



Insufficient evidence to assess dangerousness of a man who killed his wife with a view to keeping him in psychiatric detention

In today's Chamber judgment in the case of [Ruiz Rivera v. Switzerland](#) (application no. 8300/06), which is not final¹, the European Court of Human Rights held, by a majority, that there had been:

a violation of Article 5 § 4 (right to have lawfulness of detention decided speedily) of the European Convention on Human Rights on account of the refusal by the courts to order a further psychiatric report and hold an adversarial hearing before the Zürich Administrative Court.

The case concerned the refusal by the Swiss authorities, relying on two medical expert reports diagnosing paranoid and schizoid disorders, to release a person placed in psychiatric detention for having killed and decapitated his wife.

The applicant has always disputed the medical validity of the reports, claiming that he does not suffer from paranoid schizophrenia and that he murdered his wife while under the influence of drugs and in a fit of anger.

The Court found that the domestic authorities, not having ordered a third independent medical opinion, had not been in possession of sufficient evidence to enable them to establish that the conditions for releasing the applicant on probation were not met. It also held that the Zürich Administrative Court should have held a hearing in order to hear submissions from the applicant in person.

Principal facts

The applicant, Carlos Humberto Ruiz Rivera, is a Peruvian national who was born in 1955. He was living in Zürich at the relevant time.

On 6 April 1995, while under the influence of alcohol and cocaine, Mr Ruiz Rivera stabbed his wife 49 times, cut off her head and threw it out of the window of the apartment. He was charged with murdering his wife.

The Zürich public prosecutor's office requested a psychiatric report. In October 1995 a psychiatrist filed his report in which he observed that Mr Ruiz Rivera was a drug user and suffered from chronic paranoid schizophrenia. The psychiatrist concluded that the applicant had not been responsible for his actions at the relevant time.

On 29 August 1996 Mr Ruiz Rivera was admitted to Pöschwies Prison in Regensdorf (Canton of Zürich).

On 7 June 2001 a second psychiatric report was drawn up. The experts observed that the applicant's situation had hardly changed since the first psychiatric report had been drawn up in 1995.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

In 2002 and 2003 the Judicial Execution Office of the Canton of Zürich refused three applications for release on probation. In March 2004 the Psychiatry and Psychology Department of the Judicial Execution Office issued an annual report on the treatment administered. That report confirmed the conclusions of the psychiatric report of 2001. The applicant continued denying that he was ill and refused to follow the prescribed medical treatment. The psychologists concluded that the conditions for release on probation were not met.

In June 2004 a further request for release on probation was refused. Mr Ruiz Rivera applied to the Department of Justice and the Interior of the Canton of Zürich claiming that a further expert report was necessary. That application was refused, whereupon he applied to the Administrative Court arguing again that a review of the necessity of keeping him in detention should be based on a further psychiatric report. That application was dismissed by the Administrative Court on the grounds that, in the light of the circumstances, the expert report of 2001 was still valid. Mr Ruiz Rivera unsuccessfully appealed to the Federal Court.

On 11 September 2007 the Zürich District Court ordered a further psychiatric report on Mr Ruiz Rivera.

On 28 April 2008 the court-appointed expert filed a report establishing that Mr Ruiz Rivera had committed the crime while “in a psychotic state of need” but that the characteristics of a schizophrenic illness could not be identified. In March 2009 the Migration Office of the Canton of Zürich refused to extend Mr Ruiz Rivera’s residence permit and ordered him to be deported immediately. In July 2009 the Judicial Execution Office took formal note of the new medical diagnosis regarding Mr Ruiz Rivera. Finding that he now appeared to have acquired greater self-control, it considered that he could be released.

Mr Ruiz Rivera was released on bail and subject to a five-year probation order. On leaving the prison he was immediately deported to Peru.

Complaints, procedure and composition of the Court

Relying on Article 5 § 4 (right to have lawfulness of detention decided speedily) and Article 13 (right to an effective remedy), the applicant complained of the conditions in which the authorities had refused to release him in 2004. He complained of their refusal to order a further psychiatric report and that the courts had refused to hold a hearing during which he could have submitted his observations orally and addressed any relevant questions to the expert who had drawn up the first psychiatric report in 2001.

