



IN THE EUROPEAN COURT OF HUMAN RIGHTS

(Application No. 62507/12)

Jaroslav CERVENKA

APPLICANT

Czech Republic

RESPONDENT

Written Comments Submitted by:

**THE DAVID L. BAZELON CENTER FOR MENTAL HEALTH LAW
THE AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES**

THE NATIONAL DISABILITY RIGHTS NETWORK

THE AUTISTIC SELF ADVOCACY NETWORK

THE AMERICAN CIVIL LIBERTIES UNION

ADAPT

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INTRODUCTION

1. These comments are respectfully submitted on behalf of the Bazelon Center for Mental Health Law (“Bazelon Center” or the “Intervenors”) pursuant to leave granted by the President of the Commission on March 13, 2013, in accordance with Rule 44 § 3 of the Rules of the Court.¹
2. Five other American disability rights groups join the Bazelon Center in this submission:
 - 2.1. The American Association of People with Disabilities (“AAPD”) is a non-profit membership organization of children and adults with disabilities, their family members, and their supporters. AAPD’s mission is to promote political and economic empowerment for the millions of Americans with disabilities. AAPD was founded on the fifth anniversary of the signing of the Americans with Disabilities Act. AAPD works to ensure effective enforcement and implementation of the ADA and other civil rights laws.
 - 2.2. The National Disability Rights Network (“NDRN”) is the non-profit membership association of protection and advocacy (“P&A”) agencies that are located in all 50 U.S. States, the District of Columbia, Puerto Rico, and the United States Territories. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A System comprises the nation’s largest provider of legally-based advocacy services for persons with disabilities. NDRN supports its members through the provision of training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination.
 - 2.3. The Autistic Self Advocacy Network (“ASAN”) is a nonprofit advocacy organization run by and for Autistic people. ASAN provides support and services to individuals on the autism spectrum, and engages in public policy advocacy, community engagement and education, research, and other activities to improve public perceptions of autism. ASAN believes that Autistic people, and all people with disabilities, should enjoy the same access, rights, and opportunities as do all other citizens.
 - 2.4. The American Civil Liberties Union (“ACLU”) is a nationwide, non-profit, non-partisan organization with over 500,000 members dedicated to the principles of liberty and equality embodied in the U.S. Constitution, civil rights laws, and human rights treaties. ACLU affiliates around the country have been intensely engaged for nearly four decades in the effort to end the unnecessary segregation of people with mental disabilities, beginning with the work of our New York affiliate on behalf of Willowbrook residents in the early 1970s. On a federal level, the ACLU was deeply involved in the advocacy

¹ Court letter, reference ECHR-LE 14.8bP3, 13 March 2013.

effort that ultimately led to the enactment of the ADA. Both in disability cases and otherwise, the ACLU has appeared before the U.S. Supreme Court in numerous cases involving the rights of people with disabilities, including as *amicus curiae* in *Olmstead v. L.C.*

- 2.5. ADAPT is a national grass-roots organization, most of whose members have significant disabilities and have been institutionalized in nursing facilities and other institutions. ADAPT engages in community organizing as well as public policy advocacy and legal advocacy to ensure the civil and human rights of people with disabilities to live freely in their communities. ADAPT has a long history and record of enforcing the civil rights of people with disabilities and was one of the key organizations that participated in the political and legislative process that resulted in the passage in 1990 of the ADA.
3. This case concerns the rights of individuals with mental disabilities to receive community-based care and live in the most integrated setting appropriate to their needs. Over the last several decades, governments around the world have recognized that needlessly segregating people with disabilities is a form of disability-based discrimination. In the United States in particular, Congress barred unnecessary institutionalization of people with disabilities when it enacted the non-discrimination requirements of the Americans with Disabilities Act (“ADA”).²
4. These comments focus on how the right to community integration has evolved in the United States in recent decades. First, the Intervenor discusses the development of the ADA, which forms one of the foundations for the right to community integration.³ Second, the Intervenor discusses the U.S. Supreme Court’s landmark decision in *Olmstead v. L.C.*,⁴ in which the Court found that principles enshrined in the U.S. Constitution, the ADA, and other U.S. laws mandate community integration of people with mental disabilities. Third, the Intervenor discusses the interpretation of *Olmstead* by the U.S. Department of Justice and U.S. courts, and the trend toward greater community integration for people with mental disabilities. Finally, the Intervenor discusses the relevance of the U.S. experience of community integration to the mandate of the European Convention on Human Rights (“ECHR”).

