



Fyodorov and Fyodorova v. Ukraine

Application No. 39229/03

Country: Ukraine

Region: Europe

Year: 2011

Court: European Court of Human Rights European Court of Human Rights

Health Topics: Aging, Informed consent, Mental health, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial, Right to privacy

Facts

Two Ukrainian nationals lodged this complaint against the Ukraine under Article 34 of the Convention for the Protection of Human Rights (the "Convention") in 2003. The applicants alleged that they were ill-treated by the police and that no effective investigations of the event took place. One of the applicants also alleged that he had been unlawfully subjected to a psychiatric assessment and diagnosed with a psychiatric disorder and that he had been deprived of a fair trial in civil proceedings challenging the actions of the involved psychiatrists.

After a fight with his neighbors, the Applicant 1 was convicted and sentenced to suspended restriction of liberty. Mrs. L addressed a letter to the Chief Psychiatrist of the Poltava District Hospital, alleging that Applicant 1 had a psychiatric disorder and that he had been harassing her family for nine years..

A hospital psychiatrist came by Applicant 1's house and attempted to question him with regard to this behavior, during which short meeting Applicant 1 began exhibiting further unusual behavior. Following this meeting, the Chief Psychiatrist informed the district court that Applicant 1 was suffering from chronic delusional disorder and needed to undergo a medical assessment with a view to receiving in-patient treatment. Applicant 1 filed a complaint alleging that the examination was unlawful and his diagnosis incorrect, which was dismissed by the Chief of the Regional Health Department.

Applicant 1 then instituted court proceedings against the hospital psychiatrist who originally came to his house to question him, the Chief Psychiatrist, and the Chief of the Regional Health Department. A district court allowed Applicant 1's claim, observing that the Applicant's evidence had not been sufficient to justify the examination of Applicant 1 without his consent and that the examination had been improperly carried out..

The hospital psychiatrist appealed against the district court judgment and won; Applicant 1 was neither present at the appellate hearing nor did he argue against the hospital psychiatrist's version of events. Applicant 1 appealed, maintaining that the hearing was unlawfully held in his and his lawyer's absence, and that the judgment lacked reasoning. The Supreme Court dismissed Applicant 1's appeal.

The Chief Psychiatrist, after complaints from some of Applicant 1's fellow villagers, signed an order for his psychiatric confinement (very soon after this Applicant 1 sought and obtained an evaluation of psychiatric competency from a different psychiatric organization in order to get an extension on his hunting rifle license). He went to the police station to fill out paper work for his license extension, where he was surprised to be taken into custody for a psychiatric evaluation. Applicant 1 alleged that when he requested to contact his lawyer and the chief of the police department he and his wife, Applicant 2, were restrained using physical force by four police officers. After two psychiatric assessments, Applicant 1 was released with the diagnosis that did not feature in an international classification table. A few months after Applicant 1's release he was examined by a team psychiatric experts who concluded that he had not suffered from any psychiatric disorders at the time of the events in question.

The district prosecutor's office refused to institute criminal proceedings for these events on at least six occasions for want of evidence of criminal conduct.. However, this decision to discontinue the criminal proceedings was quashed by a district court, which observed that, while the prosecution had conducted an investigation based on the police version of events, the prosecution did not verify applicant's version.

Decision and Reasoning

The Court held that: (1) there were violations of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (the "Convention"), which prohibits torture, inhuman or degrading treatment with regards to both Applicants; (2) there was a violation of Article 8, which guarantees respect for an individual's private life with regards Applicant 1; (3) there was a violation of Article 6 § 1, which guarantees the right to a fair trial with regards to Applicant 1.

