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Warsaw, 30 March 2016

██████████ **against POLAND**
(Application No. 20206/11)

WRITTEN COMMENTS
BY
THE HELSINKI FOUNDATION FOR HUMAN RIGHTS

1. Introduction

Pursuant to the letter of Ms. F. Elens-Passos, the Section Registrar of the Fourth Section from 9 March 2016, the Helsinki Foundation for Human Rights (henceforth also “HFHR”) with its seat in Warsaw, would like to respectfully present to the European Court of Human Rights the written comments on the case of ██████████ *against Poland* (app. no. 20206/11).

Due to the nature of third-party intervention, these written comments will refrain from any comments on facts, merits and admissibility of the case and will focus only on legal problems of a general character. The opinion will be divided into three parts. In the first part we will briefly present the legal framework regarding grounds and procedure of involuntary placement in psychiatric hospital in Poland. In the second part we will analyze the question of lengthiness of proceedings regarding lawfulness of involuntary commitment to the psychiatric hospital in the light of the provisions of the 1994 Mental Health Protection Act (hereinafter: MHPA) and statistical data. The last part will focus on legal aspects of the right to compensation for unlawful psychiatric hospitalization.

2. Legal framework

The procedure and substantive grounds for compulsory placement of not incapacitated person in psychiatric hospital are regulated in MHPA.

The MHPA provides three grounds of involuntary commitment to psychiatric hospital:

- involuntary commitment of mentally ill person whose behaviour indicates that due to his/her illness he/she threatens his/her own life or life or health of others (Article 23);
- involuntary commitment of person whose behaviour indicates that due to mental disorder he/she threatens his/her own life or life or health of others and there are doubts as to whether he/she is mentally ill (Article 24);
- involuntary commitment of mentally ill person whose behaviour indicates that without compulsory placement in the psychiatric hospital his/her health would seriously deteriorate or

who is unable to satisfy his/her own basic life needs independently and there is a justified expectation that compulsory treatment in the psychiatric hospital would bring an improvement of his/her health (Article 29).

Decision as to compulsory placement in the psychiatric hospital on the basis of Article 23 is taken by the doctor after examination of the person and, if this is possible, consultation with other psychiatrist or psychologist. The decision on compulsory placement has to be confirmed by the head of department of the hospital within 48 hours since placement, who then has to notify the guardianship court. Subsequently the guardianship court decides whether involuntary commitment was justified (see below).

Involuntary commitment on the basis of Article 24 of MHPA has a different purpose than that carried out on the basis of Article 23. Its purpose is to observe the person deprived of liberty and to confirm or exclude doubts as to his/her mental health condition and dangerousness for himself/herself or others. Because of that, involuntary commitment on the basis of this provision cannot exceed time needed for observation of the person, that is maximum 10 days.

Person who meets the criteria defined in Article 29 of MHPA may be compulsorily placed in the psychiatric hospital on the basis of judgment of guardianship court issued upon the motion of spouse of such person, his/her relatives in direct line, siblings, guardian or person who exercises actual care over him/her. If the person is covered by social assistance programs within the meaning of Article 8 of MHPA, such a motion may be filed also by social assistance authorities. To the motion there have to be attached medical certificate which justify in details the necessity of compulsory treatment in the psychiatric hospital, issued no longer than 14 days before the day of filing a motion. If it was impossible to attach the medical certificate but the motion seems justified, the court orders psychiatric examination of the person, which may be carried out even if person concerned does not agree on it.

The role of the guardianship court in the procedure regarding involuntary commitment of the person to psychiatric hospital varies depending on the legal basis of placement. If the person is deprived of his/her liberty on the basis of Articles 23 or 24, the judicial supervision has *post factum* character, that is it is exercised after the person was already placed in the hospital. On the other hand, under Article 29 the court's involvement takes place before the person is deprived of his/her liberty, what means that without the court's approval the person concerned cannot be compulsorily hospitalized.

