

# Mihailovs v Latvia

The European Court of Human Rights

(Application no. 35939/10)



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



## Quick Facts

**Applicant:** Genadijs Mihailovs

**Member State:** Latvia

**Date Decided:** 22 January 2013

**Issue:** The Court considered the complaint related to the continued confinement of Mihailovs in the institution under Article 5§1 (right to liberty and security) and Article 5§4 (right to take proceedings to challenge the lawfulness of the detention in case of deprivation of liberty) of the European Convention on Human Rights. The Court assessed whether the continued confinement amounted to a deprivation of liberty, in which the objective element and the subjective element would have to be established; and if there was a deprivation of liberty, whether such can be justified as “the lawful detention of a person of unsound mind” within the meaning of Article 5§1 of the Convention. In light of Article 5§4 of the Convention, the

Court assessed whether Mihailovs, being deprived of liberty, was entitled to take proceedings to decide speedily whether the detention was lawful and to be immediately released once the detention was found to be unlawful.

**Holding:** The Court held that the placement of Mihailovs in the Īle Centre in Īle parish amounted to a deprivation of liberty and was a violation of Article 5§1 of the Convention; and the Court held that there was a violation of Article 5§4 of the Convention on the ground that Mihailovs was unable “to take proceedings at reasonable intervals” to determine the lawfulness of his continued deprivation of liberty. The Court held that the placement of Mihailovs in the Īle Centre in Lielbērze did not amount to a deprivation of liberty and hence would not violate Article 5§1 or Article 5§4 of the Convention. Mihailovs was awarded an aggregate sum of EUR 15,000 in respect of non-pecuniary damage.

# Procedural Background

## Domestic Remedies

In 2007 Mihailovs applied to the custodial court with a view to have him declared legally capable. The court requested a medical report on his health but did not open proceedings. He failed his second attempt in 2009. Mihailovs contacted the Ministry of Welfare, trying to seek for his release from the social care institution, while the Ministry replied that the termination would only be terminated upon the request of his guardian. Meanwhile, Mihailovs applied to the custodial court to terminate his wife's guardianship of him. He failed in the first two proceedings and finally succeeded in the third set of proceedings in 2011 that the court terminated his wife's guardianship of him and Mr Petrovs was appointed as the new guardian. In 2012, Mihailovs's guardian applied to the Administrative Regional Court seeking the release of Mihailovs from the Īle Centre, but the judge decided not to proceed with the case. Mihailovs's guardian applied in the same year to the Riga Regional Court to reopen the incapacitation proceedings but the application was rejected.

## Case Summary

Mihailovs complained that he had been held against his will in the Īle Centre and submitted that his freedom of movement had been constrained as he could not leave its territory without permission. The Latvian government argued that the applicant's complaints should be assessed from the perspective of his health, and reiterated their previous submission that the Īle Centre had been an open type institution, stressing that he could move around freely inside and outside it. The Court examined the complaint under Article 5§1 (right to liberty and security) and Article 5§4 (right to take proceedings to challenge the lawfulness of the detention in case of deprivation of liberty) of the European Convention on Human Rights. The third parties (the European Disability Forum, the International Disability Alliance and the World Network of Users and Survivors of Psychiatry) in their joint submissions noted that the Committee on the Rights of Persons with Disabilities and the Special Rapporteur on Torture have interpreted any denial of liberty where disability is a factor to be a deprivation of the right to liberty and

thus in conflict with Article 14 of the United Nations Convention on the Rights of Persons with Disabilities, and they submitted that the Court considered the objective as well as the subjective aspects of an alleged deprivation of liberty in order to determine if the breach had in fact happened.

The Court reiterated that in order to determine whether someone has been “deprived of his liberty” within the meaning of Article 5, the starting point must be his actual situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (as set forth in the case of *Stanev v. Bulgaria*). The Court further observed that the notion of deprivation of liberty within the meaning of Article 5§1 does not only comprise the objective element of a person’s confinement in a particular restricted space for a length of time which is more than negligible, but also comprises an additional subjective element that he has not validly consented to the confinement in question.

The Court found that, when being placed in the Īle Centre in Īle parish, Mihailovs was under constant supervision and was not free to leave the institution without permission whenever he wished, and the management of the centre exercised complete and effective control over his treatment, care, residence and movement. Turning to the “subjective” element, the Court reiterates that the fact that the applicant lacked de jure legal capacity to decide matters for himself does not necessarily mean that he was de facto unable to understand his situation (as in the case of *Shtukaturov v Russia*). The Court found that the applicant subjectively perceived his compulsory admission to the Īle Centre as a deprivation of liberty as he had never regarded his admission to the institution as consensual, and had objected to it during his stay there.

After concluding that Mihailovs was deprived of his liberty in the Īle Centre in Īle parish, the Court assessed whether the deprivation could be justified under Article 5§1 (e). As set forth in *Winterwerp v. the Netherlands*, three minimum conditions have to be satisfied in order for there to be “the lawful detention of a person of unsound mind” within the meaning of Article 5§1 (e): the existence of a true mental disorder must be established by a competent authority on the basis of objective medical opinion; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder. The Court noted

that expert medical report, produced in the context of the proceedings for the applicant's legal incapacitation, established that he was suffering from epilepsy but expressly noted that he did not suffer from "a mental illness", and considered that the Latvian government had not proved the existence of the "objective medical opinion" capable of justifying the applicant's detention. Also, the government could not establish the severity of the alleged disorder of Mihailovs. Observing that Mihailovs's placement in the Īle Centre in Īle parish was not ordered "in accordance with a procedure prescribed by law" and that his deprivation of liberty was not justified by Article 5§1 (e) of the Convention, the Court concluded that the placement was a violation of Article 5§1 of the Convention.

In respect of the Article 5§4 of the Convention, the Court found that Latvian law does not provide for automatic judicial review of the lawfulness of admitting a person to and keeping him in an institution like the Īle Centre. In addition, a review cannot be initiated by the person concerned if that person has been deprived of his legal capacity. Mihailovs was prevented from independently pursuing any legal remedy of a judicial character to challenge his continued involuntary institutionalization, pointing to a lack of an effective regulatory framework. The Court was not satisfied by the government's claim that Mihailovs could initiate proceedings before the Constitutional Court to challenge the compliance of specific legal provisions contained in the Law on Social Services and Social Assistance, the Civil Law and the Law on Custodial Court with provisions of superior force, on the ground that Constitutional Court in Latvia is empowered to repeal legal provisions which it finds unconstitutional, but not to adopt new legal procedures or to close an alleged legislative gap, thus it was impossible for Mihailovs to take proceedings at reasonable intervals to determine the lawfulness of his continued deprivation of liberty. The Court found that there has been a violation of Article 5§4 of the Convention as concerns the Īle Centre in Īle parish.

With regard to Mihailovs's stay in the Īle Centre in Lielbērze, the Court was satisfied that there was no deprivation of liberty as he was found to have tacitly agreed to stay there on the grounds that he did leave the centre on several occasions and that he did not approach any domestic authority to allege a breach of his rights. Thus there was no violation of Article 5§1 or Article 5§4 of the Convention.

## Resources

- ***Mihailovs v Latvia*** (Application no. 35939 / 10)