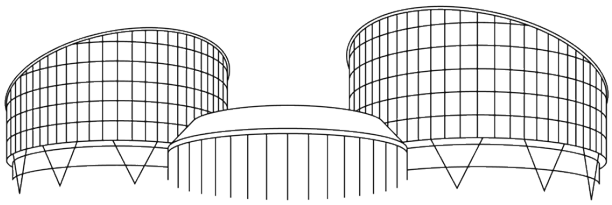

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF S. v. ESTONIA

(Application no. 17779/08)

JUDGMENT

STRASBOURG

4 October 2011

FINAL

04/01/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of S. v. Estonia**,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 13 September 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 17779/08) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Estonian national, Ms S. ("the applicant"), on 10 April 2008. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Ms V. Lee, Ms B. Bukovská and Mr Y. Marchenko, lawyers at the Mental Disability Advocacy Centre, an NGO based in Budapest, and by Ms E. Pilt, a lawyer at the Estonian Patients' Advocacy Association, an NGO based in Tallinn. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

3. The applicant alleged that her involuntary admission to a psychiatric clinic had been unlawful and in violation of Article 5 § 1 of the Convention.

4. On 28 August 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1 of the Rules of Court) and the above application was reassigned to the newly composed First Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1967 and lives in Tallinn.

7. On 4 October 2006 a criminal investigation was started in respect of the applicant's violent behaviour towards her partner. Allegedly, on 17 September 2006, she had repeatedly punched him and broken his nose.

8. On 5 November 2006 another criminal investigation was started in respect of the applicant's allegedly violent behaviour towards her partner on 3 November 2006. The two proceedings were subsequently joined.

9. According to the applicant, her partner had physically attacked her and she had acted in self-defence.

10. On 6 November 2006 the applicant was admitted to the admissions ward of the Psychiatric Clinic of the North Estonia Medical Centre.

11. On 8 November 2006 the psychiatric clinic filed an application with the Harju County Court for the authorisation of the applicant's involuntary psychiatric treatment. The application was accompanied by an opinion signed by two doctors, according to which the applicant had been suffering from a mental illness for some years. She had been treated in different hospitals and had been making outpatient visits to psychiatrists. When not in hospital, she had used medicines irregularly. According to the doctors' opinion, the applicant was suffering from delusions of grandeur, she was paranoid and her condition had become acute. She had attacked her partner and had been travelling with her six-year old child all over Estonia, including doing so late in the evening, and had repeatedly taken the child to a shelter. She had been hospitalised on 30 October 2006 but as she had refused inpatient treatment, had behaved in a restrained manner and had undertaken to follow outpatient treatment, she had been allowed to leave the hospital on the following day. However, the applicant had failed to undergo adequate treatment. She had become aggressive and, after having attacked her partner again, she had been hospitalised by ambulance. The doctors affirmed that at the time of her involuntary admission to the clinic on 6 November 2006 the applicant had demonstrated uninhibited and threatening behaviour. Thereafter, she had remained psychotic, had demonstrated signs of delusions of grandeur and had been paranoid. The doctors affirmed in their opinion that the applicant had refused inpatient treatment.

12. On 8 November 2006 the County Court decided to apply interim measures (*esialgne õiguskaitse*) and authorised the applicant's involuntary psychiatric treatment for as long as necessary, but for no longer than three months. The relevant part of the court's decision read as follows:

> "The court, having examined the evidence presented to it, finds that there are circumstances [warranting] involuntary emergency psychiatric treatment pursuant to the procedure for the application of interim measures. According to the application of the health care institution and the accompanying letter from the attending physicians, [the applicant] was taken to the Psychiatric Clinic by ambulance on 6 November 2006 because she had attacked her partner. She had also been roaming around Estonia with her six-year old child, thereby exhausting [the child] and damaging the child's health. On admission the patient was noisy, agitated and very angry with her partner: she did not deny having punched him, but argued that she had done so in self-defence. As [the applicant's] behaviour was threatening and uncontrollable, involuntary emergency psychiatric treatment was applied in respect of her from 6 November 2006, as she posed a danger to herself and to those around her. Previously, [the applicant] had received inpatient treatment [at a psychiatric hospital] in Jämejala and [had also been treated] in recent years in Tallinn. She had also been making outpatient visits to psychiatrists. Since 1993 [the applicant] had received treatment at the Psychiatric Clinic [of the North Estonia Medical Centre] on five occasions.
>
> At the time of the lodging of the application the patient's condition had not improved. [She] is agitated and stressed, and does not understand the need for treatment.
>
> Considering [the applicant's] mental state and the fact that her treatment is not possible by other means, the court finds that there are grounds to apply interim measures pursuant to Article 534 § 3 of the Code of Civil Procedure – that is, before hearing the person herself and the other persons [involved], and before appointing a representative for her. Based on the above, involuntary emergency psychiatric treatment shall be authorised in respect of [the applicant] for as long as necessary, but for no longer than three months."

On the same date, the decision was sent to the psychiatric clinic by fax.

