EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 75095/11
Rosel ZIERD
against Germany

The European Court of Human Rights (Fifth Section), sitting on 8 April 2014 as a Committee composed of:

Ganna Yudkivska, *President,*
Angelika Nußberger,
André Potocki, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 December 2011,

Having regard to the declaration submitted by the respondent Government on 16 December 2013 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Ms Rosel Zierd, is a German national, who was born in 1950 and lives in Bad Salzungen. She was represented before the Court by Mr D. Schneider Addae Mensah, a lawyer practising in Strasbourg.

2. The German Government ("the Government") were represented by their Agent, Mrs K. Behr, of the Federal Ministry of Justice.

3. The application had been communicated to the Government.

A. The circumstances of the case

4. The applicant is the mother and sole heir of H., who was born in 1982 and died on 27 February 2011.

5. On 31 May 2006 the Meiningen Regional Court found that H. had committed a number of traffic offences, including involuntary

manslaughter, while being in a state of criminal incapacity and ordered his confinement in a psychiatric hospital as a measure of correction and prevention (*Maßnahme der Besserung und Sicherung*).

6. As from February 2010, the applicant refused to take medication prescribed by the hospital doctors. In the night from 18 to 19 July 2010, H. was found by hospital staff lying on his bed with a wet towel wrapped around his neck. Antipsychotic medication was administered against his will. Further medication was administered without the applicant's consent on 21, 23 and 26 July and on 1 and 8 August 2010. The applicant remained in the special confinement room for approximately three months.

7. On 30 July 2010 counsel on behalf of H. requested the Mühlhausen Regional Court to order the immediate discontinuation of any measures of forced medication. The hospital submitted in reply that hospital staff had feared that the applicant would commit suicide by strangulation and that the applicant had attacked hospital staff.

8. On 13 September 2010 the Mühlhausen Regional Court rejected the applicant's requests as being unfounded. The Regional Court considered that, in the instant case, there was "at least the outward appearance of self-harm and actual harm had been done to another person". All medication was thus justified under the relevant provisions of the Law on the Care and Hospitalisation of Mentally Ill Persons of the *Land* of Thuringia (*Thüringisches Gesetz zur Hilfe und Unterbringung psychisch kranker Menschen, ThürPsychKG*).

9. On 30 November 2010 the Thuringia Court of Appeal rejected H.'s appeal on points of law.

10. On 19 January 2011 counsel on behalf of H. lodged a complaint with the Federal Constitutional Court.

11. On 28 January 2011 the Federal Constitutional Court served the applicant's complaint on the Justice Ministry of the *Land* of Thuringia for comments.

12. On 3 February 2011 the Federal Constitutional Court (case no. 2 BvR 132/11) rejected the applicant's request for an interim order. The Constitutional Court considered that it could not be ruled out that H. would receive further compulsory treatment if he should once again slip into a state which was assumed to be dangerous. The Constitutional Court considered that forced medication of a hospitalised person constituted a serious interference with basic rights. On the other hand, there was the risk that the applicant would seriously harm himself or inflict harm on third persons in case the interim order was granted. Under these circumstances, the requested interim order was not to be granted because the factors militating in favour of issuing the order did not sufficiently outweigh the factors militating against it.

13. On 27 February 2011 H. was found dead in his hospital room.

14. On 4 March 2011 H.'s counsel informed the Federal Constitutional Court about his client's death and requested that court to continue the proceedings because a question of general interest was at stake.

15. On 26 May 2011 the Federal Constitutional Court, sitting as a committee of three judges, decided to discontinue the proceedings in view of H.'s death. According to that court, there were no special reasons which would exceptionally warrant the continuation of the complaint proceedings after the complainant's death.

B. Relevant domestic law and practice

16. Since April 2011, the Federal Constitutional Court issued a number of decisions on the question of compulsory medical treatment administered to persons confined in a psychiatric hospital (decisions no. 2 BvR 882/09 of 2 April 2011; 2 BvR 633/11 of 20 October 2011 and 2 BvR 228/12 of 20 February 2013).

17. The Federal Constitutional Court considered, at the outset, that medical treatment performed against the will of a person who, as a measure of correction and prevention, had been committed to an institution seriously interfered with that person's right to physical integrity as guaranteed by the Basic Law. Accordingly, such measures were subject to a strict test of proportionality. Additionally, procedural safeguards had to be put in place in order to preserve the concerned person's basic rights.

COMPLAINTS

18. The applicant complained that the medical treatment administered against her late son's will violated her own and her late son's Convention rights.

THE LAW

19. The applicant complained on her own behalf and on behalf of her late son about the forced administration of medication. She relied on Articles 2, 3, 5 and 8 of the Convention.

20. After the failure of attempts to reach a friendly settlement, by a letter of 16 December 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

21. The declaration provided as follows:

> "1. The Applicant has not accepted the Federal Government's offer to begin settlement negotiations.
>
> 2. Therefore, the Federal Government recognises by way of this unilateral declaration, in view of the special circumstances of the case:
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> - that the applicant's rights arising from Article 8 (1) of the Convention have been violated;
>
> - that the applicant's son's rights arising from Article 8 (1) and Article 3 (2nd alternative) have been violated.
>
> 3. The Federal Government are prepared to pay compensation in the amount of € 20,000 to the applicant if the Court, on condition of payment of the amount, strikes the application out of the list pursuant to Article 37 (1) c) of the Convention. This would be deemed to settle all of the applicant's claims in connection with the above-mentioned application against the Federal Republic of Germany and the Land of Thuringia. "

The Government further submitted that the *Land* of Thuringia, following the leading decisions of the Federal Constitutional Court (see paragraphs 16 - 17, above), had undertaken a general reform of the pertinent legislation on forced medication of persons placed in psychiatric hospitals.

22. By a letter of 30 January 2014, the applicant indicated that she was not satisfied with the terms of the unilateral declaration on the ground that the case raised a serious question of general interest and that the Government's declaration and the amount offered by way of compensation was insufficient.

23. The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

24. It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued. To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey*, [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI); *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

25. The Court has established in a number of cases its practice concerning complaints about forced administration of medication (see, in

particular, *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244; *Naumenko v. Ukraine*, no. 42023/98, § 112, 10 February 2004 and *Gorobet v. Moldova*, no. 30951/10, § 51, 11 October 2011). Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases and € 5000 which the Court considers to represent an appropriate figure for costs and expenses – the Court considers that it is no longer justified to continue the examination of the complaints under Articles 3 and 8 of the Convention (Article 37 § 1(c)). It further considers that the case does not raise any separate issue under the other Convention Articles relied upon by the applicant.

26. In light of the above considerations, and in particular the Government's submissions as to the general reform of the pertinent legislation, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

27. The Court considers that this amount should be paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amount in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

28. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Articles 8 and 3 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention.

Stephen Phillips
Deputy Registrar

Ganna Yudkivska
President