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La CEDU su prolungata reclusione in istituto psichiatrico in assenza di obiettivi e recenti pareri medici
(CEDU, sez. I, sent. 7 aprile 2022, ric. n. 41023/19)

La Corte Edu si pronuncia sul caso riguardante il collocamento del signor XXXXX in un istituto psichiatrico dopo la sua condanna per comportamenti invadenti e minacciosi commessi quando era minorenne e non nel pieno possesso delle sue facoltà mentali.
La Corte ha ritenuto che la proroga della reclusione del ricorrente fosse stata decisa nell'ambito di una procedura non conforme alla legislazione nazionale croata e non basata su obiettivi e recenti pareri medici, non potendo nessuna delle perizie invocate dai tribunali interni essere considerate oggettive, né recenti, ai sensi della consolidata giurisprudenza della Corte.
I giudici di Strasburgo hanno ribadito, infatti, che la privazione della libertà di una persona considerata insana di mente non può essere conforme all'art. 5 § 1 (e) CEDU se disposta in assenza di un parere sufficientemente recente di un medico esperto: la vulnerabilità degli individui che soffrono di disturbi mentali pone la necessità di addurre ragioni solide per giustificare ogni restrizione dei loro diritti, sicché il procedimento che porta al collocamento involontario di una persona in una struttura psichiatrica deve fornire garanzie efficaci contro l'arbitrarietà.
Ebbene, nessuna delle spiegazioni fornite nel caso di specie appariva idonea a giustificare il fatto che non fosse stata disposta una nuova perizia, come prescritto dal diritto interno.
Di qui l'accertata violazione del diritto alla libertà e alla sicurezza del ricorrente.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXXXX v. CROATIA
(*Application no. 41023/19*)

JUDGMENT
STRASBOURG
7 April 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Marko Bošnjak, *President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Davor Derenčinović, *judges*,
and Renata Degener, *Section Registrar*,
Having regard to:
the application (no. 41023/19) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Croatian national, Mr Luka XXXXX ("the applicant"), on 29 July 2019;
the decision to give notice of the application to the Croatian Government ("the Government");
the parties' observations;
Having deliberated in private on 15 March 2022,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the applicant's compulsory psychiatric internment following his criminal conviction for intrusive behaviour and uttering threats, which he was found to have committed while lacking mental capacity. The applicant complains that the prolongation of his compulsory psychiatric internment had been unlawful in that no fresh expert opinion had been obtained in his case. He also complains that he was not served with the written proposal and reasoned opinion of the psychiatric hospital prior to the hearing in his case.

THE FACTS

2. The applicant was born in 1999 and lives in Dramalj. He was represented by Ms I. Dedić, a lawyer practising in Rijeka.
3. The Government were represented by their Agent, Ms Š. Stažnik.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. The applicant's conviction

5. In 2015 a certain D.R., who was a minor at the time, lodged a criminal complaint against the applicant, also a minor at the time, alleging that he had persistently followed, harassed and stalked her since 2013, attempting to establish unwanted contact with her. She stated that the applicant had

on many occasions addressed her with offensive words with sexual connotations. On several occasions he had physically attacked her and had grabbed her by her genitals.

6. On 6 September 2016 D.R.'s mother also lodged a criminal complaint against the applicant alleging that during the summer of 2016, the applicant had frequently visited the neighbourhood where they lived, often called them and mentioned certain details from which it was clear that he had been stalking them for a while. The applicant had also sent disturbing Facebook messages from various profiles.

7. On 19 September 2016 the police informed the Rijeka Municipal State Attorney's Office that minor L.L. had also lodged a criminal complaint against the applicant, alleging that he had sent her threatening Facebook messages because she had refused to talk to him about D.R.

8. In the course of the ensuing criminal proceedings against the applicant, on 7 December 2016 a psychiatrist D.P. and psychologist D.B. submitted an expert report, which stated that the applicant suffered from paranoid schizophrenia, a behavioural and mental disorder aggravated by taking drugs or other harmful substances. At the time of the commission of the criminal offences (tempore criminis) he was in a state of diminished mental capacity and he could not understand the meaning of his actions or control them. The expert report was based on the inspection of the case file, medical documentation and personal examination of the applicant.

9. On 12 January 2017 D.P. produced a supplement to her expert report submitting that the applicant had reduced capacity of standing trial and recommending that the court provide a psychologist who would clarify the questions put to him during court hearings. Furthermore, D.P. stated that the applicant could pose a danger to others due to the unpredictability of his behaviour, given that he was under the influence of psychopathological experiences.

10. On 13 June 2017 the Rijeka Municipal Court found that the applicant, as a minor, had committed criminal offences of two counts of intrusive behaviour and one threat, while lacking mental capacity. Relying on the psychiatric and psychological expert opinions obtained during the criminal proceedings, it decided that the applicant should be placed in a psychiatric hospital for a period of six months.

