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Original article

# Psychiatric commitment: Over 50 years of case law from the European Court of Human Rights

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**Abstract**

***Purpose***. – To extensively review the European Court of Human Rights (ECHR) case law concerning psychiatric commitment, and to estimate the role of this supranational jurisprudence in the practice of contemporary psychiatry.

***Method***. – Using keywords to search the ECHR computerised database ''HUDOC'', we reviewed all cases concerning psychiatric commitment registered between September 1953 and December 31, 2004. Four groups were identified: applications declared inadmissible; applications accepted but not judged by the Court; pending cases; and cases judged by the Court.

***Results***. – Of the almost 118,000 decisions taken by the ECHR in this time frame, we found 108 situations concerning psychiatric commitment. 41 of these applications were considered by the Court to be inadmissible. 24 other cases were considered admissible but not judged by the ECHR. Three admissible cases were still pending at the end of 2004. The ECHR judged 40 cases, and found in 35 of them that one or several rights as guaranteed by the Convention had been violated.

***Discussion***. – The ECHR protects the human rights of persons subjected to involuntary psychiatric commitment by creating supranational law in the following areas: definition of ''unsoundness of mind''; conditions of lawfulness of detention; right to a review of detention by a Court; right to information; right to respect for private and family life; and conditions of confinement, which address inhuman and degrading treatment.

The respective number of applications submitted to the ECHR did not depend on when the Convention had entered into force in that country.

***Conclusion***. – The possibility of an individual to access the ECHR depends on the degree of democracy in his country and on the access to legal assistance through non-governmental organisations or individual intervening parties.


*Keywords:* Human rights; Commitment of mentally ill; Jurisprudence

## 1. Introduction

The deprivation of liberty for psychiatric reasons is a situation in which the imbalance of power between the State and the individual may result in an infringement of the individual's basic rights [7,8]. The violation of human rights of the mentally ill has been demonstrated repeatedly throughout history. The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), drafted shortly after the end of World War II, thus refers specifically to ''persons of unsound mind, alcoholics or drug addicts or vagrants''.

The Convention was progressively ratified between 1951 and 2002 by all 45 member states of the Council of Europe. Thirteen Protocols have also been adopted over this time, expanding and strengthening the original agreement. This convention is unique from other international conventions in two ways: it permits a citizen to confront a nation by judicial means, and the decisions by its body of judgement, the European Court of Human Rights (ECHR, the Court), are binding for the States [9].

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The Court is much more often used by individuals than by States, and the decisions of the ECHR can lead to very important reforms in national legislations. Since the entry into force of the Convention in 1953 for its first signing countries, many applications concerning psychiatric commitment have been lodged.

The aim of this study is to thoroughly review this case law and to estimate the role of this supranational law in the practice of contemporary psychiatry.

## 2. Materials and methods

### *2.1. Articles of the Convention which concern psychiatric commitment*

The Convention consists of 59 articles, but only a few of these directly concern the issue of psychiatric commitment. Article 5 of the Convention, entitled ''Right to liberty and security'', stipulates as its general principle that ''Everyone has the right to liberty and security of person''. However, many exceptions are noted in paragraph 5-1, notably at line (e), which discusses the deprivation of liberty for medical reasons:

> ''No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (…)
> e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (…)''

Two other paragraphs of Article 5 also apply to the deprivation of liberty for psychiatric reasons:

> Art. 5-2: ''Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him'', and
> Art. 5-4: ''Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful''.

Other articles of the Convention may also directly or indirectly concern psychiatric commitment:

> Article 3, ''Prohibition of torture'', states clearly: ''No one shall be subjected to torture or to inhuman or degrading treatment or punishment''.
> Article 6 concerns the ''Right to a fair trial'', Article 8 the ''Right to respect for private and family life'', Article 10 the ''Freedom of expression'', Article 13 ''Right to an effective remedy'' and Article 14 the ''Prohibition of discrimination''.

### *2.2. Research of case law*

We used the ECHR's computerised database ''HUDOC'' [4]. This database groups all the applications and case references treated by the ECHR, for their admissibility and their judgements. All of these decisions are accessible online in the HUDOC database, with the exception of the oldest, which we obtained in print format from the ECHR library. Our research relates to the period extending from September 1953, the first entry into force of the Court, to December 31, 2004.

We conducted a database search using the following key words: Article 5; person(s) of unsound mind. We eliminated any duplicate cases, and excluded those cases which did not involve situations of psychiatric commitment.

## 3. Results

Of the almost 118,000 decisions taken by the ECHR in this time frame, we found 108 applications concerning psychiatric commitment.

### *3.1. Inadmissible applications*

41 applications were considered to be inadmissible by the bodies of the Court (Table 1).

France was implicated in 15 of these. 7 applications concerned the United Kingdom, and the remaining were divided between 8 other countries.

In addition to the deprivation of liberty for psychiatric reasons (Article 5 of the Convention), grievances referred to maltreatment (Article 3, 13 instances), unfair trials (Article 6, 22 instances) and violations of privacy (Article 8, 11 instances). Other articles are quoted less often.

Most of these applications (28 of 41) were rejected due to their ''manifestly ill-founded'' character. These decisions of the Court also establish its case law: they define situations in which the action of the State towards the individual does not violate rights protected by the Convention, in particular the right to freedom. Applications were rejected for their ''manifestly ill-founded'' nature when they exclusively challenged any of these three issues: findings of the psychiatric evaluation; deviation from the accepted legal procedure; or substandard conditions in the execution of the deprivation of freedom.