13. On 8 November 2006, after having taken the above decision, the County Court appointed a lawyer to defend the applicant at the State's expense.

14. According to the applicant, she gave her consent to undergo treatment and signed a consent form on 8 November 2006.

15. According to the psychiatric clinic, as stated in the reply to the applicant's subsequent appeal against the County Court's decision (see paragraph 20 below), the applicant had said that she consented to the treatment on 9 November 2006, after having been informed of the County Court's decision. She had signed a consent form to that effect which had been placed in her medical file.

16. On 14 November 2006, in the course of the criminal proceedings, the police ordered the applicant's forensic psychiatric examination. According to an expert report drawn up on 17 November 2006, the applicant suffered from paranoid schizophrenia and, at the time of committing the acts she was accused of (that is, the alleged assaults on 17 September and 3 November 2006), she had been mentally incompetent. Furthermore, she was unable to participate in the pre-trial investigation, give evidence in court or serve a punishment.

17. On 21 November 2006 the County Court heard the applicant's brother.

18. On 23 November 2006 the applicant's lawyer and a judge from the County Court paid a visit to the applicant in the clinic. According to a note made by the judge in the case file concerning the hearing of the applicant, she was satisfied with her treatment, particularly satisfied with her doctor, and had no complaints.

19. On 13 December 2006, following a telephone call from the Estonian Patients' Advocacy Association ("the EPAA"), the applicant was given a copy of the County Court's decision of 8 November 2006. On 22 December 2006, represented by an EPAA lawyer, she appealed against the decision, arguing that the court had not reliably established the existence of the circumstances required for involuntary emergency psychiatric care under section 11 of the Mental Health Act (*Psühhiaatrilise abi seadus*). She also complained that there had been procedural violations, arguing that she had not been heard at the earliest opportunity, that both the hearing and the appointment of a lawyer had been of a merely formal nature and that the principle of equality of arms had not been complied with.

20. On 25 January 2007 the psychiatric clinic submitted a reply to the applicant's appeal, explaining with reference to her medical record that the conditions for placing her in involuntary psychiatric treatment had been met. It was noted, *inter alia*, that the applicant's consent to her voluntary treatment, given on 9 November 2006, had been disregarded as this had not been her true will.

21. On 5 February 2007 the applicant's treatment in the psychiatric clinic was terminated and she was transferred to the Jämejala psychiatric hospital where she stayed until 5 September 2007. The legal basis for her treatment in Jämejala was the Harju County Court's decision of 5 February 2007, made in the context of the criminal proceedings. The court found that the applicant had committed the unlawful acts she had been charged with. However, she had been mentally incompetent at the time. Therefore, the criminal proceedings were terminated and the applicant was subjected to coercive psychiatric treatment under Article 86 of the Penal Code (*Karistusseadustik*).

22. On 20 March 2007, in a written procedure, the Tallinn Court of Appeal dismissed the appeal by the applicant against the County Court's decision of 8 November 2006.

23. The applicant appealed to the Supreme Court, reiterating her earlier complaints. In addition, relying on Article 5 § 4 of the Convention, she complained that she had received the County Court's decision thirty-eight days after it had been adopted and that it had taken three months for the Court of Appeal to decide on her appeal.

24. On 10 October 2007 the Supreme Court dismissed the applicant's appeal. It found that the elements required under section 11 of the Mental

Health Act to involuntarily admit the applicant to a closed institution had been established by the lower courts which in their decisions had referred to doctors' opinions. As regards the fifteen-day delay that had elapsed before the County Court had heard the applicant, the Supreme Court stated as follows:

> "18. In response to the claim in the [present] appeal concerning a violation of the second sentence of Article 534 § 3 of the [Code of Civil Procedure – "the CCP"], the [Supreme Court] notes the following. In the event of the admission of a person to a closed institution pursuant to the procedure for the application of interim measures, the person himself or herself, and those close to him or her, have to be heard (Article 534 § 1 (4) of the CCP). The second sentence of Article 534 § 2 of the CCP allows for an exception from this rule to be made if the hearing may cause significant damage to the health of the person or if the person is clearly not able to express his or her will. According to the first sentence of Article 534 § 3 of the CCP, due to the potential danger resulting from a delay (the meaning of the provision indicates that reference is made to danger to the person's own life or other persons' lives, health or safety), interim measures may be applied before hearing the person himself or herself and the other persons, and before appointing a representative for him or her. According to the second sentence of Article 534 § 3 of the CCP, such [hearing and appointment] must be performed promptly thereafter. The [Supreme Court] considers that the main purpose of Article 534 § 1 (4) and the second sentence of § 534 (3) of the CCP is the need to prevent an unfounded admission of a person to a closed institution or the opportunity to decide on the termination of the admission pursuant to Article 539 § 1 of the CCP.
>
> In the present case, the County Court heard the person concerned fifteen days after the decision to apply interim measures had been taken. The [Supreme Court] finds that in the present case the County Court has not given reasons for the fifteen-day delay. Although the second sentence of Article 534 § 3 of the CCP obliges the court to promptly perform certain acts (hear the person himself or herself and the other persons named in the law, and appoint him or her a representative), the meaning of the law is that the person concerned has to be heard in the first place. Since the person concerned, as a rule, will have been admitted to the closed institution by that time, his or her whereabouts will be known to the court. If there were any objective circumstances preventing the court from hearing the person concerned herself, or if there were any circumstances mentioned in the second sentence of Article 534 § 2 of the CCP (hearing the person concerned would cause significant damage to his or her health, or he or she is clearly not able to express his or her will), pertinent reasons should have been set out in the decision. However, the aforementioned violation of the norms of procedure is not so important that it would result in quashing the ruling. The County Court has heard the person concerned and, based on the materials in the case file and the rulings made, the courts have not had doubts as to the existence of the prerequisites for the person's admission to the closed institution or as to their cessation."

