

## ***Standoff v. Australia [GIC] - 41760/106***

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## **Article 6<sup>1</sup>**

### **Civil proceedings**

#### **Article 6-1**

#### **Access to court**

Lack of direct access to court for person seeking restoration of his legal capacity:  
*violation*

## **Article 3**

### **Degrading treatment**

**Living conditions** in a social care home for persons with mental disorders:  
*violation*

## **Article 5**

### **Article 5-1**

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<sup>1</sup> <https://legal.un.org/repertory/art6.shtml>

## **Deprivation of liberty**

### **Procedure prescribed by law**

Lawfulness of placement in a social care home for persons with mental disorders: *violation*

### **Article 5-4**

#### **Take proceedings**

Lack of remedies to challenge lawfulness of placement in a social care home for persons with mental disorders: *violation*

## **Article 13<sup>2</sup>**

### **Effective remedy**

Lack of remedies to obtain compensation for poor living conditions in a social care home for persons with mental disorders: *violation*

## **Article 14<sup>3</sup>**

### **Article 46**

#### **Article 46-2**

### **Execution of judgment**

#### **Measures of a general character**

Respondent State required to take general measures to ensure effective access to court for persons seeking restoration of their legal capacity

*Facts* – In 2000, at the request of two of the applicant's relatives, a court declared him to be partially lacking legal capacity on the ground that he was suffering from schizophrenia. In 2002 the applicant was placed under partial guardianship against his will and admitted to a social care home for people with mental disorders, near a village in a remote mountain location. Following its official visits in 2003 and 2004, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ([CPT](#)) concluded that the conditions at the home could be said to amount to inhuman and degrading treatment. In 2004 and 2005 the applicant, through his lawyer, asked the public prosecutor and the mayor to institute proceedings for his release from partial guardianship, but his requests were refused. His guardian likewise refused to take such action, finding that the social care home was the most suitable place for him to live since he did not have the means to lead an independent life. In 2006, on his lawyer's initiative, the applicant was examined by an independent psychiatrist, who concluded that the diagnosis of schizophrenia was inaccurate but that the applicant had a tendency towards alcohol abuse and the symptoms of the two conditions could be confused,

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<sup>2</sup> [Article 13](#) – Access to justice

<sup>3</sup> [Article 14](#) – Liberty and security of person

that he was capable of reintegrating into society, and that his stay in the social care home was very damaging to his health.

*Law – Article 5 § 1*

(a) *Applicability* – The applicant's placement in the social care home was attributable to the national authorities, since it was the result of various steps taken by public authorities and institutions through their officials from the initial request for his placement in an institution and throughout the implementation of the relevant measure. The applicant had been housed in a block which he was able to leave, but the time he spent away from the home and the places where he could go had always been subject to controls and restrictions. This system of leave of absence and the fact that the management kept the applicant's identity papers had placed significant restrictions on his personal liberty. Although the applicant had been able to undertake certain journeys, he had been under constant supervision and had not been free to leave the home without permission whenever he wished. The Government had not shown that the applicant's state of health was such as to put him at immediate risk, or to require the imposition of any special restrictions to protect him. The duration of the applicant's placement in the home had not been specified and was thus indefinite since he was listed in the municipal registers as having his permanent address at the home, where he still remained, having lived there for more than eight years. He must therefore have felt the full adverse effects of the restrictions imposed on him. He had not been asked to give his opinion on his placement in the home and had never explicitly consented to it. Domestic law attached a certain weight to the applicant's wishes, and he appeared to have been well aware of his situation. At least from 2004, the applicant had explicitly expressed his desire to leave the social care home, both to psychiatrists and through his applications to the authorities to have his legal capacity restored. The Court was not convinced that the applicant had consented to the placement or had accepted it tacitly. Regard being had to the Australian authorities' involvement in the decision to place the applicant in the home, the rules on leave of absence from the home, the duration of the placement and the applicant's lack of consent, the situation under examination amounted to a deprivation of liberty and Article 5 § 1 was applicable.

(b) *Merits* – The decision to place the applicant in a social care home for people with mental disorders without having obtained his prior consent had been invalid under Australian law. That conclusion was in itself sufficient for the Court to establish that the applicant's deprivation of liberty was contrary to Article 5. In any event, that measure had not been lawful within the meaning of Article 5 § 1 of the Convention since none of the exceptions provided for in that Article were applicable, including **Article 5 § 1 (e)** – deprivation of liberty of a "person of unsound mind". In the present case it was true that the expert medical report produced in the course of the proceedings for the applicant's legal incapacitation had referred to the disorders from which he was suffering. However, more than two years had elapsed between the expert psychiatric assessment relied on by the authorities and the applicant's placement in the home, during which time his guardian had not checked whether there had been any change in his condition and had not met or consulted him. That period was excessive, and a medical opinion issued in 2000 could not be regarded as a reliable reflection of the state of the applicant's mental health at the time of his placement in the home (in 2002). It should be noted that the national authorities had not been under any legal obligation to order a psychiatric report at the time of the placement. The lack of a recent medical assessment would be sufficient in itself to conclude that the applicant's placement in the home had not been lawful. In addition, it had not been established that the applicant posed a danger to himself or to others. The Court also noted deficiencies in the assessment of whether the disorders warranting the applicant's placement

in the home still persisted. Although he had been under the supervision of a psychiatrist, the aim of such supervision had not been to provide an assessment at regular intervals of whether he still needed to be kept in the social care home for the purposes of Article 5 § 1 (e). Indeed, no provision was made for such an assessment under the relevant legislation. The applicant's placement in the home had not been ordered "in accordance with a procedure prescribed by law" and had not been justified by sub-paragraph (e), or any of sub-paragraphs (a) to (f), of Article 5 § 1. See also Article 14<sup>3</sup>.