11. The applicant's appeal against that judgment was dismissed by the second-instance court on 18 August 2017.

I. The applicant's compulsory internment

12. On 15 September 2017 the Rijeka County Court instituted proceedings for the applicant's compulsory internment in the Rab Psychiatric Hospital (hereinafter: "the Rab Hospital") for a period of six months, based on the Rijeka Municipal Court's final judgment (see paragraph 10 above).

13. On 4 October 2017 the applicant voluntarily came to the Rab Hospital, accompanied by his father, and applied for psychiatric treatment.

14. At the same time, the applicant's lawyer lodged an appeal against the decision on his internment, challenging D.P.'s expert opinion on his lack of mental capacity given before the criminal court (see paragraph 8 and 9 above). On 31 October 2017 the Rijeka County Court dismissed the applicant's appeal.

15. On 9 February 2018 the Rab Hospital filed a motion, signed by doctor V.T., with the Rijeka County Court proposing outpatient treatment in respect of the applicant, bearing in mind that: i) he regularly received protective antipsychotic therapy, ii) his hospital treatment was not providing satisfactory results, iii) his parents were aware of the overall situation, iv) they have taken full care of the applicant's therapy, and v) for the purpose of completing secondary education. In its motion, the Rab Psychiatric Hospital also stated that it could not completely rule out the possibility that the applicant continued to pose a danger to himself and others.

16. On 14 February 2018 the Rijeka County Court commissioned a psychiatric expert report on the applicant's mental state from doctor K.R., who was not an employee of the Rab Hospital, with a view to deciding on the motion to replace compulsory internment with treatment at liberty.

17. On 25 February 2018 K.R. submitted her report based on the case file, medical documentation and examination of the applicant. She concluded that she had not currently observed paranoid schizophrenia, which, if it had existed at the time of the commission of the criminal offences, may have gone into remission under the influence of medication. In her view, the applicant suffered from a personality disorder and had a pronounced aggressive potential which could manifest itself in possibly frustrating circumstances. She could not rule out the danger that the applicant posed to others and thus considered it necessary to continue his treatment in the psychiatric institution.

18. On 28 February 2018 the Rijeka County Court held a hearing closed to the public at the premises of the Rab Hospital, in the presence of the applicant, his lawyer, the Rab Hospital's Head of Forensic Psychiatry Department, V.S.J., and expert K.R. K.R. maintained her findings and explained that the applicant could not have been cured during such a short period of hospitalisation. She therefore disagreed with the motion for outpatient treatment because the danger that the applicant posed to himself and others could not be ruled out.

19. Consequently, the Rijeka County Court extended the applicant's internment for another year, until 4 March 2019.

20. In May 2018 the applicant was released on his first therapeutic leave, during which he had again visited the place of residence of D.R., despite clear instructions not to do so.

21. Following the applicant's appeal against the above decision on prolongation of his internment, on 27 June 2018 a three-judge panel of the Rijeka County Court quashed the first-instance decision and remitted the case with an instruction to commission an additional expert report or, if necessary, a new expert witness evaluation. It held that it was not clear from K.R.'s report whether the applicant was still suffering from the same illness that led to the commission of the criminal offences.

22. On 19 July 2018 the Rijeka County Court held a hearing closed to the public and attended by the applicant, his lawyer, the Rab Hospital's doctor V.T, and expert D.P., who was not employed by the Rab Hospital. V.T. changed the hospital's initial recommendation for out-patient treatment and proposed continuation of the applicant's compulsory hospitalization given that his first therapeutic leave in May 2018 had not been successful (see paragraph 20 above).

23. Having interviewed the applicant, expert D.P. explained that her team had been treating the applicant since 2013 with a diagnosis of acute psychotic disorder. Considering all objective parameters, the applicant had been diagnosed with paranoid schizophrenia caused by the use of drugs. He also suffered from behavioural mental disorders of longer duration. In her opinion, the applicant continued to exhibit paranoia-related projective tendencies towards D.R. and her mother

and remained unaware of his condition. She proposed compulsory hospitalisation for a period of one year because such a period had been required to correct his behaviour.

24. The applicant's lawyer requested the court to commission a fresh psychiatric expert evaluation. Her request was dismissed on the grounds that the court had already obtained expert evaluation by D.P., who was not employed by the Rab Hospital.

25. On the same day, the Rijeka County Court extended the applicant's compulsory internment until 4 March 2019. Considering that there was still a possibility that the applicant, due to severe mental disorders, could commit further criminal offences, hospital treatment was required to eliminate that danger.

26. On 5 September 2018 a three-judge panel of the Zagreb County Court (Županijski sud u Zagrebu) allowed the applicant's appeal against the first-instance decision of 19 July 2018 and remitted the case. It held that K.R.'s expert opinion had been overlooked in the fresh proceedings and instructed the first-instance court to re-examine K.R.'s and D.P.'s reports, and, if necessary, to obtain a new psychiatric expert witness evaluation of the applicant's state.