The procedure before the guardianship court regarding involuntary placement in the psychiatric hospital is regulated in details in Articles 42-49 of MHPA. The law provides certain accommodations for persons who are the subjects of the proceedings. For example, the guardianship court may appoint a professional representative for person concerned even if he/she did not filed a motion for that (unfortunately, the appointment of a representative by the court is only facultative and not obligatory). Moreover, legal writings of such person do not have to satisfy all formal requirements defined in the Code of Civil Procedure. The court may also hold a hearing in the psychiatric hospital where the person stays if this is justified by the interest of such person.

Person has to be released from the psychiatric hospital when:

- the visiting judge decides that compulsory placement on the bases of Articles 23 or 24 was manifestly unjustified (see below);
- the guardianship court decides that compulsory placement on the bases of Articles 23 or 24 was unjustified (see below);
- the head of department of the psychiatric hospital decides that person has to be released due to the fact that grounds which justified compulsory placement and stay in the hospital ceased to exist (Article 35 section 1 of MHPA);
- the guardianship court orders release of the person from the hospital upon the motion of the person concerned, his/her spouse, his/her relatives in direct line, siblings, guardian or person who exercises actual care over him/her; such motion may be filed only if the head of the department of the hospital had refused to release the person upon his/her request or request of persons enumerated above (Article 36 section 3 of MHPA).

3. Length of proceedings regarding the justification of detention in a psychiatric hospital on the basis of Article 23 of MHPA

Due to the fact that judicial supervision over involuntary commitment to a psychiatric hospital on the basis of Article 23 of MHPA has only a *post factum* character (see above), it is very important for the court to act without any unreasonable delays. The longer the person stays in the psychiatric hospital without court's approval, the greater harm he/she may suffer if the deprivation of liberty was not justified.

According to Article 41(2) of the Constitution of Poland, "Anyone deprived of liberty, except by sentence of a court, shall have the right to appeal to a court for immediate decision upon the lawfulness of such deprivation." Term "deprivation of liberty" used in this provision refers not only to deprivation of liberty in prisons, arrests etc. but also to psychiatric institutions or sobering-up centres. Therefore, in the light of the Constitution, also persons involuntarily committed to the psychiatric hospitals, have a right to appeal to court for "immediate" decision upon the lawfulness of their deprivation. The Constitution does not specify, however, what time may qualify as "immediate" within the meaning of Article 41(2) or what are the consequences of issuing a decision after a longer time. Only in relation to detention in the context of criminal proceedings Article 41(3) of the Constitution specifies that person may be deprived of his/her liberty up to 72 hours without the approval of the court after which he/she has to be released unless the court decides within this period on pre-trial detention of this person.

Certain guarantees of promptness of proceedings before the guardianship court regarding the lawfulness of detention in a psychiatric hospital are provided in Article 23 and Article 45 of the Mental Health Protection Act. According to Article 23 decision on involuntary commitment to psychiatric hospital has to be confirmed by the head of department of the hospital within 48 hours since commitment. Subsequently, within 72 hours since commitment, the head of department of the hospital has to notify the guardianship court.

Within 48 hours since the delivery of the abovementioned notification, judge visiting a hospital is obliged to hear the hospitalised person. If a judge finds out that the involuntary commitment was manifestly unjustified, he/she may order immediate release of the person from

the hospital. However the term “manifestly unjustified” is interpreted very restrictively and in practice it is very rare that visiting judge order immediate release of the person.