The Court considers any determination of ''unsoundness of mind'' to be valid as long as it is made by a psychiatrist, and does not take into consideration the degree of affiliation of the psychiatrist with the State (A.R. v. UK, 25527/94; Kielczewski v. Poland, 25429/94). Legal procedure is considered to have conformed to the principles of the Convention as long as the delays of judgement and appeal are not excessively long, without actually specifying the maximum duration (Cottenham v. UK, 36509/97), and if the applicant has access to a Court of Appeals, even if he does not use this option (Van Zomeren v. the Netherlands, 12596/88). Finally, the conditions of execution of the deprivation of liberty cannot be likened to inhuman and degrading treatment unless the failings in patient care reach a certain degree of gravity, subjectively assessed by the Court and not precisely defined (Koniarska v. UK, 33670/96).

Table 1
Inadmissible applications

| Case code | Complaints | Reason for inadmissibility (date) |
|---|---|---|
| A. B. v. FRANCE 18578/91 | 5-1(e), 5-2, 5-4, 6-1, 6-3, 8-1, 13 | Manifestly ill-founded (15/05/1995) |
| ARIAS RODRIGUEZ v. ESPAGNA 25120/94 | 5-1(e), 14 | Manifestly ill-founded (20/02/1995) |
| A.R. v. THE UNITED KINGDOM 25527/94 | 5-1(e), 6, 13 | Manifestly ill-founded (29/11/1995) |
| B v. FRANCE 10179/82 | 5-1, 5-2, 5-5, 6, 8, 10 | Manifestly ill-founded (13/05/1987) |
| B. v. THE FEDERAL REPUBLIC OF GERMANY 14219/88 | 5-1, 5-5 | Non-exhaustion of the domestic remedies (18/05/1992) |
| BÖHMER v. AUSTRIA 18219/91 | 5-1(e), 6-1 | 5-1(e): Out of the time-limit<br>6-1: Resolved at domestic level (17/05/1994) |
| BOYER-MANET v. FRANCE 19455/92 | 5-1(e), 5-2, 5-5, 6-1 | Manifestly ill-founded (06/06/1994) |
| COTTENHAM v. THE UNITED KINGDOM 36509/97 | 5-4, 6-1 | Manifestly ill-founded (11/05/1999) |
| DE JONG v. THE NETHERLAND 13876/88 | 5-1(e), 5-2, 6-1 | Manifestly ill-founded (12/04/1991) |
| F.E. v. FRANCE 36842/97 | 5-1(e), 6-1 | Manifestly ill-founded (14/01/1998) |
| G.B. v. FRANCE 20282/92 | 5-1(e), 5-5, 6-1 | 5-5 Manifestly ill-founded<br>5-1(e), 6-1 Admissible (29/11/1995) |
| G.G. and N.G. v. FRANCE 19869/95 | 3, 5-1(e), 5-2, 5-4, 5-5, 8, 13 | Manifestly ill-founded (26/06/1995) |
| GRARE v. FRANCE 18835/91 | 3, 5-1(e), 5-2, 5-4, 5-5, 8-1, 11, 13 | Manifestly ill-founded and non-exhaustion of the domestic remedies (02/12/1992) |
| GUENAT v. SWITZERLAND 24722/94 | 5-2, 5-5 | Non-exhaustion of domestic remedies (10/04/1995) |
| H.S. V GERMANY 23058/93 | 5-1(a), 5-1(e) | Manifestly ill-founded (30/11/1994) |
| IRZYKOWSKI v. FRANCE 40106/98 | 5-1(e), 5-4, 6-1, 8 | Struck out of the list (25/04/2002) |
| J v. SWEDEN 14423/88 | 3, 4,5, 6 | Manifestly ill-founded (07/05/1990) |
| JAMES v. THE UNITED KINGDOM 20447/92 | 5-1(e), 6 | Manifestly ill-founded (05/05/1993) |
| J.L. v. FINLAND 32526/96 | 3, 5-1(e) | 3: Non-exhaustion of domestic remedies<br>5-1(e): Manifestly ill-founded (16/11/2000) |
| KONIARSKA v. THE UNITED KINGDOM 33670/96 | 3, 5, 8 | Manifestly ill-founded (12/10/2000) |
| KIELCZEWSKI v. POLAND 25429/94 | 5-1(e) | Manifestly ill-founded (22/10/1997) |
| LEFEVRE v FRANCE 20384/92 | 3, 5-1(e), 5-2, 5-4, 9, 10, 13 | Non-exhaustion of domestic remedies<br>Out of the time-limit (02/03/1994) |
| M v. GERMANY 12485/86 | 5-1(a), 5-1(e) | Manifestly ill-founded (06/10/1987) |
| MATEOS SANCHEZ v. ESPAGNA 28029/95 | 5-1(e), 5-4, 6-1, 14 | Manifestly ill-founded (16/04/1996) |
| MERCIER v. FRANCE 22650/93 | 3, 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 14 | Manifestly ill-founded (09/04/1997) |
| M.G. v. FRANCE 22254/93 | 3, 5-1(e), 5-2, 5-4, 5-5, 8 | Lack of new elements (24/02/1995) |
| M.G. v. FRANCE 22248/93 to 22253/93 | 3, 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13 | Manifestly ill-founded (26/02/1997) |
| NORDBLAD v. SWEDEN 19076/91 | 3, 5-1, 5-2, 9, 14 | Manifestly ill-founded (13/10/1993) |
| PALIBRK v. FRANCE 50053/99 | 3, 5, 6, 8, 9, 10, 12, 13, 14 | Manifestly ill-founded Non-exhaustion of domestic remedies<br>Out of the time-limit (03/04/2001) |
| PHILLIPS v. THE UNITED KINGDOM 35698/97 | 5-1, 5-5 | Manifestly ill-founded (03/12/1997) |
| RADAJ v. POLAND and SWEDEN 29537/95 35453/97 | 5, 6, | Manifestly ill-founded (21/03/2000) |
| SMITH v. THE UNITED KINGDOM 29467/95 | 5-1(e), 7-1 | Manifestly ill-founded (10/09/1997) |
| STROJK v. POLAND 29802/96 | 3, 5-1(e), 6-1 | Manifestly ill-founded (09/04/1997) |
| TURNBRIDGE v. UNITED KINGDOM 16397/90 | 5, 6 | Manifestly ill-founded (17/05/1990) |
| VANLEENE v. FRANCE 17996/91 | 5-1(e), 6-1 | Manifestly ill-founded and no violation art. 6-1 (05/07/1994) |
| VAN ZOMEREN v. THE NETHERLANDS 12596/88 | 5-1(a), 5-1(e), 5-4 | Manifestly ill-founded (08/01/1992) |
| VERMEERSCH v. FRANCE 39277/98 | 6-1, 5-5, 13 | Manifestly ill-founded (30/01/2001) |
| WARREN v. THE UNITED KINGDOM 36982/97 | 3, 5-1, 5-4, 8, 12 | Manifestly ill-founded (30/03/1999) |
| YILDIRIM v. GERMANY 22565/93 | 5-1, 6 | Manifestly ill-founded (30/11/1994) |
| ZYSKO v. POLAND 36426/97 | 5-1(e), 5-4 | Manifestly ill-founded (22/03/2001) |
| X. v. FEDERAL REPUBLIC GERMANY 2279/64 | 1, 5, 6, 8, 10 | Abuse of the right of petition (15/12/1967) |