BACKGROUND

5. As stated in the Applicant’s Statement of Facts,⁵ the Applicant, a resident of Prague, was diagnosed with alcoholic dementia. In 2005, the Prague 4 District Court deprived the Applicant of his legal capacity and, on 7 February 2011, the Applicant was transported to a residential social care institution.

² 42 U.S.C. § 12132, 28 C.F.R. § 35.130(d).

³ Prior to the ADA, the U.S. Congress enacted Section 504 of the Rehabilitation Act, which also contains an “integration mandate” prohibiting the needless institutionalization of people with disabilities. Section 504, which applies to federal executive branch agencies and recipients of federal funds, applies to a narrower group of entities than does the ADA. 29 U.S.C. § 794(a).

⁴ 527 U.S. 581, 593-94 (1999).

⁵ *Červenka v. Czech Republic* (Application No. 62057-12), Application Under Article 34 of the European Convention on Human Rights and Rules 45 and 47 of the Court.

6. Prior to his detention, the Applicant had been able to take care of himself and his affairs while living alone in an apartment in Prague. The institution, by contrast, was locked 24 hours a day; patients were placed in shared rooms with no privacy; there was only a small area with high walls for outdoor space; and food was often served in a “mixed substance.”
7. The Applicant contacted authorities a number of times between February 2011 and September 2011 to protest his placement in the institution. After receiving assistance from the Mental Disability Advocacy Center and continual petitioning of the courts, the Applicant was released from involuntary hospitalization on 27 September 2011, and now lives alone in an apartment.

THE AMERICANS WITH DISABILITIES ACT

8. In 1990, the U.S. Congress passed the ADA, the United States’ landmark civil rights law protecting persons with mental or physical disabilities, “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”⁶ The ADA is intended to eliminate discrimination against individuals with disabilities and ensure that they can fully participate in the economic and social life of their communities. The law prohibits discrimination in employment, public services provided by governmental entities, and public accommodations provided by private entities.
9. In the months leading up to the passage of the ADA, the U.S. Congress held a series of hearings and debates during which numerous legislators, government officials, and other parties offered overwhelming testimony about the need for legislation to remedy the long history of discrimination against and isolation of individuals with disabilities.
 - 9.1. Former U.S. Senator Lowell Weicker, sponsor of the bill when it was first introduced in 1988, believed the law would counteract years of discrimination: “For years, this country has maintained a public policy of protectionism toward people with disabilities. We have created monoliths of isolated care in institutions and segregated educational settings. It is that isolation and segregation that has become the basis of the discrimination faced by many disabled people today. Separate is not equal. It was not for blacks; it is not for the disabled.”⁸
 - 9.2. Former U.S. Attorney General Richard Thornburgh, testifying on behalf of then-President George H.W. Bush, lamented the “intolerable life of isolation” suffered by individuals with disabilities who are “still too often shut out of the economic and social mainstream of American life.”⁹
 - 9.3. Former U.S. Congressman George Miller, a co-sponsor of the bill in the U.S. House of Representatives, stated in a speech on the House floor that “it has been our unwillingness

⁶ 42 U.S.C. § 12101(b)(1).

⁷ Title I prohibits discrimination in employment (42 U.S.C. §§ 12111-12117), Title II prohibits discrimination by public entities like schools, municipalities, and cities (42 U.S.C. §§ 12131-12165), and Title III prohibits discrimination in public accommodations (42 U.S.C. §§ 12181-12189).

⁸ Americans with Disabilities Act, Hearing before the Senate Committee on Labor and Human Resources and the Sub-Committee on the Handicapped, 101st Congress, 1st Session, at 215 (1989).