Helsinki Foundation of Human Rights asked three randomly selected courts (District Court in Warsaw Praga-Północ, District Court in Gliwice and District Court in Lublin-Zachów) to provide statistical data as to how many decisions on immediate release of person due to manifestly unjustified placement of them in the psychiatric hospital were issued by visiting judges of their courts in last 5 years. According to District Court in Gliwice visiting judges have not issued any such decision in last 5 years (in 2010 the District Court reviewed 103 cases regarding involuntary commitment to psychiatric hospital, in 2011 – 129, in 2012 – 110, in 2013 – 190, in 2014 – 97, in 2015 – 95). Exactly the same information was provided by District Court in Warsaw Praga-Północ (in 2010 the District Court reviewed 29 cases regarding involuntary commitment to psychiatric hospital, in 2011 – 52, in 2012 – 71, in 2013 – 55, in 2014 – 58, in 2015 – 24). According to District Court in Lublin-Zachód there was 1 such decision in 2010 (among 501 cases reviewed by the District Court in that year), no such decisions in years of 2011-2013 (among respectively 515, 486 and 423 cases reviewed by the District Court in each of these years), 2 decisions in 2014 (among 387 cases reviewed) and 2 decisions in 2015 (among 416 cases reviewed).

Therefore, in vast majority of cases the lawfulness of involuntary commitment to psychiatric hospital has to be reviewed by the guardianship court. The decision as to whether the hospitalization was justified or not is issued after the hearing which must be held within 14 days of the delivery of the abovementioned notification (Article 45 section 1 of the MHPA). According to some legal scholars 14 days time-limit is too short for the court to analyze all medical data and notify all interested parties about the date of the hearing.¹ Nevertheless, law provides only time-limit for holding a hearing and does not set any deadlines for issuing of the decision by the court. Moreover, time-limit for holding a hearing has only instructive character and the law does not provide any sanctions for exceeding it.² In particular, there is no provision which would guarantee that if the guardianship court does not issue a decision in a certain time the involuntarily committed person would be automatically released. Therefore, the analysed provision cannot be considered as an effective safeguard of the right of the person to have his/her case reviewed immediately.

In order to establish the actual length of proceedings before the guardianship courts, the HFHR analysed statistical data provided to us by six district courts: District Court of Gliwice, District Court in Starogard Gdański, District Court in Lubliniec, District Court of Radom, District Court in Białystok and District Court in Warszawa Śródmieście. The courts were randomly selected among the district courts territorially competent for locations of the larger psychiatric hospitals. All the courts were asked to provide the list of cases regarding lawfulness of involuntary commitment under Article 23 of the MHPA with indication of the day of initiation of the proceedings (i.e. day of delivery of the notification of the head of department of the psychiatric hospital) and the day of their finalization. HFHR analysed the data for the last 3 years (i.e. 2013-2015).

¹ See: J. Duda, *Komentarz do ustawy o ochronie zdrowia psychicznego*, Warszawa 2012, p. 61.

² See: P. Gałęcki, K. Bobińska, K. Eichstaedt, *Ustawa o ochronie zdrowia psychicznego. Komentarz*, Warszawa 2013, pp. 201-202.

The result of the analysis is presented in the tables below:

1) 2013

District Court	Number of initiated proceedings	Percentage of proceedings finalized in:						
		1-3 days	4-7 days	8-14 days	15 days – 1 month	1 month – 1 month and 2 weeks	1 month and 2 weeks – 2 months	2 months and more
Białystok	237	0,8%	0,4%	86,1%	8%	3%	1,3%	0,4%
Gliwice	193	1,6%	0,5%	25,9%	63,2%	5,7%	0,5%	2,6%
Lubliniec	307	22,5%	12,3%	3,6%	25,2%	23,5%	11,6%	1,3%
Radom	166	0,6%	1,2%	59%	32,5%	4,2%	1,8%	0,6%
Starogard Gdański	170	–	–	32,9%	32,3%	10,2%	17,4%	7,2%
Warszawa Śródmieście	244	28,4%	14%	11,1%	2,9%	9,9%	12,3%	21,4%

2) 2014

District Court	Number of initiated proceedings	Percentage of proceedings finalized in:						
		1-3 days	4-7 days	8-14 days	15 days – 1 month	1 month – 1 month and 2 weeks	1 month and 2 weeks – 2 months	2 months and more
Białystok	247	0,4%	–	81,4%	6,5%	9,3%	1,2%	1,2%
Gliwice	193	0,5%	–	15,5%	65,8%	5,2%	3,1%	9,8%
Lubliniec	331	13,3%	15,1%	3,3%	14,5%	29,9%	19%	4,8%
Radom	163	–	0,6%	68,1%	22,7%	3,1%	2,4%	3,1%
Starogard Gdański	153	–	–	41,7%	15,2%	3,3%	19,9%	19,9%
Warszawa Śródmieście	219	32,7%	14,7%	24,9%	9,2%	2,8%	7,4%	8,3%