Amongst the remaining inadmissible applications, six rejections were justified by reason of non-exhaustion of the domestic remedies.

### *3.2. Admissible applications not judged by the Court*

24 applications concerning psychiatric commitment were not rejected, but neither did they receive judgments by the ECHR (Table 2). An accepted application is not judged by the Court if the applicant withdraws from the process, the matter has already been resolved, or a friendly settlement is reached between the parties concerned. Among these requests, only two were withdrawn by the applicant (Jeznach v. Poland (27580/95); Vandamme v. France (39284/98)). All other cases were struck out of the list or classified for just satisfaction or friendly settlement, further to financial compensation paid to the applicants by the governments of the implicated countries. These may be considered as cases of human rights abuses

Table 2
Admissible applications not judged by the ECHR

| Case code | Complaints | Admissibility | Decision |
|---|---|---|---|
| BISH v. THE NETHERLANDS 17741/91 | 5, 6, 13, 14 | Admissible: 5 (08/01/1992) | Just satisfaction (21/03/1994) |
| CROKE v. IRELAND 33267/96 | 5-1, 5-1(e), 6 | Admissible (15/06/1999) | Struck out of the list (21/12/2000) |
| DELBEC v. FRANCE 26514/95 | 5-1(e), 5-2, 5-4 | Admissible: 5-4 (15/01/1997) | Just satisfaction 21/10/2002 |
| E.M. v. AUSTRIA 18166/91 | 3, 5, 6, 13, 14 | Admissible: 5-1 (13/10/1993) | Friendly settlement (11/1/1995) |
| FRANCISCO v. FRANCE 19213/91 | 5-1(e), 5-2, 5-4, 6-1, 13, 14 | Admissible: 6-1, 13, 14 (04/07/1994) | Friendly settlement (13/09/1995) |
| G., A., G. et C. J. v. FRANCE 18657/91 | 3, 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13, 14 | Admissible: 5-1, 5-2, 5-4, 5-5, 8, 13 (11/04/1996) | Just satisfaction (11/06/1998) |
| G. and M.L. v. FRANCE 17734/91 | 5-1(e), 5-2, 5-4, 5-5, 6, 8, 10, 11, 13 | Admissible: 5, 6, 8 (29/06/1994) | Just satisfaction 17/01/1997 |
| HENRY v. FRANCE 53616/99 | 5-1(e), 6-1, 13 | 6-1, 13: adjourned (23/04/2002) | Struck out of the list 03/06/2003 |
| J.-C.C. v. FRANCE 18526/91 | 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13 | Admissible: 5-4 (23/01/1996) | Just satisfaction (18/02/1998) |
| JEZNACH v. POLAND 27580/95 | 3, 5-1 | Admissible: 3, 5-1(e) 19/01/1998 | Struck out of the list (14/12/2000) |
| KAY v U.K. 17821/91 | 5-1,5-4 | Admissible (07/07/1993) | Just satisfaction (12/11/1998) |
| M.S. v. BULGARIA 40061/98 | 5 | Admissible (31/01/2002) | Struck out of the list (04/07/2002) |
| O'REILLY v. IRELAND 24196/94 | 5, 6, 8, 13 | Admissible: 5-1, 5-5, 8, 13: (22/01/1996) | Friendly settlement (03/12/1996) |
| PHILLIPS v. U.K. 64509/01 | 5-1(e), 5-5 | | Struck out of the list (04/02/2003) |
| P.J.B. v. THE NETHERLAND 15672/89 | 5-1(e), 5-4 | Admissible (02/09/1992) | Just satisfaction 19/10/1994 |
| P.S. v. AUSTRIA 26778/95 | 5-4 | Admissible (14/01/1998) | Friendly settlement (27/01/1998) |
| ROUX v. U.K. 25601/94 | 5, 13 | Admissible (04/09/1996) | Friendly settlement (16/09/1997) |
| SMIET v. THE NETHERLAND 12889/87 | 5-1(e), 5-4, 5-5, 6-1 | Admissible (10/07/1989) | Just satisfaction 13/12/1991 |
| TOMSETT v. U.K. 25895/94 | 5 | Admissible: 5-4 | Friendly settlement (21/05/1997) |
| VAES v. THE NETHERLANDS 17581/90 | 5, 6, 13, 14 | Admissible: 5-1, 5-2 | Just satisfaction (21/03/1994) |
| VALLE v. FINLAND 28808/95 | 5-1(e), 8, 13 | Admissible: 8, 13 | Struck out of the list (07/12/2000) |
| VANDAMME v. FRANCE 39284/98 | 3, 5-1(e), 5-2, 5-4, 5-5,6-1, 6-3(c), 8, 13 | Adjourned: 6-1 (21/10/1998) | Struck out of the list 29/06/1999 |
| VIRDI v. U.K. 58851/00 | 5-1(e) | | Struck out of the list (08/10/2002) |
| VITZTHUM v. AUSTRIA 13843/88 | 5-1, 5-2, 5-4, 6 | Admissible (17/01/1991) | Friendly settlement (07/04/1992) |

