



## Kolanis v. United Kingdom

App. No. 517/02, 42 Eur. H.R. Rep. 12 (2006).

**Country:** United Kingdom

**Region:** Europe

**Year:** 2005

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

**Health Topics:** Health care and health services, Mental health

**Human Rights:** Freedom of movement and residence, Right to due process/fair trial, Right to health, Right to liberty and security of person

### Facts

The applicant, Ms. Kolanis, was convicted of a crime and found to be suffering from mental illness pursuant to the Mental Health Act 1983. Her application to reside at home was upheld by the Tribunal, which ordered her conditional discharge provided she live at home with her parents, be supervised by a social worker and psychiatrist, and comply with her prescribed treatment. All subsequent attempts by the health authority to fulfill the conditions imposed by the Tribunal failed as no psychiatrist was willing to comply with the conditions. The applicant's request for judicial review of the above conditions was rejected. The applicant's case was reconsidered by the Tribunal, which decided that the applicant should be conditionally discharged in accommodation approved by her responsible medical officer and in December she was discharged to a hostel. The applicant's subsequent appeal to the Courts was rejected.

The applicant alleged that Great Britain and Northern Ireland were in violation of Articles 5 § 1 (right to liberty) and 4 (right to timely proceedings to determine the lawfulness of detention), and 13 (right to an effective remedy) of the European Convention on Human Rights (ECHR). Her continued detention after the Mental Health Review Tribunal directed her conditional release was no longer justified and lacked the appropriate procedural safeguards.

### Decision and Reasoning

The Tribunal concluded that the applicant continued to suffer from an illness justifying compulsory detention within the exception outlined in Article 5 § 1 (e). The court, however, stressed the need for appropriate safeguards to ensure that any continued detention as a result of imposed conditions remains consistent with Article 5. For over a year the applicant was unable to have the issues affecting her continued detention examined by a court and the lapse of twelve months before it was reviewed on the Secretary of State's referral could not be regarded as sufficiently prompt to remedy this defect. There had therefore been a violation of

Article 5 § 4 of the Convention. The Court accordingly found the applicant had an enforceable right under Article 5 § 5 of the Convention.

In light of this, the Court considered it unnecessary to assess Article 13 as Article 5 is *lex specialis* concerning complaints relating to deprivation of liberty.

### Decision Excerpts

"80. Article 5 § 4 affords a crucial guarantee against the arbitrariness of detention, providing for detained persons to obtain a review by a court of the lawfulness of their detention not only at the time of the initial deprivation of liberty but also where new issues of lawfulness are capable of arising periodically thereafter (see, *inter alia*, *Kurt v. Turkey*, judgment of 25 May 1998, Reports 1998-III, p. 1185, § 123, and *Varbanov v. Bulgaria*, no. 31365/96, § 58, ECHR 2000-X). Where, as in the present case, the MHRT finds that a patient's detention in hospital is no longer necessary and that she is eligible for release on conditions, the Court considers that new issues of lawfulness may arise where detention nonetheless continues, due, for example, to difficulties in fulfilling the conditions. It follows that such patients are entitled under Article 5 § 4 to have the lawfulness of that continued detention determined by a court with requisite promptness.

81. The Court observes that since the facts of the present application the domestic courts have

acknowledged in a similar case that there has been a breach of Article 5 Â§ 4 and that they have overruled previous authority which was perceived to conflict with the requirements of Article 5 and given guidance as to the way in which the authorities should give effect to the legislation to avoid breaches in the future, namely by the MHRTs issuing provisional decisions, monitoring progress in the implementation of conditions and varying conditions, or modifying their decision, if necessary, (see paragraphs 58-50 above).

82. In the present case, however, the Court finds that for over a year the applicant was unable to have the issues arising from supervening events as they affected her continued detention examined by a court and that the lapse of twelve months before it was reviewed on the Secretary of State's referral cannot be regarded as sufficiently prompt to remedy this defect. There has therefore been a violation of Article 5 Â§ 4 of the Convention." Page 21.

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