27. At a hearing held on 22 October 2018, the Rijeka County Court heard V.T., and experts D.P. and K.R. Expert D.P. maintained that the applicant's compulsory internment should be continued considering that he was obsessed with the victim at the level of insanity, from which he had not yet been retrieved by previous methods. Expert K.R. submitted that the applicant's symptoms clearly indicated a dissocial personality disorder. The danger to himself and to others stemmed from his persistence in achieving his goal, and it was thus necessary to continue his treatment in a closed institution. Outpatient treatment was not expected to reduce or eliminate his risky behaviour. Representing the Rab Hospital, V.T. also stated that the applicant suffered from a dissocial personality disorder and that he would pose a threat to himself and others if he were to be released.

28. At the same hearing the applicant's lawyer lodged a request for a fresh psychiatric expert evaluation at the Vrapče Psychiatric Hospital. That request was dismissed on the grounds that V.T. and two expert witnesses D.P. and K.R. had all agreed on the applicant's diagnosis and concluded that there had been a need to continue his treatment in a closed institution. Thus, the court extended the applicant's compulsory internment until 4 March 2019.

29. The applicant's appeal against that decision was dismissed by a three-judge panel of the Rijeka County Court on 19 December 2018.

30. In the meantime, on 8 November 2018, the applicant requested that he be released from the psychiatric hospital and continue his treatment at liberty. He based his request on a privately commissioned expert witness evaluation by doctor D.M., who recommended that the applicant's out-of-hospital treatment be considered, with regular reporting to a psychiatrist and the involvement of the parents in the process.

31. On 31 January 2019 the judge forwarded the applicant's request to the Rab Hospital for comments and scheduled a hearing for 13 February 2019.

32. On 7 February 2019 the Rab Hospital filed a motion for the continuation of the applicant's hospital treatment, stating that he had still not achieved a sufficient degree of criticism regarding his condition or the committed criminal offences. The danger which he posed to others had resulted from a disturbed personality structure and dynamics, he had been uncritical and insufficiently aware of his condition, had only formally verbalized remorse, while disobeying hospital rules,

poorly tolerating frustration and responding to warnings with aggression. That submission was not forwarded to the applicant.

33. On 8 February 2019 the Rab Hospital submitted written observations on the applicant's motion for out-of-hospital treatment. The hospital refuted certain statements contained in D.M.'s expert report, relying on relevant medical theory and practice. It further stated that the applicant's resocialization process had begun by his second therapeutic leave in early 2019. However, he had not yet reached the level required for out-patient treatment. While expert D.M. had ruled out the applicant's violent behaviour, all psychological tests had confirmed his aggressiveness and he had recently initiated physical conflict with another patient. That submission was not forwarded to the applicant.

34. At the hearing held on 13 February 2019, the Rijeka County Court served on the applicant's lawyer the Rab Hospital's written observations on his proposal for release as well the Hospital's counter proposal for the continuation of his hospital treatment (see paragraphs 32 and 33 above). The court began the hearing by reading out the applicant's motion for release as well as the Rab Hospital's proposal for continuation of his compulsory psychiatric internment. On behalf of the Rab Hospital, doctor V.T. maintained that it had been necessary to continue the applicant's treatment in the hospital in order to eliminate the danger of committing further criminal offences, since he had still been focused on the victim. According to the applicant's therapist, there had been no adequate response to the therapeutic activities, the applicant's vulgar and inappropriate behaviour towards members and therapists having continued. The applicant's lawyer contested the hospital's motion by noting that she had received it only at that hearing, stressing that the applicant's motion for outpatient treatment had been based on an independent expert opinion by D.M. who should be heard in court and reiterating her request to obtain a fresh expert opinion.

35. At the same hearing, the Rijeka County Court extended the applicant's compulsory internment until 4 March 2020, dismissing his motion for outpatient treatment. The court found that the applicant had continued to suffer from a severe mental disorder (dissocial personality disorder) and that the course of treatment showed that he had remained focused on the victim and insufficiently aware of his condition. The danger to others could not yet be ruled out, thus reducing or eliminating risks by outpatient treatment could not be expected in his current state. The court dismissed the applicant's request to obtain a fresh expert witness evaluation, deeming that the existence of the requirements for the continuation of his compulsory internment had not been called into question.

36. On 24 April 2019 a three-judge panel of the Rijeka County Court dismissed the applicant's appeal against the first-instance court's decision. As regard his complaint that the first-instance court should have commissioned a fresh expert report, it pointed out that the applicant had previously been subjected to an expert witness evaluation during his treatment in the Rab Hospital by K.R. and D.P. Both experts had agreed on the applicant's diagnosis, as well as on the need to continue his compulsory internment.