during psychiatric commitment, as the governments implicitly recognised these violations by settling out of court.

### 3.3. Pending cases

Three cases concerning psychiatric commitment, submitted in 2001, were judged to be partially admissible and in 2004 were still awaiting judgement by the ECHR.

### 3.4. Judgements by the ECHR (Table 3)

There are relatively few ECHR judgments for cases of psychiatric commitment up until 2001 (zero to two judgments a year, except for four judgements in 1990). Since then, the numbers have increased substantially (between seven and nine judgements per year). The countries most often cited are France (twelve judgements), the Netherlands (nine judgments), and the United Kingdom (five judgments). Only six applications referred exclusively to Article 5 of the Convention. The maximum number of articles cited was twelve, in the case of Herczegflavy v. Austria (10533/83).

In five cases, the ECHR ruled that there had not been any violation of the Convention. In the 35 cases where the ECHR judged that there had been a violation of the Convention, 26 condemnations concern mainly or uniquely a violation of the right to liberty and security (Art. 5), and seven condemnations concern mainly or uniquely a violation of the right to a fair trial (Art. 6). The remaining two condemnations concern both of these Articles.

In the judgments for the violation of Article 5, the right to liberty and security, there were 13 condemnations for contravention of Article 5-1 (lawful detention of persons of unsound mind) and 18 condemnations for infringement of Article 5-4 (right to have detention reviewed by a court). Article 5-2 (right to information) was the object of a condemnation only once.

In the judgments for violations of Article 6, the right to have access to an independent court, the condemnations concerned the non-compliance with reasonable delays of procedure (Art. 6-1). Three of these infractions are also associated with a condemnation for violation of the right to an effective remedy (Art. 13).

Herczeglalvy v. Austria (10533/83), following Winterverp v. The Netherlands (6301/73), is another landmark case for situations of psychiatric commitment. Here, the ECHR condemned the State not only for violations of Article 5-4, but also for violations of Article 8 (Right to respect for private and family life) and of Article 10 (Freedom of expression).

### 3.5. Distribution by country

For each country, we separated the applications regarding violations of human rights related to psychiatric commitment into two groups: applications deemed inadmissible or struck out of the list, and applications which ended in a friendly settlement or with a judgment by the Court. We then compared

the number of these applications to the number of years since the Convention came into effect in these countries (Graph 1).

Three countries are most often the object of applications: France (36 applications, Convention entered into force 30 years ago), the Netherlands (15 applications, Convention in force for the past 50 years), and the United Kingdom (18 applications, Convention entered into force 51 years ago). 17 other countries are named in 1 to 5 applications each; the remaining countries are not involved in any of the 108 applications. Amongst the countries which have not been named in any application involving psychiatric commitment are countries in which the Convention has been in force for many years, such as Turkey (50 years), Denmark (51 years), and Iceland (51 years). It seems that there is no direct relation between the length of time a country has been party to the Convention and the number of applications filed against it.

## 4. Discussion

### *4.1. Limits*

This study is expressly limited to the domain of psychiatric commitment. We thus did not examine ECHR case law which concerns situations of persons of unsound mind deprived of liberty for non-psychiatric reasons. For example, the case Keenan v. United Kingdom (27229/95) is the only application in which the ECHR pronounced a condemnation of a country for inhuman and degrading treatment or punishment (Art. 3) towards a person of unsound mind. However, Keenan had been detained in a prison, not in a psychiatric establishment.

### *4.2. Key case law reviewed*

The Convention guarantees certain fundamental rights to persons deprived of liberty for psychiatric reasons [3]. Referring to the case law which we gathered, we discuss below some of the main aspects of the application of these human rights.

#### *4.2.1. Right to liberty and security: legal exceptions for unsoundness of mind (Art. 5-1(e))*

Article 5 is the article quoted most often in the applications concerning psychiatric commitment. Paragraph 5-1(e) clarifies that the lawful detention of a ''person of unsound mind'' constitutes a legally valid exception to the general principle of the right to freedom of an individual. This exception thus rests on two definitions: ''unsoundness of mind'' and ''lawfulness of detention''.

*4.2.1.1. Unsoundness of mind.* The precise definition of ''unsoundness of mind'' was questioned in the very first case concerning psychiatric commitment to be judged by the Court, Winterverp v. The Netherlands (6301/73), deposited in 1973 and finally judged in 1979. It is important to note that during this time period in the Soviet Union, psychiatry was often misused for political means. For Western European countries, the term ''unsoundness of mind'' thus became particularly important to define.