⁹ *Id.* at 195.

to see all people with disabilities that has been the greatest barrier to full and meaningful equality. Society has made them invisible by shutting them away in segregated facilities.”¹⁰

10. The ADA was signed into law on July 26, 1990, by President George H.W. Bush, who stated when signing the bill that it “takes a sledgehammer to another wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse but not grasp.”¹¹
11. In the preamble to the law, Congress included several key factual findings. When debating the passage of the bill on the Senate floor, Senator Tom Harkin, one of the bill’s co-sponsors, emphasized that the drafters of the legislation included these factual findings to “ensure once and for all that no Federal agency or judge will ever misconstrue the congressional mandate to integrate people with disabilities into the mainstream.”¹² The findings include:
 - 11.1. “Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;”
 - 11.2. “Discrimination against individuals with disabilities persists in such critical areas as ... institutionalization;” ...
 - 11.3. “Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, ... failure to make modifications to existing facilities and practices, exclusionary qualification standards, [and] segregation.”¹³
12. The law charges the U.S. Attorney General with developing regulations to ensure that states implement the ADA. The Attorney General adopted the following provision in the series of implementing regulations:

“A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”¹⁴
13. When issuing this requirement, the Attorney General explained that an “integrated setting,” per the regulation, is “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”¹⁵

THE U.S. SUPREME COURT’S *OLMSTEAD* DECISION AND THE RIGHT TO COMMUNITY-BASED TREATMENT

¹⁰ 136 Cong. Rec. H2447 (daily ed. May 17, 1990).

¹¹ Reprinted in the National Council on Disability. *Equality of Opportunity: The Making of the Americans with Disabilities Act* at App. G (1997).

¹² 135 Cong. Rec. S4986.

¹³ 42 U.S.C. § 12101.

¹⁴ 28 C.F.R. 35.130(d).

¹⁵ 28 C.F.R. Part 35, App. A, § 35.130(d).

14. In 1995, two mentally disabled women – L.C., who had schizophrenia, and E.W., who had been diagnosed with a personality disorder – sued the State of Georgia for failure to comply with the ADA’s integration mandate.¹⁶ L.C. was voluntarily admitted to a state psychiatric hospital in Atlanta, Georgia, in May 1992, and by 1993 her treatment team agreed her needs could be met in a community-based setting.¹⁷ Nonetheless, L.C. remained institutionalized until 1996.¹⁸ L.C. alleged that the State’s failure to offer her a community-based setting after her treatment team agreed she was ready for discharge violated the ADA.¹⁹
15. E.W. was voluntarily admitted to the same hospital in 1995.²⁰ In 1996, her treatment team determined that she was able to live and continue treatment in a community-based setting, but like L.C., she remained institutionalized.²¹ Both women requested that the State of Georgia offer them community-based settings that would enable them to be integrated into mainstream society.²²
16. The case ultimately reached the U.S. Supreme Court, which held that “[u]njustified isolation . . . is properly regarded as discrimination based on disability.”²³ The Court required public entities to provide people with disabilities with services in the most integrated setting appropriate, unless the individuals are opposed to receiving services in a more integrated setting.²⁴ *Olmstead*’s integration requirement may be excused only where a state demonstrates that it would result in a “fundamental alteration” of the state’s services and programs.²⁵
17. In reaching this conclusion, the Supreme Court conducted an extensive analysis of the effects of segregating people with disabilities. First, the Court concluded that “institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participation in community life.”²⁶ Second, the Court found that “confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.”²⁷
18. Both L.C. and E.W. flourished in the community. E.W. spoke and presented publicly about her own experience with institutionalization in Georgia and elsewhere. She passed away in 2005. L.C. has become a passionate advocate for individuals with mental disabilities, and continues to live independently in the community and thrive as a folk artist.

IMPLEMENTATION OF THE *OLMSTEAD* MANDATE

¹⁶ *Olmstead v. L.C.*, 527 U.S. 581, 593-94 (1999).

¹⁷ *Id.* at 593.

