



Varbanov v. Bulgaria

App. No. 31365/96, Eur. Ct. H.R. 457 (2000).

Country: Bulgaria

Region: Europe

Year: 2000

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

Health Topics: Health care and health services, Health systems and financing, Informed consent, Mental health

Human Rights: Right to due process/fair trial, Right to liberty and security of person

Facts

Applicant was accused of being mentally ill and dangerous. The District Prosecutor's Office opened an inquiry. A police officer heard the applicant, who allegedly presented a document issued by a psychiatrist certifying that he was mentally fit. Later applicant refused an invitation by the prosecutor to undergo psychiatric examination therefore he was forcefully detained at a psychiatric hospital. Meanwhile his complaint against his unlawful detention was rejected by the authorities and he had no right of appeal. He was later discharged.

The applicant complained that he was deprived of his liberty unlawfully, in breach of Article 5 Â§ 1 of the European Convention on Human Rights. He also complained that he was denied his right under Article 5 Â§ 4 to have the lawfulness of his detention reviewed by a court

Decision and Reasoning

The Court found that the applicant's detention was not a lawful detention of a person of unsound mind under Article 5 Â§1(e) insofar as it was ordered without seeking a medical assessment based on the applicant's actual state of mental health, as opposed to based on past events. Additionally, the applicant did not have access to Article 5 Â§ 4 remedies insofar as the district prosecutor, who subsequently became a party to proceedings against him, ordered the applicant's detention.

Decision Excerpts

"47. The Court considers that no deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 Â§ 1(e) if it has been ordered without seeking the opinion of a medical expert. Any other approach falls short of the required protection against arbitrariness, inherent in Article 5 of the Convention.

The particular form and procedure in this respect may vary depending on the circumstances. It may be acceptable, in urgent cases or where a person is arrested because of his violent behaviour, that such an opinion be obtained immediately after the arrest. In all other cases a prior consultation should be necessary. Where no other possibility exists, for instance due to a refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be required, failing which it cannot be maintained that a person has reliably been shown to be of unsound mind.

Furthermore, the medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. A medical opinion cannot be seen as sufficient to justify deprivation of liberty if a significant period of time has elapsed."