



H.L. v. United Kingdom

App. No. 45508/99, 40 Eur. H.R. Rep. 761 (2004).

Country: United Kingdom

Region: Europe

Year: 2004

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

Health Topics: Health systems and financing, Hospitals, Mental health

Human Rights: Freedom from discrimination, Freedom from torture and cruel, inhuman or degrading treatment, Freedom of movement and residence, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person

Facts

The applicant, a United Kingdom national, suffered from severe autism. He was unable to speak, his level of understanding was limited, and he lacked the ability to consent or refuse treatment. For over thirty years he had been cared for in Bournemouth Hospital as an in-patient at the Intensive Behavioural Unit after which time he was entrusted to paid care-takers, Mr. and Mrs. E., with whom he successfully resided from then on. He attended a day-care center run by the local authority and was present there when he became particularly agitated, engaging in self-harming behaviour. His care-takers could not be reached and he was admitted as an in-patient at the Bournemouth emergency unit. According to an attending doctor, the applicant was compliant and did not resist admission. Personnel claimed they were repeatedly unable to contact H.L.'s carer-takers. The applicant continued to show signs of escalated behavioral problems and personnel discouraged visits by the applicant's carers as it risked causing them and the applicant's distress. Hospital personnel came to the conclusion that the applicant, as well as being autistic, suffered from a mood disorder, and noted that his discharge would be against medical opinion. Mr. and Mrs. E. made repeated efforts during the course of the circumstances to visit the applicant and expressed concerns to staff about the applicant's care and treatment. Ultimately, they challenged the continued detention of H.L.

The High Court decided that H.L. was not detained and could be admitted and treated informally. The Court of Appeal reversed this decision, finding that H.L. was detained, as he was not free to leave. Accordingly, H.L. was held as an involuntary patient under section 3 of the 1983 Mental Health Act. The House of Lords then held by a 3:2 majority that H.L. was not detained and that s.131 Mental Health Act allowed H.L. to be admitted and treated in his best interests under the common law doctrine of necessity.

Claims were filed with the Commission alleging violations of H.L.'s rights under Articles 3 (freedom from torture or to inhuman or degrading treatment or punishment) for alleged physical and psychological harm from his treatment in a hospital, 8 for violations of H.L.'s right to respect for his private and family life as the State failed to protect him from arbitrary detention, psychological and physical harm from neglectful care, and denied him access to his friends and family while in detention, 5 Â§ 1 (right to liberty and security of the person) and Â§ 4 (right to speedy trial) for alleged unlawful detention, unjustified on account of H.L. not being of unsound mind, and being deprived procedural channels to challenge its lawfulness, 13 (right to remedy) for the denial of an effective remedy for violations under 3 and 8, and 14 (freedom from discrimination) of the Convention in conjunction with Article 5, alleging that H.L. was discriminated against on the ground of his status as an "informal" patient.

Regarding Article 5, the government claimed that the imposition of a rigorous statutory regime on involuntarily committed incapacitated patients requiring psychiatric treatment was ill-advised and inconsistent with the therapeutic benefits of allowing the admittance of such patients in their best interests, according to flexible common law doctrines.

Decision and Reasoning

The Court held the applicant had not exhausted all remedies under Article 3 and 8 violations. As a result, those claims were inadmissible.

The Court unanimously held that there had been violations of Articles 5 Â§ 1 and 5 Â§ 4. The Court found that the health care professionals treating and managing H.L. exercised complete and effective control over his

care and movements. H.L. was not free to leave despite his care-takers express wish that he be allowed to do so. As such, the Court found H.L. was deprived of his liberty within the meaning of Article 5 Â§ 1 of the Convention. Furthermore, the Court characterized the lack of fixed procedural rules by which the admission and detention of compliant incapacitated persons were conducted as "striking" and noted the stark contrast between the "dearth" of regulation and the extensive network of safeguards applicable to psychiatric committals covered by the 1983 Act. Consequently, the Court found that the absence of procedural safeguards failed to protect against arbitrary deprivations of liberty on grounds of necessity and failed to comply with the essential purpose of Article 5 Â§ 1. While the Court did not question the good faith of the attending professionals acting in what they considered to be the applicant's best interests, the very purpose of procedural safeguards was to protect individuals against any misjudgment or professional lapse.

Moreover, the Court found a violation of Article 5 Â§ 4, as the requirements under said provision were not satisfied by judicial review and habeas corpus proceedings.

The Court considered it unnecessary to examine the complaint under Article 14.

Decision Excerpts

"120. In this latter respect, the Court finds striking the lack of any fixed procedural rules by which the admission and detention of compliant incapacitated persons is conducted. The contrast between this dearth of regulation and the extensive network of safeguards applicable to psychiatric committals covered by the 1983 Act (see paragraphs 36 and 54 above) is, in the Court's view, significant.

In particular and most obviously, the Court notes the lack of any formalised admission procedures which indicate who can propose admission, for what reasons and on the basis of what kind of medical and other assessments and conclusions. There is no requirement to fix the exact purpose of admission (for example, for assessment or for treatment) and, consistently, no limits in terms of time, treatment or care attach to that admission. Nor is there any specific provision requiring a continuing clinical assessment of the persistence of a disorder warranting detention. The appointment of a representative of a patient who could make certain objections and applications on his or her behalf is a procedural protection accorded to those committed involuntarily under the 1983 Act and which would be of equal importance for patients who are legally incapacitated and have, as in the present case, extremely limited communication abilities.

121. The Court observes that, as a result of the lack of procedural regulation and limits, the hospital's health care professionals assumed full control of the liberty and treatment of a vulnerable incapacitated individual solely on the basis of their own clinical assessments completed as and when they considered fit: as Lord Steyn remarked, this left "effective and unqualified control" in their hands. While the Court does not question the good faith of those professionals or that they acted in what they considered to be the applicant's best interests, the very purpose of procedural safeguards is to protect individuals against any "misjudgments and professional lapses" (Lord Steyn, paragraph 49 above)." Page 39-40.