¹⁸ *Id.*

¹⁹ *Id.* at 594.

²⁰ *Id.* at 593.

²¹ *Id.*

²² *Id.*

²³ *Olmstead*, 527 U.S. at 607.

²⁴ *Id.*

²⁵ *Id.* at 603.

²⁶ *Id.* at 600.

²⁷ *Id.* at 601.

19. The Supreme Court's *Olmstead* decision affirmed that the ADA prohibits needlessly segregating people with physical or mental disabilities, and is widely regarded as a landmark recognition of the benefits of community living for people with disabilities. The *Olmstead* decision has resulted in thousands of individuals with disabilities being afforded the opportunity to move from institutions to their own homes and communities, and successfully reintegrating.
20. In the years since the *Olmstead* decision, and even before it, numerous courts in the U.S. have applied the ADA's integration mandate to require states to offer services to individuals with disabilities in integrated settings. See, e.g., *Kathleen S. v. Department of Public Welfare*, 10 F. Supp. 2d 460 (1998) (state violated ADA by needlessly institutionalizing individuals in state psychiatric hospital); *Rolland v. Cellucci*, 52 F. Supp. 2d 231 (D. Ma. 1999) (allowing individuals with developmental disabilities to proceed with ADA claim challenging needless segregation in nursing facilities); *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2002) (denying personal care services that would enable individuals with disabilities to avoid institutionalization would violate the ADA); *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175 (10th Cir. 2003) (denying full coverage of prescription medications to individuals in home and community-based program would violate the ADA); *Pennsylvania Protection & Advocacy, Inc. v. Pennsylvania Dep't of Public Welfare*, 402 F.3d 374 (3d Cir. 2005) (state failed to show that offering community-based settings to individuals currently residing in a psychiatric nursing home would fundamentally alter its service system and excuse state from ADA's integration mandate); *Radaszewski v. Maram*, No. 01- 9551, 2008 WL 2097382 (N.D. Ill. Mar. 26, 2008) (state violated ADA by refusing to provide sufficient private duty nursing services needed to enable plaintiff to avoid institutionalization); *Ball v. Rodgers*, No. 00-00067, 2009 WL 1395423 (D. Az. Apr. 24, 2009) (state violated ADA by failing to provide personal care services needed for plaintiffs to avoid institutionalization); *Marlo M. v. Cansler*, 639 F. Supp. 2d 635 (E.D.N.C. 2010) (granting preliminary injunction under the ADA requiring state to continue 24-hour-a-day services for individuals with developmental disabilities and mental illnesses to enable them to avoid institutionalization); *Knowles v. Horn*, No. 08-1492-K, 2010 WL 517591 (N.D. Tex. Feb. 10, 2010) (state violated ADA by terminating plaintiff's round-the-clock home care services and referring him for placement in a state institution); *Disability Advocates Inc., v. Paterson*, 653 F. Supp. 2d 184 (E.D.N.Y. Sept. 8, 2009), reversed on other grounds sub nom., *Disabilities Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149 (2d Cir. 2012) (state violated ADA by failing to offer board and care home residents with psychiatric disabilities the opportunity to live in supported housing); *M.R. v. Dreyfus*, 663 F.3d 1100 (9th Cir. 2011) (directing district court to enter preliminary injunction under the ADA requiring state to continue extended in-home personal care services to enable plaintiffs to avoid institutionalization).
21. In 2011, the U.S. Department of Justice released guidance to assist states in complying with *Olmstead*. The Justice Department's guidance states that integrated settings are those that are "located in mainstream society; offer access to community activities and opportunities at times, frequencies, and with persons of an individual's choosing; afford individuals choice in

their daily life activities; and provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.”²⁸

