EUROPEAN COURT OF HUMAN RIGHTS

CHAMBER JUDGMENT ENHORN v. SWEDEN

The European Court of Human Rights has today notified in writing a judgment [1] in the case of Enhorn v. Sweden (application no. 56529/00). The Court held unanimously that there had been a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 12,000 euros (EUR) for non-pecuniary damage and EUR 2,083 for costs and expenses.

1. Principal facts

The applicant is a Swedish national, Eie Enhorn, who was born in 1947. He is a homosexual. In 1994 it was discovered that he was infected with the HIV virus and that he had transmitted the virus to a 19-year-old man with whom he had first had sexual contact in 1990.

On 2 February 1995 the county medical officer applied to the County Administrative Court (länsrätten) for a court order that the applicant be kept in compulsory isolation in a hospital for up to three months pursuant to section 38 of the 1988 Infectious Diseases Act.

In a judgment of 16 February 1995, finding that the applicant had failed to comply with the measures prescribed by the county medical officer, aimed at preventing him from spreading the HIV infection, the County Administrative Court ordered that the applicant should be kept in compulsory isolation for up to three months pursuant to section 38 of the 1988 Act.

Thereafter, orders to prolong his deprivation of liberty were continuously issued every six months until 12 December 2001. Since the applicant absconded several times, his actual deprivation of liberty lasted from 16 March 1995 until 25 April 1995, 11 June 1995 until 27 September 1995, 28 May 1996 until 6 November 1996, 16 November 1996 until 26 February 1997, and 26 February 1999 until 12 June 1999 – almost one and a half years altogether.

On 12 December 2001 an application to further extend the order was turned down by the County Administrative Court, which referred to the fact that the applicant's whereabouts were unknown and that therefore no information was available regarding his behaviour, state of health and so on. It appears that since 2002 the applicant's whereabouts have been known, but that the competent county medical officer has made the assessment that there are no grounds for the applicant's further involuntary placement in isolation.

2. Procedure and composition of the Court

The application was lodged on 3 April 2000 and declared admissible on 10 December 2002.

Judgment was given by a Chamber of 7 judges, composed as follows:

Jean-Paul Costa (French), President,
András Baka (Hungarian),
Ireneu Cabral Barreto (Portuguese),
Riza Türmen (Turkish),
Mindia Ugrekhelidze (Georgian),

Elisabet Fura-Sandström (Swedish),
Danute Jočienė (Lithuanian), judges,

and also Sally Dollé, Section Registrar.

3. Summary of the judgment

Complaint

The applicant complained that the compulsory isolation orders and his involuntary placement in hospital had been in breach of Article 5 § 1 of the Convention.

Decision of the Court

Being satisfied that the applicant's detention had a basis in Swedish law, the Court proceeded to examine whether the deprivation of the applicant's liberty amounted to "the lawful detention of a person in order to prevent the spreading of infectious diseases" within the meaning of Article 5 § 1 (e) of the Convention.

In view of the limited amount of directly relevant case-law, it was necessary to establish which criteria were relevant when assessing whether such a detention was in compliance with the principle of proportionality and the requirement that any detention must be free from arbitrariness.

The Court found that the essential criteria when assessing the "lawfulness" of the detention of a person "for the prevention of the spreading of infectious diseases" were whether the spreading of the infectious disease was dangerous for public health or safety, and whether detention of the person infected was the last resort in order to prevent the spreading of the disease, inasmuch as less severe measures had been considered and found to be insufficient to safeguard the public interest. When those criteria were no longer fulfilled, the basis for the deprivation of liberty ceased to exist.

In the case under review, it was undisputed that the first criterion was fulfilled, in that the HIV virus was and is dangerous for public health and safety.

It thus remained to be examined whether the applicant's detention could be said to be the last resort in order to prevent the spreading of the virus, because less severe measures had been considered and found to be insufficient to safeguard the public interest.

The Court noted that the Government had not provided any examples of less severe measures which might have been considered for the applicant in the period from 16 February 1995 until 12 December 2001, but had turned out to be insufficient to safeguard the public interest.

Among other things, despite his being at large for most of the period from 16 February 1995 until 12 December 2001, there was no evidence or indication that during that period the applicant transmitted the HIV virus to anybody, or that he had sexual intercourse without first informing his partner about his HIV infection, or that he did not use a condom, or that he had any sexual relationship at all for that matter.

In those circumstances, the Court found that the compulsory isolation of the applicant was not a last resort in order to prevent him from spreading the HIV virus after less severe measures had been considered and found to be insufficient to safeguard the public interest. Moreover, by extending over a period of almost seven years the order for the applicant's compulsory isolation, with the result that he had been placed involuntarily in a hospital for almost one and a half years

in total, the authorities had failed to strike a fair balance between the need to ensure that the HIV virus did not spread and the applicant’s right to liberty.

There had accordingly been a violation of Article 5 § 1 of the Convention.

Judges Costa and Cabral Barreto each expressed concurring opinions, which are annexed to the judgment.