37. The applicant then lodged a constitutional complaint, claiming that his rights to a fair trial and equality before the law had been violated and that his freedom was disproportionately restricted because the domestic courts had not duly considered replacing compulsory internment with a milder measure, and they had failed to commission a new expert evaluation.

38. On 2 July 2019 the Constitutional Court (Ustavni sud Republike Hrvatske) dismissed his constitutional complaint as ill-founded.

I. Subsequent events

39. According to the Government, on 22 July 2019 the applicant lodged a fresh motion for outpatient treatment. The Rijeka County Court obtained a fresh expert evaluation by K.R., who had concluded that there had been progress in the applicant's treatment. The Head of the Forensic Department of the Rab Hospital warned that the applicant's outpatient treatment should be structured and carried out cautiously. Consequently, the Rijeka County Court accepted the motion to replace compulsory internment with treatment at liberty as of 31 January 2020.
40. In the summer of 2020, the applicant again tried to contact D.R. and his condition deteriorated.
41. On 14 July 2020 the court ordered the applicant's compulsory internment, based on expert K.R.'s fresh recommendation to continue the applicant's treatment under institutionalised conditions as the deterioration had occurred during outpatient treatment. The applicant's compulsory confinement has continued in the Vrapče Psychiatric Hospital.

RELEVANT DOMESTIC LAW

42. The relevant provision of the Criminal Code (Kazneni zakon, Official Gazette no. 125/11, with subsequent amendments), as in force at the material time, reads as follows:

Article 140 – Intrusive behaviour

"(l) Whoever persistently and over a long period of time follows or spies on another, or establishes or seeks to establish unwanted contact with another, or intimidates another in some other way and by doing so provokes anxiety in him or her or causes fear for his or her safety or the safety of persons close to them,
shall be punished by imprisonment not exceeding one year."

43. The relevant provisions of the Code of Criminal Procedure (Zakon o kaznenom postupku, Official Gazette, nos. 52/2008, 76/2009, 80/2011, 91/2012, 143/2012, 56/2013, 145/2013 and 152/2014), as in force at the material time, read as follows:

Article 554

"(1) If the State Attorney has made a request in accordance with Article 550 paragraph 1 of this Code, and the court, upon completion of the trial, establishes that the defendant committed the unlawful act in a state of mental incapacity and that the conditions exist for ordering his or her confinement in a psychiatric hospital or psychiatric treatment at liberty in accordance with the Protection of Individuals with Mental Disorders Act, it shall adopt a judgment determining that the defendant committed the unlawful act in a state of mental incapacity and shall order [his or her] involuntary internment in a psychiatric hospital for a period of six months. The judgment shall also contain a warning to the accused that psychiatric treatment at liberty will be replaced by compulsory

internment in a psychiatric institution if he fails to start treatment at liberty by the date specified in the ruling on referral to a psychiatric institution."

44. The relevant provisions of the Protection of Persons with Mental Disorders Act (Zakon o zaštiti osoba s duševnim smetnjama, Official Gazette no. 76/2014) provide:

Section 13

"(2) Proceedings conducted on the basis of this Act shall be considered urgent."

Section 37

"(1) The compulsorily detained person, legal representative, lawyer, head of the department and, if necessary, a person of trust and the social welfare centre shall be invited to an oral hearing. ...
(2) For an oral hearing, the court may, and upon a reasoned request of the compulsorily detained person or his or her lawyer, has to obtain written findings and opinion of one of the psychiatrist expert witnesses who is not employed at the psychiatric institution where the compulsorily detained person is placed on whether that person has severe mental disorders due to which he or she seriously and directly endangers his or her own or someone else's life, health or safety...
(3) Exceptionally, if due to the impossibility of meeting the deadline referred to in section 36(7) of this Act or other objective circumstances, it is not possible to act in the manner specified in paragraph 2 of this section, the written findings and opinion may be given by a psychiatrist expert witness employed by the institution where the compulsorily detained person is staying, who had not previously decided on his/her compulsory detention.
(4) A psychiatrist expert witness shall submit the written findings and opinion to the court upon the personal examination of the compulsorily detained person.
...
(7) The court shall allow the compulsorily detained person, person of trust, legal representative, lawyer and head of the department to state all the facts relevant to issuing a decision on compulsory internment and to ask questions to the psychiatrist expert witness and other persons heard at the hearing."

Section 40

"(1) If a psychiatric institution determines that a compulsorily detained person should remain in internment even after the expiration of the duration thereof determined by the court decision, it is obliged to propose to the court an extension of internment no later than seven days before its expiry.
(2) The court shall issue a decision on the extension of the internment in accordance with the same procedure as the first decision on involuntary placement.
(3) The court is obliged to issue a decision on the extension of the internment before the expiry of the previously determined [period].