In its 1979 judgement of this landmark case, the ECHR ruled that Article 5 could not apply to an individual just because ''his view or behavior deviates from the norms prevailing in a particular society''. Furthermore, ''the very nature of what has to be established before the competent national authority – that is, a true mental disorder – calls for objective medical expertise''. The ECHR then defined three conditions related to the notion of mental illness that were necessary in order for a detention to be legal: ''For the detention of a person of unsound mind to be lawful, except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder''. These three conditions were subsequently validated in the judgments Luberti v. Italy (9019/80), Johnson v. United Kingdom (22520/93), and Hutchinson Reid v. United Kingdom (50272/99).

*4.2.1.2. Lawfulness of detention.* The Convention forbids the arbitrary commitment of persons of unsound mind [6]. Article 5 states that any deprivation of liberty of a person must be conducted ''in accordance with a procedure prescribed by law''. Paragraph 5-1(e) reiterates this notion, clarifying that even the deprivation of liberty of persons of unsound mind must still be ''lawful''. In other words, psychiatric commitment must be regulated by a local law, in either civil or criminal jurisdiction. Again, it is the case Winterverp vs. the Netherlands (6301/73) which is cited most often in reference to this topic.

The ECHR also determines whether local law adheres to the standards of ''lawfulness'' according to the democratic principles of the countries of the Council of Europe. Thus, in the case Van der Leer v. the Netherlands (11509/85), a violation of Article 5 was declared, because the judge who approved the psychiatric commitment had independently dispensed with a hearing, despite the psychiatrist's opinion that it would *not* be ''devoid of purpose or medically inadvisable'' for this patient to be heard by a judge. Furthermore, the patient was not ''promptly and adequately informed of the reasons'' of her commitment, neither verbally nor through a copy of the judge's written decision. Unaware of the decision, she was unable to make timely use of her right to appeal, and the lawfulness of her detention was only decided five months later.

In the case Aerts v. Belgium (25357/94), the ECHR clarified that detention could be legal only if it was in accordance with the objectives of treatment. This means that a relationship must exist between the material and legal modalities of the detention, and the pursued therapeutic objectives [7]. The ECHR also imposes the provision of a minimal level of a therapeutic environment for any deprivation of liberty justified by ''unsoundness of mind''.

#### *4.2.2. Right to a review of detention by a Court (Art. 5-4)*

Article 5-4 is not specific to psychiatric commitment, but it is frequently referred to in applications concerning such situations. The ECHR ruled in Winterwerp v. the Netherlands (6301/73) that persons detained for psychiatric reasons,