22. The Justice Department emphasized scattered-site housing with supportive services as an example of an integrated setting. Such housing enables individuals with disabilities to live in their own apartments or homes with access to case management and other support services on a flexible, as-needed basis. The individuals have the same rights and responsibilities as other tenants. Scattered site supportive housing provides individuals with disabilities the opportunity to live the same kind of lives as individuals without disabilities.
23. The Justice Department explained that segregated housing, by contrast, is often characterized by an institutional atmosphere. Examples of segregated housing include (1) congregate settings populated exclusively or primarily by individuals with disabilities; (2) congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors or limits on individuals’ ability to engage freely in community activities and to manage their own activities of daily living; or (3) settings that provide for daytime activities primarily with other individuals with disabilities.²⁹
24. The Department of Justice has vigorously enforced the ADA’s integration mandate, challenging unnecessary segregation of people with disabilities through litigation in states across the United States. The Department’s enforcement activities are described at www.ada.gov/olmstead.
25. Efforts by the Justice Department and private parties to enforce *Olmstead* rigorously have brought about significant changes for people with disabilities. Among other things, in locations around the country, states have committed to afford thousands of people with disabilities who had been needlessly institutionalized the opportunity to live in their own homes. North Carolina has committed to provide community alternatives for thousands of people in adult care homes as part of a settlement with the Justice Department,³⁰ and Delaware reached a similar settlement requiring it to offer housing subsidies and services to thousands of individuals residing in or at risk of entry into a state psychiatric hospital.³¹ In 2010, Georgia – the state in which the original *Olmstead* case was brought – entered into a similar settlement agreement with the Justice Department requiring it to provide community-based housing for thousands of individuals with psychiatric and intellectual disabilities who were then institutionalized in psychiatric hospitals.³² In 2012, Virginia entered into a settlement agreement with the Justice Department requiring it to offer home and community-based services to thousands of individuals with intellectual or developmental disabilities residing in or at risk of entering institutions.³³

²⁸ Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and *Olmstead v. L.C.* (see www.ada.gov/olmstead/q&a_olmstead.htm).

²⁹ *Id.*

³⁰ Joint Motion to Dismiss Without Prejudice and Retain Jurisdiction at Exhibit A, *United States v. State of North Carolina*, No. 12-557 (E.D.N.C. Aug. 23, 2012) (see www.ada.gov/olmstead/olmstead_cases_list2.htm#NC).

³¹ Settlement Agreement, *United States v. Delaware*, No. 11-591 (D. Del. 2011) (see www.ada.gov/olmstead/olmstead_cases_list2.htm#DE).

³² *United States v. Georgia*, No. 10-249 (N.D. Ga. 2010) (see www.ada.gov/olmstead/olmstead_cases_list2.htm#georgia).

³³ *United States v. Virginia*, 3:12-059 (E.D. Va. 2012) (see www.ada.gov/olmstead/olmstead_cases_list2.htm#va).

26. Many other states around the country have entered into similar settlements with private plaintiffs that have together resulted in community-based housing for thousands of individuals with mental disabilities. *See, e.g.,* Settlement Agreement, *Disability Rights New Jersey, Inc. v. Velez*, No. 05-4723 (D.N.J. Mar. 5, 2013) (states to offer community alternatives for hundreds of institutionalized individuals with intellectual disabilities);³⁴ Settlement Agreement, *Disability Rights New Jersey, Inc. v. Velez*, No. 05-01784 (D.N.J. July 29, 2009) (state commits to offer community alternatives to thousands of state psychiatric hospital residents);³⁵ Consent Decree, *Williams v. Quinn*, No. 05-4673 (N.D. Ill. Mar. 15, 2010) (state to offer community alternatives for thousands of individuals in intermediate care nursing homes for people with psychiatric disabilities);³⁶ Consent Decree, *Ligas v. Maram*, No. 05-04331 (N.D. Ill. Nov. 13, 2008) (state to offer community alternatives for thousands of people residing in institutions for individuals with intellectual disabilities);³⁷ Settlement Agreement, *Chambers v. City and County of San Francisco Department of Health and Human Services*, No. 06-cv-6346 (N.D. Cal. Mar. 20, 2008) (city to offer community alternatives for hundreds of residents of skilled nursing facility).³⁸
27. Some of the litigation following *Olmstead* has involved board and care homes for people with psychiatric disabilities that are very similar to the social care institution in which Mr. Cervenka was confined. U.S. federal courts have not hesitated to find that institutionalizing in these facilities people who are qualified to live independently violates *Olmstead*.
28. In *DAI v. Paterson*, for example, a federal court found a violation of *Olmstead* where the state of New York administered a service system that relied on large, segregated “adult homes” to serve thousands of individuals with psychiatric disabilities. The court determined that the state had “denied thousands of individuals with mental illness in New York City the opportunity to receive services in the most integrated setting appropriate to their needs” and ordered the state to develop supported housing for all residents of the 28 adult homes at issue who were qualified for and wanted it.³⁹
29. In March 2013, the Fourth Circuit Court of Appeals found that the ADA required the State of North Carolina to provide in-home personal care assistance when such aid was necessary for people with disabilities to live outside of an institution.⁴⁰ The plaintiffs, adults with disabilities, sought an injunction to stop the state from eliminating this in-home help.⁴¹ Without in-home personal care assistance, the plaintiffs faced a significant risk of institutionalization in North Carolina’s “adult care homes,” which the Fourth Circuit found violated the ADA.⁴² North Carolina had already entered into a settlement with the United

