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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.
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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).

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