Table 3
Applications judged by the ECHR

| Case code | Articles under complaints | Admissibility | Judgments of the Court |
|---|---|---|---|
| AERTS v. BELGIUM 25357/94 | 3, 5, 6 | Admissible (02/09/1996) | Violation: 5-1, 6-1<br>No violation: 3, 5-4 (30/07/1998) |
| ASHINGDANE v. THE UNITED KINGDOM 8225/78 | 5-1, 5-4, 6-1 | Admissible (05/02/1982) | No violation: 5-1, 5-4, 6-1 (28/05/1985) |
| BERLINSKI v. POLAND 27715/95; 30209/96 | 3, 5-1, 5-2, 6, 8, 13, | Admissible: 3, 6 (18/01/2001) | Violation: 6-1, 6-3(c)<br>No violation: 3 (20/06/2002) |
| BRAND v. THE NETHERLAND 49902/99 | 3, 5 | Adjourned: 5 (11/09/2001) | Violation: 5-1 (11/05/2004) |
| COUILLARD-MAUGERY v. FRANCE 64796/01 | 3, 5-1(e), 6-1, 8, 13 | Admissible: 8 (03/04/2003) | No violation: 8 (01/07/2004) |
| D.M. v. FRANCE 41376/98 | 3, 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13 | Admissible: 5-4 (26/06/2001) | Violation: 5-4 27/06/2002 |
| DELBEC v. FRANCE 43125/98 | 5-1(e), 5-4 | Admissible: 5-4 (04/07/2000) | Violation: 5-4 18/06/2002 |
| ERKALO v. THE NETHERLANDS 23807/94 | 5-1, 5-4, 13 | Admissible (15/05/1996) | Violation: 5-1 NNE 5-4, 13 (02/09/1998) |
| ERIKSEN v. NORWAY 17391/90 | 5 | Admissible (31/08/1994) | No violation: Art 5-1, 5-3 (27/05/1997) |
| FRANCISCO v. FRANCE 38945/97 | 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13 | Admissible: 6-1 (29/08/2000) | Violation: 6-1 (13/11/2001) |
| FROMMELT v. LIECHTENSTEIN 49158/99 | 3, 5, 6, 8 | Admissible: 5-4<br>Inadmissible: 3, 5-1(e), 5-3, 6, 8 (15/05/2003) | Violation: 5-4 (24/06/2004) |
| GRANATA v FRANCE 39626/98 | 3, 5, 6, 8, 13 | Admissible: 6-1 (04/05/2000) | Violation: 6-1 (19/03/2002) |
| HERZ v. GERMANY 44672/98 | 3, 5-1(e), 5-4, 6-1, 13 | Admissible: 5-1(e), 5-4, 6-1, 13 (21/03/2002) | Violation: 5-4<br>No violation: 5-1, 5-4/NNE: 6-1, 13 (12/06/2003) |
| HERCZEGFALVY v. AUSTRIA 10533/83 | 2, 3, 4, 5, 6, 8, 9, 10, 13, 14, 17, 18 | Admissible: 3, 5-1(c + e), 5-3, 5-4, 8, 10, 13 (04/10/1989) | Violation: 5-4, 8, 10<br>No violation: 3, 5-1, 5-3, 8/NNE: 13 (24/09/1992) |
| H.L. v. UNITED KINGDOM 45508/99 | 3, 5-1, 5-4, 8, 13 | Admissible: 5 (10/09/2002) | Violation: 5-1, 5-4 (05/10/2004) |
| HUTCHISON REID v. THE UNITED KINGDOM 50272/99 | 5-1(e), 5-4, 13 | Admissible (15/11/2001) | Violation: 5-4<br>No violation: 5-1 (NNE: 13) (20/02/2003) |
| JOHNSON v. THE UNITED KINGDOM 22520/93 | 3, 5-1, 5-4, 8 | Admissible: 5-1, 5-4 (18/05/1995) | Violation: 5-1 NNE: 5-4 (24/10/1997) |
| KOENDJBIHARIE v. THE NETHERLANDS 11487/85 | 3, 5-1(a,e), 5-4, 6-1, 6-3(d), 14 | Admissible (09/12/1988) | Violation: 5-4 NNE: 3, 5-1, 6-1, 14 (25/10/1990) |
| KEUS v. THE NETHERLANDS 12228/86 | 5-2, 5-4, 6-1, | Admissible (06/07/1988) | No violation: 5-2, 5-4 NNE: 6-1, 6-3 (25/10/1990) |
| KEPENEROV v. BULGARIA 39269/98 | 5-1 | Admissible (12/09/2002) | Violation: 5-1 (31/07/2003) |
| LAIDIN v. FRANCE 39282/98 | 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13 | Admissible: 6-1, 13 (09/05/2000) | Violation: 6-1, 13 (07/01/2003) |
| LAIDIN v FRANCE 43191/98 | 3, 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13 | Admissible: 5-4 (08/01/2002) | Violation: 5-4 (05/11/2002) |
| LANGLOIS v. FRANCE 39278/98 | 5-1(e), 5-5, 6-1, 8, 13 | Admissible: 6-1 (16/05/2000) | Violation: 6-1 (07/02/2002) |
| LUBERTI v. ITALY 9019/80 | 5-1, 5-4 | Admissible: 5-1, 5-4 (06/05/1982) | Violation: 5-4<br>No violation: 5-1 (23/02/1984) |
| L.R.-R. v. FRANCE 33395/96 | 3, 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 10, 13 | Admissible: 5-4 (19/06/2001) | Violation: 5-4 (27/06/2002) |
| LUTZ v. FRANCE 49531/99 | 5-1(e), 5-2, 5-4, 5-5, 6-1, 8, 13 | Ajourned: 6-1, 13<br>Inadmissible: 5-1(e), 5-2, 5-5, 8 (30/04/2002) | Violation: 6-1, 13 (17/06/2003) |
| MAGALHAES PEREIRA v. PORTUGAL 44872/98 | 3, 5-1, 5-4 | Admissible: 5-1, 5-4 (14/06/2001) | Violation: 5-4 NNE: 5-1 (26/02/2002) |
| MORSINK v. THE NETHERLAND 48865/99 | 5-1, 5-3 | Adjourned: 5-1 (03/06/2003) | Violation: 5-1 11(0/5/2004) |
| NOUHAUD and OTHERS v. FRANCE 33424/96 | 5, 6, 8, 13 | Admissible: 6-1, 13 (05/05/2000) | Violation: 6-1, 13<br>No violation: 5, 8 09/07/2002 |
| RAKEVICH v. RUSSIA 58973/00 | 5, 6 | Admissible: 5 (05/03/2002) | Violation: 5-1, 5-4 (28/10/2003) |
| R. L. and M.-J. D. v. FRANCE 44568/98 | 3, 5-1 (c + e), 5-5, 8-1 | Admissible: 3, 5-1 (c + e), 5-5 (18/09/2003) | Violation*: 3, 5-1 (c + e), 5-5 (19/05/2004) |
| RUTTEN v. THE NETHERLANDS 32605/96 | 5-1, 5-4 | Admissible (28/03/2000) | Violation: 5-4<br>No violation: 5-1 (24/07/2001) |
| SILVA ROCHA v. PORTUGAL 18165/91 | 3, 5-1(e), 5-4 | Admissible: 5-4 10/01/1995 | No violation: 5-4 (15/11/1996) |
| TAM v. SLOVAKIA 50213/99 | 5-1, 5-4 | Admissible (01/07/2003) | Violation: 5-1, 5-4, (22/06/2004) |

Table 3 (*continued*)

| Case code | Articles under complaints | Admissibility | Judgments of the Court |
|---|---|---|---|
| TKACIK v. SLOVAKIA 42472/98 | 3, 5, 6, 8, 10, 13, 17 | Admissible: 5-1, 8 (08/10/2002) | Violation: 5-1 NNE: 8 (14/10/2003) |
| VAN DER LEER v. THE NETHERLANDS 11509/85 | 5-1(e), 5-2, 5-4, 6-1 | Admissible (16/07/1986) | Violation: 5-1, 5-2, 5-4<br>NNE: 6-1 (21/02/1990) |
| VARBANOV v. BULGARIA 31365/96 | 2, 3, 5, 6, 8, 9, 10 | Admissible: 5-1, 5-4 (21/04/1999) | Violation: 5-1, 5-4 (05/10/2000) |
| WASSINK v. THE NETHERLANDS 12535/86 | 5-1(e), 5-4, 5-5, 6-1 | Admissible: (09/12/1987) | Violation: 5-1<br>No violation: 5-4, 5-5/NNE: 6-1 (27/09/1990) |
| WINTERWERP v. THE NETHERLANDS 6301/73 | 5, 6-1 | Admissible (30/09/1975) | Violation: 5-4, 6-1<br>No violation: 5-1 (24/10/1979) |
| X v. THE UNITED KINGDOM 7215/75 | 3, 5-1, 5-2, 5-4 | Admissible: 5-1, 5-2, 5-4 (11/03/1976) | Violation: 5-4<br>No violation: 5-1/NNE: 5-2 (05/11/1981) |

NNE: Not Necessary to Examine. *Only the violation of Article 5-1(e) concerns psychiatric commitment.