3) 2015

District Court	Number of initiated proceedings	Percentage of proceedings finalized in:						
		1-3 days	4-7 days	8-14 days	15 days – 1 month	1 month – 1 month and 2 weeks	1 month and 2 weeks – 2 months	2 months and more
Białystok	195	1,5%	–	80%	5,6%	7,7%	3,6%	1,5%
Gliwice	198	3,5%	–	17,2%	69,2%	2%	1%	7,1%
Lubliniec	260	11,1%	14,1%	2,7%	17,9%	39,7%	6,9%	7,6%
Radom	121	–	0,8%	60,3%	24%	5,8%	2,5%	6,6%
Starogard Gdański	136	–	–	40,6%	21,8%	3%	11,3%	23,3%
Warszawa Śródmieście	191	29,8%	10,6%	28,2%	16,5%	–	4,8%	10,1%

The analysis reveals that substantial amount of proceedings lasted longer than 14 days, what means the cases were not finalized on the first hearing held in accordance with the time-limit set in Article 45(1) of the MHPA. The average time of proceedings varied between different compared courts. In District Court in Białystok more than 80% of cases were solved in 2 weeks since the initiation of the proceedings. On the other hand, in District Court in Starogard Gdański in 2013 around 35% of proceedings, in 2014 – more than 43% and in 2015 around 37% of

proceedings lasted longer than one month. Particularly worrisome is relatively large number of proceedings which lasted longer than 2 months, e.g. around 20% in District Court in Warszawa-Śródmieście in 2013, around 10% in District Court for Gliwice or around 23% in District Court in Starogard Gdański in 2015. Certain individual proceedings lasted exceptionally long – for example cases ref. nos RNs 38/15 and RNs 266/15 before the District Court in Lubliniec were finalized after more than 5 months and case ref. no. RNs 1153/14 before the District Court of Radom after more than 7 months.

It is true that the person does not necessarily have to stay in the psychiatric hospital until the guardianship court issues a judgment as to whether involuntary commitment was justified. One have to keep in mind, that according to Article 35(1) of MHPA the head of department of the hospital orders a release of the compulsorily placed patient from the hospital if he/she considers that reasons which justified involuntary hospitalization ceased to exist. Such a release may take place even before the proceedings before the guardianship court finishes. However, the possibility of issuing this order by the head of department is to a large extent discretionary and cannot substitute the review of the legality of detention exercised by the independent court. Therefore, in the HFHR opinion, as a rule the proceedings before a guardianship court regarding lawfulness of detention in a psychiatric hospital should be finalized in the shortest possible time.

Even 14 days of involuntary commitment without court's approval significantly interferes with the patient's human rights. However, we also realize that setting in the law too short time-limits for the courts might be unrealistic taking into account the necessity of examination of the state of mental health of the person and analysis of the medical data by the court. Therefore, too short time-limits may cause that the judicial supervision of legality of involuntary commitment to psychiatric hospitals would be superficial.

On the other hand, proceedings which last few weeks or even few months may significantly threaten human rights of persons deprived of their liberty. In this context it is worth to note that according to Article 33 of the MHPA toward the person involuntary placed in psychiatric hospital may be taken indispensable health care interventions, aimed to eliminate reasons of involuntary placement. If the person prevents carrying out an intervention, measures of direct coercion may be used against him/her. Only two medical interventions cannot be carried out without consent of person concerned: electroconvulsive therapy and sub-occipital or lumbar puncture carried out in order to collect a sample of cerebrospinal fluid or to inject a medicine.³ Such interventions may be carried out also before the guardianship court issues final judgment as to the lawfulness of deprivation of liberty – it is therefore yet another important argument that proceedings before the court should not be excessively lengthy.