³⁴ See [www.dnj.org/pdf/100924%20Thompson%20Opinion%20\(SJ\).pdf](http://www.dnj.org/pdf/100924%20Thompson%20Opinion%20(SJ).pdf).

³⁵ See www.bazelon.org/In-Court/Current-Litigation/DRNJ-v.-Velez.aspx.

³⁶ See www.bazelon.org/In-Court/Current-Litigation/Williams-v.-Quinn.aspx.

³⁷ See www.equipforequality.org/resourcecenter/LigasConsentDecreeSigned_06152011.pdf.

³⁸ See www.bazelon.org/In-Court/Current-Litigation/Chambers-v.-San-Francisco.aspx.

³⁹ *Disability Advocates, Inc. v. Paterson*, No. 03-3209, 2010 WL 786657 (E.D.N.Y. Mar. 1, 2010), reversed on other grounds sub nom., *Disability Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc.*, 675 F.3d 149 (2d Cir. 2012) (see www.bazelon.org/In-Court/Current-Litigation/Disability-Advocates-Inc.-v.-Cuomo.aspx).

⁴⁰ *Pashby v. Delia*, No. 11-2363, 2013 WL 791829, at *13 (4th Cir. Mar. 5, 2013)

⁴¹ *Id.* at *1.

⁴² *Id.* at *11.

States under which the state would provide community-based supported housing for the 3,000 people then living in adult care homes.⁴³

30. As a result of *Olmstead*, the ADA, and the myriad court cases challenging the needless segregation and institutionalization of people with mental disabilities, tens of thousands of Americans are now being offered the opportunity to live in their own homes rather than in institutional settings like the one in which Mr. Cervenka was confined. And *Olmstead* implementation efforts continue to address the circumstances of many more individuals with disabilities who live in institutions and congregate facilities, nearly all of whom could live independently in the community with adequate support services.

RELEVANCE OF *OLMSTEAD* AND THE ADA FOR THE COURT

31. Intervenor respectfully submit that the Court should hold that needlessly segregating individuals with mental or physical disabilities in institutions is discriminatory and a violation of the ECHR.
32. As described below, both the ADA and the ECHR work towards the same fundamental objective: avoiding needless discrimination based on characteristics such as mental disability. The evolution of the right to community-based care in the United States therefore provides useful background for the Court in construing the ECHR. The stated goal of the ADA is “to continue to break down barriers to the integrated participation of people with disabilities in all aspects of community life.”⁴⁴ The ECHR achieves this objective through, *inter alia*, Articles 5, 8, and 14.
- 32.1. First, the core requirement of ECHR Article 5 that “[e]veryone has the right to liberty and security of person,” also underlies the ADA and the U.S. Supreme Court’s ruling in *Olmstead*. This Court has found violations of Article 5 when an individual was institutionalized for nine years, isolated from community, placed on a daily schedule with strict rules on leave of absence, and given little choice in daily activities.⁴⁵ Such conditions are precisely what the integration mandate of the ADA is designed to target.
- 32.2. Similarly, the principles behind the ADA’s community integration mandate are also enshrined in Article 8 of the ECHR. In particular Article 8 mandates the right to respect for private and family life, home, and correspondence, which are fundamental rights infringed by the unnecessary and involuntary institutionalization – and isolation – of a person with mental disability. Institutionalization denies individuals with mental disabilities the same Article 8 rights enjoyed by others. Without integration into the community to the fullest extent possible, individuals with mental disabilities will not receive the full benefits of Article 8.
- 32.3. Furthermore, the prohibition of discrimination regarding the rights and freedoms afforded to people with disabilities underpins both the ADA and Article 14 of the ECHR.