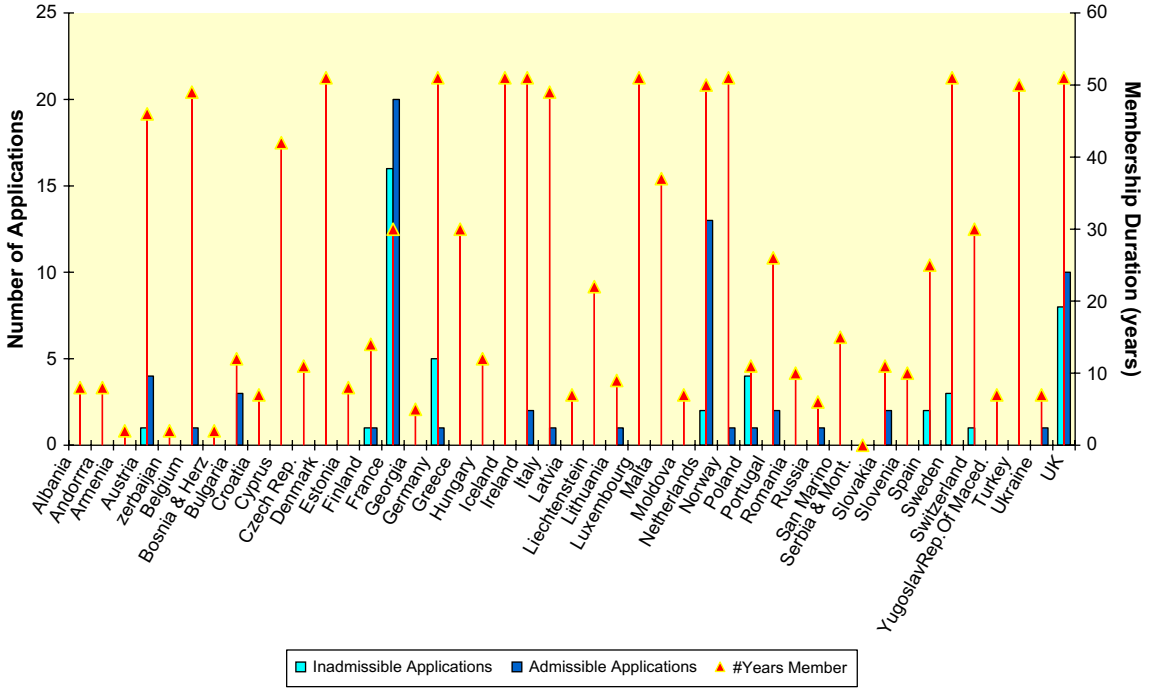
whatever the modality of commitment, were owed the same possibilities of appeal as any other type of detainee. The Court which rules on the appeal must have the power to release persons who are being held illegally, without the necessity of a supplementary ruling.

The case X v. United Kingdom (7215/75) established that the deprivation of a person's liberty must withstand review of not only the process but also the content of the decision, that is, the patient's objective mental state. The persistent deprivation of liberty of a person who is no longer ''of unsound mind'' is considered to be a violation of the Convention, even if this commitment was at one stage lawful.

Appeals must be held before a local court, that is to say a body with judicial character. As shown in Varbanov v. Bulgaria (31365/96), its essential characteristic is its independence with regards to executive power and to the parties concerned.

### *4.2.3. Right to information (Art. 5-2)*

Article 5-2 of the Convention establishes the right for any person arrested to be informed ''promptly, in a language which he understands, of the reasons for his arrest and of any charge against him''. The importance of this human right to the field of psychiatry is best illustrated in the 1975 case, X v. United Kingdom (7215/75), where the Commission affirmed that any difficultly in communicating such information to patients suffering from active psychiatric illness does not exclude these persons of the right to be informed. The Court confirmed in




Graph 1. Applications to the ECHR, 1953–2004, per country.

their judgment of the case Van der Leer v. The Netherlands (11509/85), that no difference in the right to information may be made between persons of unsound mind and persons detained for other reasons.

However, the content and transmission of this information may be adapted according to the specific situation at hand. The Commission accepted in the case X v. United Kingdom (7215/75) that certain elements of information may be retained if the health of the patient required it, and that in certain situations, information may be communicated to the patient's legal representatives rather than to the patient himself.

Another aspect of Article 5-2 is the question of promptness of the information transmitted. The timely communication of this information is the responsibility of the treatment staff, and particularly of the physicians, who must inform the patient upon his arrival to hospital (J.-C.C. v. France, 18526/91; G. and M.L. v. France, 17734/91). Afterwards, the patient must continue to be informed about his status and any potential modifications.

*4.2.4. Conditions of confinement (Art. 3)*

No member state was condemned by the Court for violation of Article 3 of the Convention in relation to psychiatric commitment. Nonetheless, several applications alleging inhuman and degrading treatment during psychiatric commitment were accepted and reviewed by Chambers (or by its predecessor, ''The Commission'').