In a summary, in the HFHR opinion current Polish law does not effectively ensure that the proceedings before the guardianship courts regarding lawfulness of involuntary commitment to psychiatric hospital will not be unreasonably lengthy. Time limits provided in MHPA have only instructive character and do not set any deadline for the court to issue a judgment. The analysis of statistical data provided to us by 6 courts indicates that substantial amount of proceedings lasted more than one month, what means that person could have been deprived of his/her liberty for a

³ Regulation of the Minister of Health of 24 April 2012 on the list of health care interventions posing an increased risk for the patient, for which consent of the patient is necessary.

relatively long time and, at least in some cases, forcibly treated without the approval of the court. Such a situation poses significant threat for person's liberty and dignity.

We would like also to point out that in May 2012 the Ombudsman appealed to the Minister of Justice to consider necessity of introducing amendments to MHPA in order to ensure that proceedings before the guardianship courts would be finalized in reasonable time.⁴ The Ombudsman indicated that under current legal framework person involuntarily committed to the psychiatric hospital may wait for the judgment as to the lawfulness of deprivation of liberty for a long time. She argued that it is doubtful whether time-limits set in the law for the first contact of person deprived of liberty with visiting judge and for holding a hearing ensure that the judgment will be issued "immediately" within the meaning of the Constitution. Such time-limits are not only too long to consider them as "immediate" but also have only instructive character. However, the Ombudsman's letter did not lead to any legislative amendments.

4. Right to a compensation for unlawful detention

According to the Communication of the present case, the Applicant's claim for compensation was dismissed because the civil court held that compulsory placement of her in the psychiatric hospital did not constitute illegal state action within the meaning of Article 24 and Article 417 § 1 Civil Code. The court also held that the fact that the guardianship court had ruled that involuntary commitment to psychiatric hospital was unjustified does not influence the civil case for compensation because "unjustified involuntary commitment" within the meaning of MHPA does not necessarily equate to unlawful action in the understanding of the Civil Code. The question of relations between the two proceedings, that is to what extent the civil court is bound by the prior judgment of the guardianship court, has not been entirely clarified in the case law of the Polish courts.

The position of the civil court in the Applicant's case was presented also in several judgments of other courts. For example, the Court of Appeals in Warsaw in the judgment of 19 July 2012 (ref. no. I ACa 1247/11) ruled that although in the earlier decision the guardianship court established that involuntary commitment of the plaintiff was unjustified what interfered with his personal rights, such interference was not unlawful because the defendant (psychiatric hospital) acted on the basis of MHPA. The court argued that the judgment of guardianship court as to lack of justification for involuntary commitment to psychiatric hospital does not mean that the action of the hospital was unlawful as long as the hospital acted within its statutory competences in order to provide medical assistance, justified by circumstances of the case, to the patient.

Similar judgment was issued by the Circuit Court in Gdańsk on 23 December 2011 (ref. no. I C 1614/09). On 26 November 2006 the plaintiff was involuntarily committed to psychiatric hospital on the basis of Article 23 of MHPA. The hospitalization was motivated by the fact that the plaintiff barricaded herself in her flat and threatened she would blow up whole block of flats. On 4 January 2007 District Court issued a judgment in which it ruled that involuntary commitment was justified. On 16 January 2007 the Applicant was released from the hospital. On 8 November 2007 the Circuit Court reversed the judgment of the District Court and ruled that involuntary commitment to the psychiatric hospital was unjustified. The Circuit Court in Gdańsk dismissed the plaintiff's claim for compensation and argued that the hospital's actions were not

⁴ <http://www.sprawy-generalne.brpo.gov.pl/pdf/2012/05/703919/1648411.pdf> (last access: 24 March 2016).

unlawful. Moreover as a result of involuntary commitment the plaintiff not only did not suffer any harm but on the opposite: her state of mental health significantly improved. The Circuit Court's judgment was subsequently upheld by the court of II instance.

