ2h0c1BlcnNvbnNXaXRoRGlzYWJpbGl0aWVzLmFzcHg%3D&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions) (2006), and by Recommendation [Rec (2004) 10](http://www.prisonlitigation.org/?email_id=99&user_id=140&urlpassed=aHR0cHM6Ly9zZWFyY2guY29lLmludC9jbS9QYWdlcy9yZXN1bHRfZGV0YWlscy5hc3B4P09iamVjdElkPTA5MDAwMDE2ODA1ZGMwYzE%3D&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions) of the Committee of Ministers of the Council of Europe concerning the protection of the human rights and dignity of persons with mental disorders – which recommended, in particular, that an appropriate individualised treatment plan be drawn up, after consultation (in so far as possible) with the person concerned. It was natural to take account of the language factor, so that the individual in question could receive the necessary information related to treatment (failure to do so could increase his or her vulnerability).

(b) Application to the present case

(i) Period from 2004 to 2017 – Although German had the status of an official language in Belgium, it was not often spoken in the region in which the institution in question was located. Furthermore, the applicable legislation did not require this type of institution to employ staff members who were bilingual in French and German.

However, the applicant’s right to speak, to be understood and to receive treatment in this language had been expressly acknowledged by the social protection board in 2009, although it had subsequently seemed to accept the idea that this aspect was not decisive for his progress and refused to issue orders to or reprimand the authorities. The Court could not speculate on what results might have been obtained from treatment in German; it had to limit itself to noting the absence of such treatment. Further, the possibility that the individual concerned could not be cured did not reduce the obligation to provide treatment.

Taking account of the applicant’s requests for treatment and discharge, it had been for the authorities to find a way to overcome the deadlock arising from the communication issue between him and his health-care providers. It was not for the Court to rule in a general manner on the types of solutions which could have been considered sufficient: that choice fell within the authorities’ margin of appreciation.

In the present case, the authorities’ sporadic measures had not been an integral part of any therapeutic care or treatment path. The possibility of treating the applicant in Germany had been explored by the authorities, but there was no information about the results of these efforts. In Belgium itself, however, overcoming a problem related to the use of German did not seem unrealistic, given that it was one of the official languages of the country.

Conclusion: violation (unanimously).

(ii) Period since August 2017 – Given that the applicant had been held to be capable of reaching his own decisions and granting consent, the domestic law prohibited a therapeutic measure being imposed on him against his will. By definition, however, his discernment was weakened by his psychological disorders, which increased his vulnerability. The authorities were obliged to attempt to include the applicant, as much as possible, in an individualised medical treatment care capable of bringing about an improvement in his health.

In the present case, the authorities had adopted a multidisciplinary and – on the face of it – coherent approach, between the various players, seeking to ensure that the applicant’s “care path” was tailor-made to his specific communication needs and pathology. The series of activities in German (making available a German-speaking psychiatrist, psychologist and welfare officer) was such as to facilitate communication and the construction of a relationship of trust.

Moreover, the applicant’s personal advocate or his legal representative, where appropriate, had an active role to play in assisting him to exercise his rights to consent and benefit from a treatment plan. In spite of assistance from his representatives, however, the applicant had refused to cooperate with the medical staff in drawing up a treatment path.

In this situation – in the absence of information such as, for example, a refusal by the German-speaking psychiatrist to meet the applicant and to draw up with him a suitable therapeutic project –, the Court considered that the State’s obligation as to means had been fulfilled.

In short, having regard in particular to the significant efforts made by the authorities, which were on the fact of it coherent and adapted to the medical treatment that was now available, to the brevity of the period under examination, and to the fact that the applicant was not always receptive, in spite of his representatives’ assistance, the applicant’s compulsory confinement corresponded to the required therapeutic aim.

The Court specified, however, that having regard to the applicant’s vulnerability and his diminished ability to take decisions, the authorities remained under an obligation to ensure that all the necessary initiatives were taken, in the medium and long term, to secure psychiatric and psychological treatment and welfare assistance, so as to provide him with the prospect of release.

Conclusion: no violation (ten votes to seven).

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