

## **CASE OF D.D. v. LITHUANIA - Application no.\_13469/06 (2012)**

In the Chamber's judgment in the case of **CASE OF D.D. v. LITHUANIA** (2012) the European Court of Human Rights held, unanimously, that there had been:

- **a violation of Article 5 § 4 of the Convention as regards the applicant's inability to obtain her release from the K dainiai Home;**
- **a violation of Article 6 § 1 of the Convention on account the unfairness of the guardianship proceedings;**

### **I. Principal facts**

The applicant, D.D., is a Lithuanian national. Suffering from schizophrenia, the applicant was legally incapacitated in 2000. Her adoptive father was subsequently appointed her legal guardian and, at his request, she was interned in June 2004. She was then placed in the K dainiai care home where she remains to date.

In 2005 and with the assistance of her former psychiatrist and then friend D.G., the applicant asked for the guardianship proceedings to be reopened and D.G. appointed as her guardian. The court held a closed hearing on November 2005, but refused the applicant's request to be assisted by a lawyer on the grounds that her guardian's lawyer would represent her interests. The applicant alleges that she was taken to the judge's office during a break in the hearing and warned not to say anything negative about her adoptive father. After the break she agreed to her adoptive father remaining her guardian but asked to be released from the home. Subsequently, the court refused to reopen the guardianship proceedings.

### **II. Complaints and procedure**

Relying on Article 5 §§ 1 and 4 (right to liberty and security), the applicant complained about being admitted to the K dainiai care home without her consent and without possibility of judicial review. She also alleged that the proceedings she had brought in 2005 to reopen the proceedings concerning her guardianship as well as to have her legal guardian changed had been unfair, in breach of Article 6 § 1 (right to a fair trial).

### **III. Decision of the Court**

Even though the Court was unable to examine the initial appointment of a guardian, as the complaint concerning this aspect of the case had been lodged outside the six-month's time-limit, it could not overlook the fact that the applicant had not participated in the court proceedings for her incapacitation. As regards the proceedings for a change of guardian, given the applicant's problematic relationship with her adoptive father and their conflicting interests, her adoptive father's lawyer could not properly represent her and she should have had her own lawyer. The judge had also refused a request by D.G. for an audio recording to

be made and it appeared that the applicant had not been allowed to sit next to D.G. during the hearing.

The applicant had allegedly been taken to the judge's office during the break and after returning to the hearing room had declared herself content. The general spirit of that hearing had therefore further compounded her feelings of isolation and inferiority, taking a significantly greater toll on her than would have been the case had she had her own legal representation. In the light of the foregoing, the Court concluded that the applicant's proceedings had been unfair and dismissed the Government's objection of abuse of the right of application.

Under the Court's practice, persons of unsound mind who were compulsorily confined in a psychiatric institution should in principle be entitled to take proceedings at reasonable intervals before the court to challenge the lawfulness of their continued detention.

This requirement was all the more important in the circumstances of the applicant's case, where her placement in the home had been requested by her guardian and decided on by municipal and social-care authorities without any involvement of the courts. However, in situations such as the applicant's, the domestic law did not provide for automatic judicial review of the lawfulness of admitting a person to and keeping him or her in an institution such as the home where the applicant stayed.

Moreover, a review could not be initiated by a person who had been deprived of legal capacity. The applicant had, therefore, been unable to independently pursue any legal remedy of a judicial character to challenge her continued involuntary institutionalisation. It appeared that she would only have been able to institute such proceedings through her guardian, the very person who had requested her confinement in the first place.

In these circumstances, the Court considered that where a person capable of expressing a view, despite being deprived of legal capacity, was also deprived of liberty at the request of his or her guardian, he or she must be accorded the opportunity of contesting that confinement before a court with separate legal representation.

In the light of the above, the Court holds that there has also been a violation of Article 5 § 4 of the Convention.

#### **IV. Just satisfaction**

The court held that Lithuania was to pay the applicant 8,000 (EUR) in respect of non-pecuniary damage and 5,000 (EUR) in respect of costs and expenses