

Stanev v Bulgaria

The European Court of Human Rights

(Application no. 36760/06)



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Quick Facts

Applicant: Rusi Stanev

Member State: Bulgaria

Court: European Court of Human Rights

Date Decided: 20 May 2010

Issue: Whether Stanev's placement in the Pastra social care home constituted deprivation of liberty and inhumane treatment and whether he had access to justice and what would be the appropriate remedy.

Holding: The Court agreed unanimously that Stanev's long-term institutionalization under poor living conditions and restricted right to leave the home along with his lack of

access to the courts amounted to violation of Stanev's rights under Article 5(1) (the right to liberty and security of person), Article 5(4) (the right to challenge the deprivation of liberty in court), Article 5(5) (the right to compensation for the deprivation of liberty), Article 3 (right not to be subjected to inhumane or degrading treatment), Article 6(1) (right to fair hearing) and Article 13 (the right to damages in this case for the violation of Article 3) of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court further held by thirteen votes to four that it was not necessary to examine violations of Stanev's right to respect for his private and family life under Article 8 as no separate issues arose from Stanev's argument.

Procedural Background

Admissibility

Application was declared admissible by a Chamber of the 5th Section of the ECtHR on 29 June 2010. Parties made submissions regarding complaints under Articles 5(1), 5(4), 5(5), 3, 6(1), 13 and 8. The Court only dismissed the Government's objection of failure to exhaust domestic remedies as the Government failed to justify their failure to raise the objection at the Chamber's examination of the admissibility of the case.

Context

Admission to social care homes in Bulgaria was very informal and was not subjected to any procedural safeguards. It usually took a contractual form, on the basis of an agreement concluded between the person concerned and a local official. Consent could also be obtained through the legal fiction of substituted-decision making if the person is under guardianship. As a result, the person might not know the details of the agreement, for example, the duration or location of the placement, or even the reason for the placement. It would be unfortunate if the guardian takes advantage of the substituted-decision making mechanism and makes the decision for the person without taking the person's wishes into account.

It would be easy to commit a person into social homes, but it would be hard for the person to get out of the agreement on his own. The person might not have access to courts to review the lawfulness of the placement under domestic legislation and the law might not provide him with any remedies even though the placement is unlawful.

Bulgaria had not ratified the Rights of Persons with Disabilities when the violations took place, so it was not legally bound by its provisions (Article 12 of the CRPD stipulates that everyone with disabilities should have legal capacity on an equal basis with others, and that the State is required to make assistance available to those who need help in exercising their legal capacity).

Case Summary

Violation of Article 5(1)

Although Stanev had lived at the home for over 8 years, he had never consented to staying there. The Court observed that the director of the home, who was also Stanev's guardian, had only permitted Stanev to leave the home three times over a period of 8 years. Moreover, leave were always subjected to controls and restrictions. He had no access to his identity papers nor money to pay for food and accommodation since his guardian had arranged his social security income to be paid to the home. On one occasion, when Stanev tried to leave, the director reported to the police and he was then brought back to the home by staff. Having regard to Stanev's lack of consent, the duration of the placement and restrictions imposed, the Court held that he must have felt the full adverse effects of the restrictions imposed on him and the situation amounted to a deprivation of liberty.

Violation of Article 5(4)

The domestic legislation did not provide for automatic periodic judicial review of placement for people with mental disorders, nor did it recognize the placement as a deprivation of liberty. Besides, the validity of the placement agreement could only have been challenged on the guardian's initiative. With the director of home being his guardian, the Bulgarian courts were not involved at any time or in any way in the placement. The Court held that no domestic remedies were available to Stanev to challenge the lawfulness of his placement and constituted violation of Article 5(4).

Violation of Article 5(5)

The Court found that Stanev's rights under Article 5(1) and Article 5(4) had been violated, so Article 5(5) is applicable. The Bulgarian judicial authorities did not at any stage found the placement to have been unlawful and Stanev could not have invoked State liability as a basis for receiving compensation since no judicial remedy by which to review the lawfulness of the placement was available under Bulgarian law. Therefore, the Court found that Stanev had not been and would not be able to avail himself of right to compensation under domestic legislation

for the violation of Article 5(1) and 5(4), and thus a violation of Article 5(5).

Violation of Article 3

Before the home was renovated in late 2009, it was inadequately heated, access to toilet was dangerous and bathroom was unhygienic. In addition, people at the home received inadequate food and clothes were not returned to the same people. The Court followed the finding of the Committee for the Prevention of Torture that the conditions in the home were so poor as to amount to inhumane and degrading treatment.

Violations of Article 13

The Court observed that Stanev would not have been entitled to compensation for the poor living conditions in the home. His placement was not regarded as detention under domestic law regardless of his legal capacity. The lack of effective remedies constituted violation of Article 13.

Violations of Article 6(1)

Stanev failed to have his legal capacity restored in November 2004 after attempts to bring his case to prosecutors and the Mayor of Rila. His application for release from partial guardianship had also been rejected by his guardian.

The Court ruled that the application for restoration of legal capacity would be decisive for the exercise of all the rights and freedoms affected by the declaration of incapacity. However, Stanev was unable to apply for restoration of his legal capacity other than through his guardian. Thus, the Court ruled that the lack of sufficient degree of certainty in such a direct access to a court under the Bulgarian legislation constituted violation of Article 6(1).

Dissenting opinion

4 out of 17 judges disagreed with the majority's finding that no separate issue arises under Article 8. They were of the view that Court should have examined issues related to Stanev's right to private life and home separately, such as restrictions associated to his placement and possible alternative therapeutic solutions. The Court could decide on whether States should set up procedures to

review the need to maintain a measure restricting legal capacity.

Significance

Stanev was the first case in which the court has found a violation of Article 3 in any sort of institution for people with disabilities and to review the applicability of Article 5 to the situation of a person placed by a guardian in a social care home. Previous case law largely concerned compulsory detention under mental health legislation in psychiatric wards or hospitals, which the Court has generally found acceptable as long as there are safeguards in place. The court recognized the right of persons in social care homes to challenge both their deprivation of liberty and the inhuman and degrading conditions in the care homes. The court affirmed that persons with limited legal capacity have the right to challenge their loss of rights in courts. However, it should be noted the court was very careful to limit its holdings to the specific facts of the case.

Resources

- *Stanev v Bulgaria* (Application no. 36760 / 06)