Concerning the alleged ill-treatment, the Court held that Applicant 1, who had only two days before the incident been issued with a psychiatric fitness certificate, was correct in acting in good faith to protect his civil rights upon being unexpectedly ordered to comply with a confinement decision. The Court noted that the decision to confine Applicant 1 was made unilaterally by a district physician who had never examined him in person, and Applicant 1 was never given a chance to challenge this decision. Thus the decision-making process leading to his confinement lacked basic procedural safeguards. Even assuming the confinement had been lawful, the way applicants protested against it (by asking to speak to the chief of police and to consult a lawyer) made the application of physical force excessive and degrading. Further, irrespective of the necessity of force, the manner in which it had been applied was out of proportion and amounted to inhuman treatment because the applicants were senior citizens and the confrontation took place on the premises of a police station. Thus, the injuries thus sustained by both applicants violated the prohibition on inhuman and degrading treatment under Article 3 of the Convention.

Concerning the effectiveness of the investigation, the Court noted the long duration of the investigation of the applicants' case which had been halted a number of times and, at the time of the judgment, had yet to be concluded. The Court held that there had been a violation of Article 3 guarantee of effective investigation into the applicants' complaints.

With respect to the alleged violation of Article 8 of the Convention, the Court found that subjection of Applicant 1 to psychiatric examination constituted an unjustified interference with his private life. It noted that the law required either (a) individual's consent, (b) a court decision or (c) urgent necessity (i.e., imminent danger) in order to subject an individual to examination by psychiatrist, none of which conditions were satisfied in Applicant 1's case. The Court also held that the informal manner and brief timespan in which the examination was carried out was characterized by significant procedural shortcomings.

With respect to the alleged violation of Article 6 of the Convention, the Court found that the domestic court of appeals did not state sufficient reasoning for reversing lower court judgment which found Applicant 1's psychiatric examination unlawful. The Court notes that on the facts, Applicant 1 appeared not to have been notified of the hearing, and new evidence was presented by the government which he did not have the opportunity to contest. The court of appeals had re-assessed both the law and the facts of the case, and although Applicant 1 had the opportunity to appeal, the Supreme Court had rejected his appeal without reasoning or a hearing. The Court therefore found a violation of Article 6.

The Court awarded damages to the applicants.

Decision Excerpts

¶62. In the present case, the decision to confine the first applicant in the psychiatric clinic was taken unilaterally by a district psychiatrist, who appears not to have ever examined him in person. The first applicant was never given the opportunity to challenge this decision before its execution. On the contrary, according to his submissions, undisputed by the Government, the announcement of the confinement order caught the first applicant by surprise, as he had allegedly obtained a psychiatric fitness certificate two days before the events in question and reported to the police believing in good faith that he would obtain a rifle permit. Further, the first applicant was not afforded an opportunity to contact either the chief of the police department or his advocate before the measure was applied. The decision-making process leading to his confinement in the present case therefore lacked basic procedural safeguards, casting serious doubts concerning the therapeutic necessity for the measure at issue and even more serious doubts concerning the need for its forceful execution.

¶65. Based on the above considerations, the Court finds that, irrespective of whether the first applicant's injuries were self-inflicted by banging against various objects, as argued by the Government, or inflicted by the police officers, as suggested by him, the Government have failed to show that these injuries have been caused by an application of force which was appropriate in the circumstances. The Court therefore finds that the force used was disproportionate and amounted to inhuman and degrading treatment of the first applicant.

83. The Court further reiterates that an interference will contravene Article 8 unless it is in accordance with the law, pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is necessary in a democratic society in order to achieve the aim (see, as a recent authority, *GuÅŁu v. Moldova*, no. 20289/02, Å§ 65, 7 June 2007). The expression 'in accordance with the law' refers, in particular, to a requirement of reasonable clarity concerning the scope and manner of exercise of discretion conferred on the public authorities.

88. The Court considers that analysis of the alleged procedural shortcomings of the applicant's psychiatric examination was of crucial significance in the present case. The Government likewise did not provide any plausible explanation as to conformity of the procedural aspect of the applicant's psychiatric examination with applicable law. The Court therefore considers that the establishment of the first applicant's diagnosis was not in accordance with the law.

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