(4) With the decision referred to in paragraph 2 of this section, the court may extend the involuntary placement of a person in a psychiatric institution for up to three months from the expiration of the time set out by the decision on involuntary placement referred to in section 39(3) of this Act.
(5) Any further involuntary placement may be extended by a court decision for a period of up to six months."

Section 47

"(1) A compulsorily detained person shall be released from a psychiatric institution before the expiration of the time for which the internment was determined if it is established that the reasons for involuntary placement referred to in section 27 of this Act have ceased to exist. A reasoned decision on early release ... shall be issued by the head of the department.
(2) The psychiatric institution shall be obliged to send the decision on early release of a compulsorily detained person to the court that issued the decision on involuntary placement without delay.
(3) The decision on early release of a compulsorily detained person may also be issued by the court ex officio or at the proposal of the compulsorily detained person, their legal representative or lawyer if it finds that the reasons for internment referred to in section 27 of this Act have ceased to exist.
(4) In the procedure of early release referred to in paragraph 3 of this section, the court shall apply mutatis mutandis the provisions of sections 34 to 39 and 41 to 44 of this Act."

Section 51

"(1) In criminal proceedings the court shall order the compulsory internment of a person lacking mental capacity in a psychiatric institution for a period of six months if, based on the opinion of a psychiatrist expert witness, it finds that the person could again commit an aggravated criminal offence owing to severe mental disorders, causing the lack of mental capacity, and that treatment in a psychiatric institution is necessary to eliminate that danger."

Section 58

"(1) The psychiatric institution shall lodge a reasoned motion for the extension of compulsory internment in a psychiatric institution with the competent court at least fifteen days before the expiry of the compulsory internment of a person lacking mental capacity in a psychiatric institution if the reasons referred to in section 51(1) of this Act still exist.
...
(3) A motion for release from a psychiatric institution or for the replacement of compulsory internment with psychiatric treatment at liberty may be lodged with the competent court by the psychiatric institution at any time, and a motion for release from a psychiatric institution, for the replacement of compulsory internment with psychiatric treatment at liberty or for the termination of psychiatric treatment at liberty may be filed by a person lacking mental capacity, his or her legal representative or lawyer, once every six months."

Section 59

"(1) The motion for the extension of compulsory internment or psychiatric treatment at liberty, for the replacement of compulsory internment with psychiatric treatment at liberty, for the release of a person lacking mental capacity from a psychiatric institution or the termination of psychiatric treatment at liberty shall be decided by the court on the basis of a hearing, applying in an appropriate manner the provisions of sections 37 to 41 of this Act.
(2) If, after the proceedings the court finds that the requirements for the compulsory internment of a person lacking mental capacity referred to in section 51(1) of this Act, or for ordering his or her psychiatric treatment at liberty referred to in section 51(2) of this Act continue to exist, it shall issue a ruling extending compulsory placement or extending psychiatric treatment at liberty for up to one year. Any further extension of the compulsory internment or treatment at liberty may be for a period of up to one year without exceeding the period referred to in section 56 of this Act."

45. In the final proposal of the Protection of Persons with Mental Disorders Act, dated May 2014, the relevant explanation concerning section 37 of the Act reads as follows:

"...It is also prescribed that the court may, and at the request of the person with mental disorders or their lawyer in any event must, obtain an independent expert opinion. Namely, the practice has shown shortcomings in the procedures of obtaining expert opinions, especially in smaller communities where experts are usually employees of psychiatric institutions. In these cases, the independence of the expert in the specific expertise may be questionable. Therefore, it was necessary to stipulate that the court is obliged to ensure the right of a person with mental disabilities to request independent expertise, which is in accordance with Article 6 of the Convention, according to which the quality of medical examination is decisive for the lawfulness of court proceedings, and with Article 5 of the Convention which stipulates that it is necessary to ensure the protection of persons with mental disabilities from arbitrary decisions on their freedom."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

46. The applicant complained that his involuntary internment in the psychiatric hospital as ordered by the decision of the Rijeka County Court of 13 February 2019 had been in breach of Articles 5 § 1 and 6 § 1 of the Convention. On the one hand, the court had failed to obtain a fresh expert opinion when ordering the continuation of his internment and, on the other, it had failed to forward to his lawyer the opinion and the proposal of the Rab Hospital prior to the hearing of 13 February 2019.
47. Being master of the characterisation to be given in law to the facts of the case (see Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), the Court considers that the applicant's complaints should be examined under Article 5 §§ 1 and 4 of the Convention, which, in so far as relevant, read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
...
(e) the lawful detention ... of persons of unsound mind, ..."
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

48. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

49. The applicant maintained that the domestic courts had failed to properly assess whether his condition warranted continuation of his psychiatric internment and that the judicial decisions in that regard had not been accompanied by adequate procedural safeguards. Nor had the principles of adversarial proceedings and equality of arms been respected.
50. He had filed his motion for outpatient treatment on 8 November 2018, basing it on a privately-commissioned expert report, which concluded that he had most likely not suffered from any mental disorder at the time when the offences had been committed and that his condition allowed for treatment in an outpatient setting. The report also noted that, given his young age and lack of trust in the Rab Hospital staff, he was more likely to resolve his difficulties with outpatient treatment and closer relationship with his parents.
51. According to the applicant, following his request for release, the court acted unlawfully in that it refused to obtain a fresh expert evaluation. Instead, it unjustifiably extended his involuntary placement, relying solely on the submissions of the institution and ignoring D.M.'s expert report. Moreover, the second-instance court erroneously pointed out that the applicant had already been subject to independent expert evaluations by K.R. and D.P., disregarding the fact that those opinions had been obtained earlier in the proceedings and not for the purpose of the hearing held on 13 February 2019.
52. Finally, the applicant stressed that the court had failed to communicate to him, prior to the hearing of 13 February 2019, the Rab Hospital's comments on his request for out-patient treatment, as well as its counter-proposal on prolongation of his psychiatric internment, thereby breaching the principles of adversarial proceedings and equality of arms.

(b) The Government

53. The Government maintained that during the criminal proceedings the applicant had been evaluated by two expert witnesses, who concluded that he had suffered from serious mental disorders and posed a danger to others warranting his psychiatric internment. The applicant's mental state had thus been reliably determined at the time of the imposition of compulsory interment by the judgment of the criminal courts.

54. Furthermore, during his compulsory hospitalisation, the applicant had been subjected to a further psychiatric expert witness evaluation by K.R., who had based her findings on the medical documentation and her examination of the applicant. In addition, during the entire period of his compulsory internment, the domestic court had also been provided with the statements and opinions of the Rab Hospital doctors, who had given their reasons for proposing the extension of the applicant's treatment based on his daily monitoring by an entire team of medical staff.

55. The Government stressed that all experts involved in the proceedings had unanimously concluded that the applicant had posed a danger to himself and others, as he had remained obsessed with the victim and lacked any real awareness of his condition.

56. Moreover, throughout the impugned period the court carefully considered the application of more lenient measures and the justification for the applicant's further confinement on the basis of regular reports by the Rab Hospital on developments in his treatment and behaviour. Thus, when the risk of reoffending had been minimized and positive developments in the applicant's treatment achieved, the court approved his outpatient treatment in January 2020. However, due to a subsequent deterioration in his condition, the applicant was again hospitalised several months later.

57. The Government further argued that the applicant enjoyed full access to court, by participating and presenting motions and opinions, personally and through his chosen representative. He had had direct contact with the lawyer of his choosing, who effectively represented him throughout the proceedings before the domestic courts, actively and comprehensively protecting his interests. What is more, the applicant had the opportunity to have reviewed the lawfulness of the decisions to extend his compulsory internment. Oral hearings, which he attended, were held at regular intervals before the domestic court.

58. As regards the hearing of 13 February 2019, the Government submitted that the court had had all the information necessary to issue its decision on the extension of the applicant's compulsory internment, which had comprised the medical documentation on the course of his treatment, the reports on his behaviour in the hospital and during therapeutic leave, written observations and statement of the Rab Hospital on the applicant's motion for outpatient treatment, the opinion of doctor V.T., who had not been previously involved in decisions on the applicant's compulsory internment and the oral opinion produced by expert K.R. at a hearing held only four months previously. Thus, in the Government's view, the domestic court's decision extending the applicant's compulsory internment had been based on a "sufficiently recent" psychiatric expert witness evaluation, and there had been no medically justified reason to obtain a fresh expert evaluation as requested by the applicant.

59. The Government further noted that the court served the motion for the extension of compulsory internment and the opinion of the Rab Hospital on the applicant's motion for outpatient treatment on the applicant immediately at the beginning of the hearing of 13 February 2019. The applicant and

his lawyer did not ask the court to adjourn the hearing in order to study those materials, but instead engaged in discussing the content of those documents.

60. As regards D.M.'s private expert witness evaluation, the Government observed that he was not a specialist in the field of forensics, and that the Rab Hospital had presented clear arguments challenged his findings. The domestic court considered two opposing opinions, taking into consideration all the evidence submitted on the applicant's behaviour and his state of health. It was thus able to reach an impartial conclusion as to the redundancy of hearing D.M. in court.

1. The Court's assessment

(a) As regards Article 5 § 1 of the Convention

(i) General principles

61. The Court reiterates that Article 5 § 1 (e) of the Convention permits detention of persons of "unsound mind" only when both the substantive and procedural requirements for such detention are met (see Zagidulina v. Russia, no. 11737/06, § 54, 2 May 2013).