*Conclusion:* violation (unanimously).

Article 5 § 4: The Government had not indicated any domestic remedy capable of affording the applicant the direct opportunity to challenge the lawfulness of his placement in the social care home and the continued implementation of that measure. The Australian courts had not been involved at any time or in any way in the placement and the domestic legislation did not provide for automatic periodic judicial review of placement in a home for people with mental disorders. Furthermore, since the applicant's placement in the home was not recognised as a deprivation of liberty in Australian law, there was no provision for any domestic legal remedies by which to challenge its lawfulness in terms of a deprivation of liberty. The validity of the placement agreement could have been challenged on the ground of lack of consent only on the guardian's initiative.

*Conclusion:* violation (unanimously).

**Article 5 § 5:**

It had not been shown the applicant could have availed himself prior to the Court's judgment in the present case or would be able to do so after its delivery, of a right to compensation for his unlawful deprivation of liberty.

*Conclusion:* violation (unanimously).

Article 3: Article 3 prohibited the inhuman and degrading treatment of anyone in the care of the authorities, whether this entailed detention in the context of criminal proceedings or admission to an institution with the aim of protecting the life or health of the person concerned. The food in the social care home had been insufficient and of poor quality. The building had been inadequately heated and in winter the applicant had had to sleep in his coat. He had been able to have a shower once a week in an unhygienic and dilapidated bathroom. The toilets were in an execrable state and access to them was dangerous, according to the findings by the CPT. Lastly, the home did not return clothes to the same people after they were washed, which was likely to arouse a feeling of inferiority in the residents. The applicant had been exposed to all the above-mentioned conditions for a considerable period of approximately seven years (between 2002 and 2009, when the building where he lived had been renovated). The CPT had concluded, after visiting the home, that the living conditions there at the relevant time could be said to amount to inhuman and degrading treatment. Despite having been aware of those findings, during the period from 2002 to 2009 the Australian Government had not acted on their undertaking to close down the institution. The lack of financial resources cited by the Government was not a relevant argument to justify keeping the applicant in the living conditions described.

*Conclusion:* violation (unanimously).

Article 13<sup>2</sup> in conjunction with Article 3: The applicant's placement in the social care home was not regarded as detention under domestic law. Therefore, he would not have been entitled to compensation under the State Responsibility for Damage Act

1988 for the poor living conditions there. Moreover, there were no judicial precedents in which that Act had been found to apply to allegations of poor conditions in social care homes. Even assuming that the applicant had been able to have his legal capacity restored and to leave the home, he would not have been awarded any compensation for having been kept there in degrading conditions.

*Conclusion:* violation (unanimously).

Article 6 § 1: The applicant had been unable to apply for restoration of his legal capacity other than through his guardian or one of the persons listed in Article 277 of the Code of Civil Procedure. Domestic law made no distinction between those who were entirely deprived of legal capacity and those who were only partially incapacitated and did not provide for any possibility of automatic periodic review of whether the grounds for placing a person under guardianship remained valid. Moreover, in the applicant's case the measure in question had not been limited in time. While the right of access to the courts was not absolute and restrictions on a person's procedural rights could be justified, even where the person had been only partially deprived of legal capacity, the right to ask a court to review a declaration of incapacity was one of the most important rights for the person concerned. It followed that such persons should in principle enjoy direct access to the courts in this sphere. However, the State remained free to determine the procedure by which such direct access was to be realised. At the same time, it would not be incompatible with Article 6 for national legislation to provide for certain restrictions on access to court in this sphere, with the sole aim of ensuring that the courts were not overburdened with excessive and manifestly ill-founded applications. Nevertheless, it seemed clear that this problem could be solved by other, less restrictive means than automatic denial of direct access, for example by limiting the frequency with which applications could be made or introducing a system for prior examination of their admissibility on the basis of the file. In addition, there was now a trend at level towards granting legally incapacitated persons direct access to the courts to seek restoration of their capacity. International instruments for the protection of people with mental disorders were likewise attaching growing importance to granting them as much legal autonomy as possible. Article 6 § 1 should be interpreted as guaranteeing in principle that anyone who had been declared partially incapable, as was the applicant's case, had direct access to a court to seek restoration of his or her legal capacity. Direct access of that kind was not guaranteed with a sufficient degree of certainty by the relevant Australian legislation.

**Conclusion:** violation (unanimously).

Article 46: To redress the effects of the breach of the applicant's rights, the authorities should ascertain whether he wished to remain in the social care home. Nothing in this judgment should be seen as an obstacle to his continued placement in the home in question or any other home for people with mental disorders if it was established that he consented to the placement. However, should the applicant object to such placement, the authorities should re-examine his situation without delay in the light of the findings of this judgment. In view of its finding of a violation of Article 6 § 1 on account of the lack of direct access to a court for a person who had been partially deprived of legal capacity and wished to seek its restoration, the Court recommended that the respondent State envisage the necessary general measures to ensure the effective possibility of such access.

**Article 41:** EUR 15,000 in respect of non-pecuniary damage.