⁴³ Joint Motion to Dismiss Without Prejudice and Retain Jurisdiction at Exhibit A, *United States v. State of North Carolina*, No. 12-557 (E.D.N.C. Aug. 23, 2012) (see www.ada.gov/olmstead/olmstead_cases_list2.htm#NC).

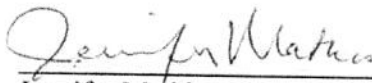
⁴⁴ H. Rep. No. 101-485, pt. III, 101st Cong., 2d Session (1990), at 26, 49.

⁴⁵ *Stanev v. Bulgaria*, Application No. 36760/06, Judgment 17 January 2012.

In *Glor v. Switzerland*, for example, this Court confirmed that the scope of Article 14 includes discrimination based on disability.⁴⁶ The ADA likewise prohibits discrimination against people with disabilities with respect to various areas of life, including, but not limited to, employment, health and welfare, and public services.

33. The Court has throughout its history applied the collective principles of the ECHR like the U.S. courts have applied the principles of the ADA, the *Olmstead* decision, and subsequent legal developments to recognize the rights of people with mental disabilities. The Court has held that ordering detention in a psychiatric institution without prior medical opinion violates the ECHR,⁴⁷ that a mental disability must be of sufficient seriousness to warrant compulsory confinement based on factors such as dangerousness,⁴⁸ and that an individual has the right to initiate the review of their detention.⁴⁹ In *Aerts v. Belgium*, this Court further held that the ECHR provided a right not to be held in an institution that is destructive of an individual's mental health.⁵⁰ Accordingly, the right to community integration and freedom from unnecessary institutionalization, as enshrined in the ADA and American jurisprudence, is already recognized in this Court's rulings.
34. The successful integration of thousands of people with mental disability in the years following the *Olmstead* decision bodes well for the successful integration that will follow a holding by this Court that needlessly segregating individuals with mental or physical disabilities in institutions is discriminatory and a violation of the ECHR. The Intervenors firmly believe, based on their experience with community integration and needless institutionalization, that community integration is absolutely fundamental to combating discrimination against people with mental disabilities, and can be inferred from both the ECHR and the ADA. Isolation and segregation of mentally disabled individuals who are able to live independently would only ensure continued discrimination against people with mental disabilities, and fundamentally undermine the ECHR's objectives.

Respectfully submitted on this 3rd day of April, 2013.



Jennifer Mathis

Emily Read

The David L. Bazelon Center for Mental Health Law
1101 15th St NW # 1212
Washington, DC 20005 USA

Stephen F. Gold

Counsel for Intervenors

125 S. 9th Street, Suite 700
Philadelphia, PA 19107 USA

⁴⁶ App. No. 13444/04, Judgment 30 April 2009.

⁴⁷ *Varbonov v. Bulgaria*, 2000-X Eur. Cr. HR 457 (2000); *Winterwerp v. Netherlands*, 2 Eur. H.R. Rep. 387 (1979).

⁴⁸ *Rakevich v. Russia*, Eur. Ct. H.R. 558 (2003).

⁴⁹ *E v. Norway*, App. No. 11701/85, 17 Eur. H.R. Rep. 30, 57-58 (1990).

⁵⁰ App. No. 25357/94, 29 Eur. H.R. Rep. 50 (1998).