62. Substantively, an individual cannot be deprived of his liberty as being of "unsound mind" unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind, that is, a true mental disorder must be established before a competent authority on the basis of objective medical expertise; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see Ilnseher v. Germany [GC], nos. 10211/12 and 27505/14, § 127, 4 December 2018, and Rooman v. Belgium [GC], no. 18052/11, § 192, 31 January 2019). In deciding whether an individual should be detained as a person "of unsound mind", the national authorities are to be recognised as having a certain discretion, since it is in the first place for them to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see Ilnseher, cited above, § 128).

63. The Court further reiterates that no deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert. Any other approach falls short of the required protection against arbitrariness, inherent in Article 5 of the Convention (see Kadusic v. Switzerland, no. 43977/13, § 43, 9 January 2018, with further references). Moreover, the objectivity of the medical expertise entails a requirement that it was sufficiently recent, the assessment of which depends on the specific circumstances of the case before it (see Ilnseher, cited above, § 131, and the references therein).

64. Procedurally, the expressions "lawful" and "in accordance with a procedure prescribed by law" under Article 5 § 1 of the Convention essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law. The notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see M.S. v. Croatia (no. 2), no. 75450/12, § 140, 19 February 2015, with further references).

65. Finally, in order to comply with Article 5 § 1 (e) of the Convention, the proceedings leading to the involuntary placement of an individual in a psychiatric facility must necessarily provide clearly effective guarantees against arbitrariness given the vulnerability of individuals suffering from mental disorders and the need to adduce very weighty reasons to justify any restriction of their rights (see M.S. (no. 2), cited above, § 147).

(ii) Application of the above principles to the present case

66. The Court notes that the applicant was initially deprived of his liberty by virtue of the Rijeka County Court's judgment of 13 June 2017 ordering his placement in a psychiatric hospital for a period of six months (see paragraph 10 above). His detention could thus fall under Article 5 § 1 (a) as being detention "after conviction" by a "competent court", and/or under Article 5 § 1 (e) as constituting detention of a person of "unsound mind".
67. In view of the fact that his continued deprivation of liberty was prolonged on two occasions, based on a finding by the domestic courts that the applicant suffered from a mental disorder and was therefore of "unsound mind", the Court considers it appropriate to examine the complaint under Article 5 § 1 (e) (see X v. the United Kingdom, 5 November 1981, § 39, Series A no. 46; Puttrus v. Germany, (dec.), no. 1241/06, 24 March 2009; and Graf v. Germany, (dec.), no. 53783/09, 18 October 2011).
68. The Court will first examine whether the procedure followed by the domestic courts had been "prescribed by law" as required by Article 5 § 1 of the Convention.
69. In that connection, the Court observes that under section 37(2) of the Protection of Persons with Mental Disorders Act, when deciding on the periodic prolongation of a person's compulsory internment or his or her request for out-of-hospital treatment, at a reasoned request of the person concerned, the domestic court is as a rule under the obligation to obtain a fresh expert opinion from a person not employed by the institution concerned (see paragraph 44 above). According to section 47(4) of the Protection of Persons with Mental Disorders Act, the same procedure is to be applied mutatis mutandis to requests for early release (ibid.)
70. The Court further observes that section 37(3) of the Protection of Persons with Mental Disorders Act provides for an exception from obtaining an independent expert opinion, in cases when this would not be possible due to the impossibility of meeting the deadline for prolongation of one's internment or other objective circumstances. In such cases, written findings and opinion on the person's mental state may be given by a psychiatrist expert witness employed by the institution where the compulsorily detained person was staying, provided that that person had not previously decided on his or her compulsory detention (see paragraph 44 above).
71. It is not disputed that in the present case the applicant's lawyer submitted a reasoned request for obtaining an independent expert opinion at the hearing held on 13 February 2019. Her request was rejected by the first-instance court because "the existence of the requirements for the continuation of the applicant's compulsory internment had not been called into question" (see paragraph 35 above). Replying to the same argument in the applicant's appeal, the appellate court stated that he had previously been subjected to an expert witness evaluation by K.R. during his treatment (see paragraph 36 above). None of these explanations, in the Court's view justify the fact

that no fresh expert evaluation had been requested in the applicant's case, as prescribed by domestic law (see in this connection also the travaux préparatoires of the Protection of Persons with Mental Disorders Act cited at paragraph 45 above).

72. The Court further notes that none of the domestic courts explained why it had been necessary to disregard the applicant's clear and reasoned request to obtain a fresh expert opinion and follow the exceptional procedure prescribed by section 37(3) of the Protection of Persons with Mental Disorders Act. While it is true that the previous decision on the applicant's internment was about to expire on 4 March 2019, as the applicant rightly pointed out, the Rijeka County Court had ample time to obtain a fresh expert opinion between the moment the applicant had submitted his proposal for out-patient treatment on 8 November 2018, and the holding of the court hearing on 13 February 2019. Instead, despite the fact that the proceedings were considered urgent under domestic law (see section 13 of the Protection of Persons with Mental Disorders Act, cited in paragraph 44 above), the Rijeka County Court took no action on the applicant's motion for release for almost three months and forwarded it to the Rab Hospital for observations as late as 31 January 2019 (see paragraph 31 above). None of the domestic courts have sought to explain, nor does the Court see any justification for, such an excessive delay in a situation involving urgent domestic procedures and strict deadlines.