The position that unjustified involuntary commitment to psychiatric hospital does not necessarily entails unlawfulness within the meaning of provisions of the Civil Code is shared by some legal scholars. For example, J. Ciechorski⁵ argued that lack of justification for involuntary commitment has to be strictly separated from the question of its lawfulness. According to him those two terms cannot be equated – lack of justification refers only to non-existence of substantive grounds of deprivation of liberty, while unlawfulness refers to procedural errors. Only unlawful (procedurally) or manifestly unjustified compulsory placement should lead to civil liability of psychiatric hospital. Liability of the hospital for all cases of unjustified involuntary commitment would require from doctors employed therein to be infallible. Such a requirement would be unrealistic because decision as to compulsory placement of a patient in the psychiatric hospital is usually taken in circumstances which entail high risk of making a mistake. Psychiatrists do not have enough time to examine a patient thoroughly before they make a decision to place him in the hospital against his will. Therefore equation of lack of justification with unlawfulness would impose on the psychiatric hospitals a condition which is impossible to fulfil (*ad impossibilia nemo obligatur*) and could lead to significant reduction of involuntary commitments.

At the same time, there are also judgments which present completely opposite approach to the analyzed problem. For instance, in the judgment of 18 February 2015 (ref. no. 1681/14) the Court of Appeals in Kraków held that the civil court which adjudicate in the case of the claim for compensation for unlawful detention in psychiatric hospital is bound by the earlier judgment of guardianship court as to lack of justification for involuntary commitment. The Court of Appeals referred to Article 365 § 1 of the Code of Civil Procedure, according to which final judgment is binding not only for the parties and the court which issued it but also to other courts and authorities and, if the law provides so, also other persons. Therefore, judgment of the guardianship court which holds that the involuntary commitment to psychiatric hospital was unjustified determines that the actions of the hospital were unlawful. The Court also underlined that unlawful hospitalization violates several personal rights of a patient, in particular his/her liberty and dignity.

More importantly, the approach presented in the abovementioned judgment of the Court of Appeals in Kraków was shared by the Supreme Court in the judgment of 9 July 2015 (ref. no. I CSK 524/14). After the crash of the aircraft of Polish president in Smolensk in April 2010 the plaintiff was coming every day near the presidential palace and putting a rose and photography of the dead president and his wife in order to commemorate their death. On 22 September 2010 he was apprehended by the officers of Police and Municipal Guard who claimed that he behaved aggressively. Subsequently the plaintiff was transferred to psychiatric hospital where he panicked, cried and accused policemen and staff of psychiatric hospital of cooperation with Jews and communists. The doctor diagnosed the plaintiff with limited delusional disorder and held that he threatened life and health of other persons, what justified his involuntary commitment to

⁵ J. Ciechorski, *Odpowiedzialność odszkodowawcza szpitala psychiatrycznego za działania władcze na podstawie art. 417 k.c.*, „Prawo i Medycyna” 2015, no. 2, pp. 173-177.

psychiatric hospital. He was released from the hospital after 7 days. During that time he was forcibly treated via injections. On 4 February 2011 the guardianship court ruled that involuntary commitment was not justified under Article 23 of MHAP but it was justified under Article 24 of MHAP. However, on 22 September 2011 the Circuit Court partly reversed this judgment and ruled that the involuntary commitment of the plaintiff was justified neither under Article 23 nor Article 24 of MHAP. Subsequently the plaintiff filed a claim for compensation against psychiatric hospital for his unlawful detention and involuntary treatment. In the judgment of the Circuit Court of 30 August 2013 the plaintiff's claim was dismissed. The Court held that both detention and treatment were not unlawful because they had their legal bases in the provisions of MHAP. The doctors employed by the psychiatric hospital could have reasonably believed that the plaintiff's behavior indicated that he was mentally ill. The judgment was upheld by the Court of Appeals on 31 January 2014 which ruled that the guardianship court's judgment as to lack of justification for involuntary commitment of the plaintiff to the psychiatric hospital does not mean that the hospital's actions were unlawful as long as the hospital acted within its statutory competences in order to provide medical assistance, justified by circumstances of the case, to the patient. The court of the II instance argued that it was very difficult to diagnose the state of mental health of the plaintiff with full certainty just after short examination before deciding on his involuntary placement in the hospital and that his behaviour could have suggested that he was mentally ill and dangerous for other people. Therefore, according to the Court of Appeals, the involuntary commitment of the plaintiff to the psychiatric hospitals was not motivated by the will of making him a harm but to provide him medical aid. As such, the hospital's action could not have been considered unlawful.