What can be considered as ''inhuman and degrading treatment''? In Ireland v. United Kingdom (5310/71), the ECHR ruled that acts could not be considered within the framework of Article 3 unless they reached a ''high level'' of gravity. Thus, the evaluation of what can or cannot be considered as inhuman and degrading treatment rests subjective and as the Court recognized, it ''depends on all the circumstances of the case''.

The case Herczegfalvy v. Austria (10533/83) is characteristic of the Court's difficulty in analysing the validity of medical treatment. The applicant, who had been on a hunger strike, was force-fed and given strong doses of neuroleptics. He was also placed in seclusion, restrained with handcuffs, and secured to a bed for several weeks on end. The Court criticized the lengthy duration of the seclusion and the immobilization, but accepted the argument of the Austrian government that this type of treatment was justified for therapeutic reasons, and thus could not be considered as inhuman and degrading.

As for the appropriateness of the medical treatment provided, various cases such Grare v. France (18835/91) or Warren v. United Kingdom (36982/97) show that the ECHR always trusts the psychiatric medical evaluation, as far as it satisfies the criteria of usual practice [5].

*4.2.5. Right to a fair trial (Art. 6)*

The Convention guarantees persons in psychiatric commitment their full entitlement to civil rights, in particular to have access to an independent court. Several ECHR judgments cited violations of Article 6 because the patient could not access, or faced excessive delays in accessing, an independent court. The point of contention in justifying the access to an independent court depended on the case: in Winterwerp v. The Netherlands (6301/73) it concerned the right to control property, in Laidin v. France (39282/98) and Francisco v. France (38945/97) it was for demands of compensation, and in Lutz v. France (49531/99) the justification was for a procedure of guardianship.

However, ECHR case law also determines the limits of the appeal process. For example, in Ashingdane v. United Kingdom (8225/78), the ECHR accepted that if allegations were revealed to be unfounded, the State appeal court could dismiss the case without violating the applicant's right to a fair trial.

*4.2.6. Right to respect for private and family life (Art. 8)*

The fact that a person is psychiatrically committed does not modify his right to have his private and family life respected. A State can place limitations on these rights in accordance with its laws, but only if proportional to the situation in question. This was the origin of the dispute in the cases Koniarska v. United Kingdom (33670/96), Warren v. United Kingdom (36982/97), and Valle v. Finland (28808/95). However, it is only in the case Herszegfalvy v. Austria (10533/83) that the ECHR recognized a violation of Article 8, in the form of an infringement of the patient's freedom of correspondence.

*4.3. Accessibility of the ECHR*

Our study reveals that the number of applications deposited by individuals suffering from mental illness is very unevenly distributed amongst member countries, and unrelated to the length of time the Convention has been in force in that country.

It is particularly unsettling to note that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has denounced human rights violations in numerous psychiatric hospitals of countries which have never been the object of complaints submitted to the ECHR [11]. An example is Greece, where the Convention came into effect in 1974. In 1993, the CPT reported serious human rights violations taking place in the psychiatric asylum of the Island of Leros and in other hospitals. However, between 1974 and 1993, not a single application implicating Greece was submitted to the ECHR. Another example is Turkey, where the Convention has been in effect since 1954. Human rights violations were denounced by the CPT in 1997 after it visited the Regional Psychiatric Hospital in Samsun and the Bakýrköy Mental and Psychological Health Hospital. Nonetheless, the ECHR has never received an application implicating Turkey, even after these visits.

One may thus be justified in questioning the relevance of international human rights law to the lives of psychiatric patients [10]. Examining in more detail the applications concerning the three most frequently accused countries, we find that it was often a third party who submitted the applications, a process which the Court often facilitated. Thus for France, a review of the case law text reveals that 25 of 36 applications, filed up until the end of 2004, were represented by Philippe

Bernardet, a French sociologist well-known for his position against psychiatric commitment [2]. In the applications filed against The Netherlands, 9 times out of 15 the applicants were represented by Mtre G.E.M. Later, a lawyer practising in The Hague. The cases against the United Kingdom, amongst others X v. United Kingdom (7215/75), were very often litigated by the National Association of Mental Health (MIND) and its president, Prof. Gostin [7].

These and many other available examples strongly suggest that in fact, accessibility to the ECHR depends on both the degree of democracy of the country where the case is situated (the ability of an individual to access the local and supranational legal systems), and on the degree of support offered to the individual by a person or an organisation specializing in the field of psychiatric commitment.

## 5. Conclusions

ECHR case law is an important source of data to help define the rights of psychiatric patients in situations of involuntary commitment, and the limits of these rights. It also guides the development and revision of national mental health laws. In certain countries, the judgments pronounced by the Court have had direct repercussions on their legal systems. Five cases have resulted in the modification of national legislation as it pertains to psychiatric commitment:

Further to the cases Winterwerp and Van der Leer, the Netherlands modified their legislation on involuntary internments and a new law on ‘‘the placement in psychiatric institutions for special cases’’ came into effect in 1994. The 1988 modification of the Dutch penal code regarding the special treatment of the mentally ill was largely influenced by the Koendjbiharie case.

The case X v. United Kingdom was the source of an amendment to the 1982 Mental Health Act, and the creation of a new Mental Health Act in 1983. Subsequent modifications of mental health law in the United Kingdom have been constructed so as to be compatible with ECHR case law [1].

In Austria, the case Herczegfalvy has resulted in a modification of the law on hospitals, and the law on the placement of mentally ill patients now mentions specifically the right to freedom of correspondence between a patient and his lawyer.

Despite certain limitations of accessibility, the European Court of Human Rights will continue to play an important role in the reorganisation of psychiatric care systems of not only current, but also future, members of the Council of Europe.

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