73. Furthermore, even assuming that the other conditions for applying the exceptional procedure as prescribed in section 37(3) of the Protection of Persons with Mental Disorders Act had been met, the court did not obtain an opinion of a psychiatrist expert witness employed by the institution where the applicant was staying, who had not previously decided on his internment. Indeed, the only person who had given an opinion on the need for the applicant's continued internment on which the Rijeka County Court ultimately based the impugned decision of 13 February 2019 was doctor V.T., acting on behalf of the Rab Hospital, who had been involved in previous decisions concerning the prolongation of the applicant's internment. Notably, she had filed on behalf of the Rab Hospital the proposal for the applicant to be released in February 2018, which she amended at the hearing held on 19 July 2018 proposing his continued internment (see paragraphs 15 and 22 above), and gave evidence on the applicant's diagnosis and the need for his continued internment at the hearing held on 22 October 2018 (see paragraph 27 above).

74. The Court further notes that, having refused the applicant's proposal to obtain a fresh expert opinion, in addition to the hospital's opinion, the domestic courts based their decisions on expert evaluations of K.R. and D.P. which were not only initially in disagreement about the applicant's diagnosis, but at the time of ordering his continued internment had been one and two years old, respectively (see paragraphs 8, 9 and 17 above). In such circumstances, the Court is not convinced that either of those expert opinions could be considered both objective and recent within the meaning of the Court's case-law on Article 5 § 1 (e) (see Kadusic, cited above, § 55; and Herz v. Germany, no. 44672/98, § 50, 12 June 2003).

75. Bearing in mind that the question whether medical expertise was sufficiently recent cannot be answered in a static way but depends on the specific circumstances of the case before it (see, among many other authorities, M.B. v. Poland, no. 60157/15, § 64, 14 October 2021), the Court would in addition note the following. Already when the applicant's internment was being prolonged for the first time, the appeal court had repeatedly instructed the first-instance court to obtain a fresh expert report (see paragraphs 21 and 26 above), which the latter did not do at the relevant time. It transpires

from the facts of the case that the applicant, who was of a very young age, had previously shown changes in his condition (see for instance paragraphs 15 and 22 above, when the Rab Hospital first proposed his release and subsequently his prolonged internment due to a change in circumstances). Moreover, a recent privately-commissioned expert opinion the applicant had submitted in support of his request for early release, implied that his condition had further evolved (see paragraph 50 above). In such circumstances, and in order to obtain the most accurate information on the applicant's mental health at the time of his request for discharge, the court should at least have sought a fresh medical expert opinion (compare Ruiz Rivera v. Switzerland, no. 8300/06, § 64, 18 February 2014).

76. In conclusion, the Court notes that the assessment of the applicant's mental state at the moment of prolonging his internment had on the whole been adopted in a procedure at odds with the relevant provisions of the domestic legislation and had not been based on objective and recent medical expert opinion.

77. The applicant's position in the ensuing proceedings was further compromised by the fact that he had not learned about the Rab Hospital's counterproposal for his continued internment or its opinion on his request for release of 7 and 8 February 2019, respectively (see paragraphs 32 and 33 above), prior to the hearing of 13 February 2019.

78. The above procedural failures obviate the need for the Court to examine whether the national authorities met the substantive requirement for the applicant's involuntary internment by proving that his mental condition had necessitated continued deprivation of his liberty (see M.S. (no. 2) v. Croatia, cited above, § 161).

79. There had accordingly been a violation of Article 5 § 1 in the present case.

(b) Article 5 § 4 of the Convention

80. The applicant also complained that the court had failed to communicate to him two crucial submissions by the Rab Hospital, thereby breaching the principles of adversarial proceedings and equality of arms.

81. Having regard to its findings under Article 5 § 1 above, in which it took into account the fact that the applicant had not been served the two submissions by the Rab Hospital prior to the hearing held on 13 February 2019 (see paragraph 77 above), the Court considers that it is not necessary to examine separately whether, in this case, there has also been a violation of Article 5 § 4.

I. APPLICATION OF ARTICLE 41 OF THE CONVENTION

82. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

83. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;
2. Holds that there has been a violation of Article 5 § 1 of the Convention;
3. Holds that it is not necessary to examine separately the complaint under Article 5 § 4 of the Convention;

Done in English, and notified in writing on 7 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Marko Bošnjak
Registrar	President