

D.D. v Lithuania

The European Court of Human Rights

(Application no. 13469/06)



<http://disabilityrights.law.hku.hk>



Quick Facts

Applicant: D.D.

Member State: Lithuania

Court: European Court of Human Rights

Date Decided: 14 February 2012

Issue: Whether a legally incapacitated person has the right to access to the courts and apply for judicial review of his incapacitation, guardianship appointment and institutionalization proceedings.

Holding: The Court held that the divesting of D.D.'s right to apply for judicial review of her institutionalization violates her right to liberty and security under Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Court also held that the divesting of D.D.'s right to apply for judicial review of her incapacitation and guardianship appointment decision constitutes a violation of the right to a fair trial under Article 6 of the Convention.

Procedural Background

Domestic Remedies

In 2000, the Lithuanian Court declared D.D. legally incapacitated upon the request by her adoptive father, and appointed him as the D.D.'s legal guardian in 2004. In 2005, the Lithuanian Court dismissed D.D.'s requests for a release from institutionalization and a change of legal guardian. The psychiatric hospital and the State-run social care institution further rejected her request for a change of guardianship. D.D. lodged an appeal at the European Court of Human Rights against the Republic of Lithuania to challenge the arbitrary decisions of the Lithuanian Court.

Admissibility

The Court declared the complaints under Article 5 (right to liberty and security), Article 6 (right to a fair trial) and Article 13 of the Convention admissible, and the remaining complaints under Articles 2, 3, 8, 9 and 10 inadmissible.

Context

Lithuania has approximately 6.9% of the population on a mental illness register. D.D.'s case exposes the deficiency of domestic legislation and faulty policies in protecting legally incapacitated individuals. The mental healthcare system in Lithuania largely relies on enclosed mental healthcare institutions. This conflicts with the modern mental health and social policy, which emphasizes individual autonomy and the right to live in the least restrictive environment possible. In response to the poor mental healthcare system, Lithuania implemented the "National Mental Health Strategy" in 2007 based on the WHO Mental Health Declaration for Europe. The national strategy covers a wide range of principles, including a special focus on human rights of mentally disabled persons, as well as support of principles of autonomy and participation.

Case Summary

D.D. is a Lithuanian national who was declared legally incapacitated by the Lithuanian court. She was not informed of nor summoned to the proceedings involving her incapacitation and subsequent guardianship appointment. In addition, D.D.'s request for reopening of her guardianship and institutionalization proceedings was rejected by the Lithuanian court.

The Court pointed out that a “lawful detention of a person of unsound mind” in the context of Article 5 §1 of the Convention requires the measure to deprive a person of his liberty be fair and proper. The ECHR in *Winterwerp v Netherlands* explicitly recognized three minimum conditions that have to be satisfied: (1) the individual concerned must be reliably shown to be of unsound mind; (2) the mental disorder must be of a kind or degree warranting compulsory confinement; and (3) persistence of such a disorder justifies continued confinement. Applying *Winterwerp*, the Court concluded that D.D.'s involuntary institutionalization amounts to “deprivation of liberty” as the administration of the institution has complete control over D.D. in relation to her treatment, accommodation and freedom of movement. However, taking into account the event of escape when D.D. was put under less restrictive confinement, the Court concluded that there was no other appropriate measures available in the circumstances and the involuntary placement was therefore lawful in the context of Article 5 §1 of the Convention.

Article 5 §4 of the Convention guarantees D.D.'s right to apply for periodic judicial review of her involuntary institutionalization. Since Lithuanian laws did not provide for such review, and in practice a legally incapacitated person had no right to apply to court alone, the Court ruled that such legal regulation is in breach of Article 5 §4 of the Convention, which guarantees the right of a person deprived of his liberty to take proceedings by which the lawfulness of the detention must be decided speedily by a court.

Regarding the right to a fair trial guaranteed under Article 6 of the Convention, the Court recognized that the crux of “a fair trial” lies in “*fairness* of the proceedings” rather than “*legality* of the decision”. The fact that a person is mentally ill and placed under guardianship does not necessarily mean that he is incapable of expressing his opinion as to the appropriateness of his guardian.

Special procedural safeguards must be provided to a person who is not fully capable of acting for himself, particularly when there are conflicting interests between the incapacitated person and his guardian. The Court further observed that prosecutorial inquiry cannot be regarded as judicial review. Accordingly, a legally incapacitated person who is deprived of his liberty at the request of his guardian must be accorded the opportunity to contest the “lawfulness” of that confinement before a court, with separate legal representation.

In this case, D.D. had been in a strained relationship with her father before he was appointed as her legal guardian. Since Lithuanian laws do not allow a person without legal capacity to lodge a petition to change his guardianship, D.D. was barred from appealing against the appointment decision. Furthermore, she was neither informed of nor summoned to proceedings regarding her incapacitation, guardian appointment and involuntary institutionalization, which resulted in the eventual limitation of her liberty. The Lithuanian Court has also refused her request for independent legal aid in the proceedings regarding the change of her guardian. The Court therefore concluded that D.D. was deprived of the right to a fair trial.

Resources

- ***D.D. v Lithuania*** (Application no. 13469 / 06)
- ***Kędzior v Poland*** (Application no. 45026 / 07): this case was decided after *D.D. v Lithuania*. The applicant had been formally incapacitated and had thus been unable to apply directly the courts to restore his legal capacity or to challenge his institutionalization. Similar to *D.D. v Lithuania* and *Stanev v Bulgaria*, the European Court of Human Rights held that placement of the applicant in social care homes by guardians had amounted to a deprivation of his liberty.
- The Human Rights Monitoring Institute (HRMI): a Lithuanian NGO with the mission to promote an open democratic society through the implementation of human rights. HRMI represented D.D. in the ECHR case against the Republic of Lithuania. (<http://www.hrmi.lt/en/>)

- D.D. v Lithuania: Written submission by Harvard Project on Disability on the development of international human rights standards as they affect disabled persons with particular reference to access to justice.
- D.D. v Lithuania: Amicus brief by the European Group of National Human Rights Institutions in accordance with Articles 36 § 2 of the European Convention for the Protection of Human Rights and Fundamental Freedom.