The Supreme Court did not agree with this interpretation. It held that in the light of Article 365 § 1 of the Code of Civil Procedure (see above) the civil courts adjudication in the case of claim for compensation for unlawful detention in psychiatric hospital are bound by the earlier judgment of guardianship court as to lack of justification for involuntary commitment. The purpose of proceedings before guardianship court is thorough examination of lawfulness of compulsory placement in the psychiatric hospital. This examination includes both procedural and substantive aspects. Therefore, judgment of a guardianship court that the detention was unjustified leads to a conclusion that patient was deprived of his liberty unlawfully.

Due to persuasive force of the Supreme Court's case-law, it may be expected that the abovementioned judgment will contribute to uniformization of the case law of civil courts.

In the HFHR opinion, interpretation presented by the Supreme Court and Court of Appeals in Kraków is much more acceptable from the human rights perspective. Situation in which person involuntarily placed in the psychiatric hospital and forcibly treated without proper justification in the light of the provisions of MHPA would not be entitled to compensation, could violate constitutional and conventional rights and freedoms of such person. It would also lead to strange emergence of two regimes of unlawfulness – some actions of hospitals could be unjustified in the light of MHPA but nevertheless legal within the meaning of Civil Code. Such a situation would negatively influence the clarity of law. The HFHR believes that although decisions regarding involuntary commitment inevitably entail high risk of making a mistake, such a risk cannot be transferred completely upon a patient, whose the most basic rights that is liberty and dignity are violated by the unjustified compulsory hospitalization. Moreover, one has to keep in mind that if doctors at psychiatric hospital have doubts as to state of mental health of a person they do not

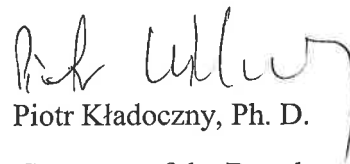
have to decide to compulsorily hospitalize him/her for an indefinite time under Article 23 of MHPA but instead may order his/her detention for t observation for a limited time of maximum 10 days under Article 24 of MHPA (see above). Also, all individual circumstances of the case, for example behaviour of the patient that led to involuntary commitment, may be taken into account by the civil court in order to mitigate the amount of compensation granted to him/her.

5. Conclusions

The HFHR believes that the ECtHR judgment in the present case may contribute to positive changes in the practice of Polish courts and authorities in regards to two important human rights guarantees of individual's liberty, that is the right to judicial supervision of lawfulness of involuntary commitment to psychiatric hospital exercised in "speedy" procedure and the right to compensation for unlawful deprivation of liberty. Our analysis indicates that the Polish law does not provide effective guarantees preventing against undue delays in procedure before guardianship courts and as a result substantive number of proceedings last for a few weeks or even few months. Such a situation is very dangerous from a human rights perspective, especially taking into account that person compulsorily hospitalized may be involuntarily treated, even with the use of measures of direct coercion. In relation to the right to compensation for unlawful detention in psychiatric hospitals, we would like to note that enforcement of this right is, or at least was before the abovementioned recent judgment of the Supreme Court, hampered by divergences between case-law of various courts as to the question whether the guardianship court's judgment establishing that detention was unjustified determines that it was also "unlawful" within the meaning of the Civil Code.

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On behalf of the Helsinki Foundation of Human Rights,


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