The application was lodged with the European Court of Human Rights on 24 February 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido Raimondi (Italy), *President*,
Işıl Karakaş (Turkey),
Peer Lorenzen (Denmark),
Dragoljub Popović (Serbia),
András Sajó (Hungary),
Paulo Pinto de Albuquerque (Portugal),
Helen Keller (Switzerland),

and also **Stanley Naismith**, *Section Registrar*.

Decision of the Court

Article 5 § 1

When the case had been communicated the Court had decided to put a question to the Government of its own motion about the appropriateness of Mr Ruiz Rivera's place of detention – a prison – having regard to his state of health. Mr Ruiz Rivera indicated that he had argued before the courts that the authorities had not had sufficient regard to alternatives to imprisonment and had refused from the outset to envisage his release. The Court observed, however, that Mr Ruiz Rivera had never intended to complain about his prison conditions themselves before the domestic courts and accordingly considered that domestic remedies had not been exhausted with regard to that complaint.

Article 5 § 4

The Court noted that the decision refusing Mr Ruiz Rivera's request for release on probation had been adopted by the Judicial Execution Office on the basis of the treatment report of March 2004. According to the two psychologists who had drawn up the report, the conclusions of the psychiatric report of 2001 confirming the diagnosis contained in the initial expert report of 1995 were still valid.

The Court had no reason to believe that the psychiatric reports drawn up in 1995 and 2001 diagnosing Mr Ruiz Rivera with paranoid schizophrenia were arbitrary or medically inaccurate. While it was true that a third expert report had reached significantly different conclusions, that was a question of assessment of the medical soundness of conflicting expert reports and was firstly a matter for the jurisdiction of the domestic courts. The Court could not therefore criticise the domestic authorities, on the basis of a third – conflicting – expert report, for failing to question the medical soundness of the concurring conclusions of the first two expert reports.

The Court observed, however, that the treatment report of March 2004 was not the equivalent of an independent psychiatric report. No deprivation of freedom of a person considered as mentally unsound could be regarded as Convention compliant where it was decided without having regard to a sufficiently recent opinion of a medical expert. The psychiatric report on which the treatment report of March 2004 was based and to which the decisions of the Judicial Execution Office and the Administrative Court referred had at that time dated back three years and seventeen days.

The Court considered that, given that the relationship of trust between the applicant and the medical team responsible for his health had broken down, the domestic authorities should have ordered a third medical opinion. By basing their decisions on the treatment report of 2004 alone, they had not therefore been in possession of sufficient evidence to allow them to establish that the conditions for Mr Ruiz Rivera's release on probation were not met.

The Court concluded that Article 5 § 4 had been violated as a result of the refusal to order a further expert report on Mr Ruiz Rivera.

Failing a further psychiatric report, Mr Ruiz Rivera had requested a hearing in his application to the Administrative Court. His request had been rejected on the grounds that the psychiatric report of 2001 was sufficiently detailed and the conclusions of that report had been confirmed by the treatment report of March 2004. Furthermore, Mr Ruiz Rivera had already unsuccessfully disputed before a court the medical validity of the diagnosis established in 1995 and 2001 and no new evidence had been obtained since.

The Court reiterated that the Zürich Administrative Court had not had a sufficiently recent psychiatric report to allow it to assess the personality and degree of maturity of Mr Ruiz Rivera. The Court was of the view that the Zürich Administrative Court could not therefore dispense with a hearing at which Mr Ruiz Rivera could be heard in person.

The Court concluded that there had been a violation of Article 5 § 4 on the grounds that there had been no hearing before the Zürich Administrative Court.

Just satisfaction (Article 41)

The Court held that Switzerland was to pay the applicant 6,500 euros in respect of costs and expenses.

Separate opinions

Judge Sajó, Lorenzen, Keller and Popović expressed separate opinions, which are annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.