II. RELEVANT DOMESTIC LAW

25. The Mental Health Act (*Psühhiaatrilise abi seadus*), as in force at the material time, provided:

Section 11 – Involuntary emergency psychiatric care

"(1) A person may be admitted to the psychiatric department of a hospital for emergency psychiatric care without the consent of the person or his or her legal representative, or the treatment of a person may be continued regardless of his or her wishes, only if all of the following circumstances exist:

1. the person has a severe mental disorder which restricts his or her ability to understand or control his or her behaviour;

2. without inpatient treatment, the person may endanger the life, health or safety of himself or herself or others due to the mental disorder; and

3. other psychiatric care is not sufficient.

(2) Involuntary treatment may be applied only on the basis of a court's decision. Involuntary care may be applied in the absence of a court's decision if this is unavoidable for the protection of the person or the public and a court's decision cannot be obtained sufficiently promptly.

(3) A decision to apply involuntary treatment in the absence of a court's decision shall be made by a psychiatrist on the admission of the person to the psychiatric department of the hospital ... promptly after his or her medical examination. ...

(4) Involuntary treatment on the basis of a decision referred to in subsection 3 may be applied for forty-eight hours from the beginning of the involuntary treatment.

..."

Section 13 – Review of involuntary treatment

"(1) A request to apply involuntary treatment and admit a person to a hospital's psychiatric department under the procedure for the application of interim measures shall be made to the court in the area where the hospital is located by the hospital's chief doctor. ..."

26. Admission of persons to closed institutions is dealt with in Chapter 54 of the Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*). As in force at the material time, it provided:

Article 533 – Admission of persons to closed institutions

"Pursuant to the procedure provided in this Chapter, the court shall conduct proceedings concerning the following matters based on a petition by the rural municipality or city government of the residence of the person:

1. the admission of a mentally ill person to a psychiatric hospital or a social welfare institution against his or her will, together with deprivation of the liberty of the person;

...

3. other matters concerning the admission of a person to a closed institution provided by law."

Article 534 – Application of interim measures

"(1) Based on the request of the petitioner, the court may [order the] admission of a person to a closed institution pursuant to the procedure for the application of interim measures, if:

1. the conditions of admission to a closed institution are clearly met and a delay is likely to result in danger, and

2. documents exist concerning the person's state of health, and

3. a representative has been appointed for the person [concerned] in the proceedings, and

4. the person himself or herself, and the persons specified in Article 536 § 2 of this Code, have been heard.

(2) ... A person need not be heard if this may cause significant damage to his or her health or if the person is clearly not able to express his or her will.

(3) If a delay could result in danger, the court may apply interim measures even before hearing the person himself or herself and the other persons, and before appointing a representative for him or her. In such a case, such [hearing and appointment] must be performed promptly (*viivitamata*) thereafter.

(4) Interim measures may be applied for a period of up to three months. After hearing an expert, such term may be extended to up to six months. Such term shall also include the time the person is admitted to a closed institution for examination.

(5) In the cases and pursuant to the procedure provided by law, a person may be admitted to a closed institution without a court ruling if this is strictly necessary for the protection of the person himself or herself or the public, and a court ruling cannot be obtained promptly enough. In such a case, a petition for obtaining a court ruling shall be submitted no later than during the following working day."

Article 535 – Appointment of representative for a person

"(1) If it is clearly necessary in the interests of the person and the person is not represented by another person with full legal capacity [to take part in] civil proceedings, the court shall appoint a representative for the person [concerned] in proceedings for the admission of the person to a closed institution.

..."

Article 536 – Hearing of the person himself or herself and other persons

"(1) Before a person is admitted to a closed institution, the person must be heard in person by the court and the court shall explain the course of the proceedings to him or her. If necessary, the court shall hear the person in his or her usual environment. ...

(2) Before a person is admitted to a closed institution, the court shall also hear the opinion of the rural municipality or city government, and the following persons:

1. the spouse of the person, and other family members who live or have lived together with the person;

2. the guardian or caregiver of the person;

3. the trustee appointed by the person;

4. the head of the closed institution in which the person has been admitted, or an official appointed thereby.

..."

Article 539 – Termination and extension of term of admission to a closed institution

"(1) The court shall terminate the admission of a person to a closed institution by a ruling after the prerequisites thereof have ceased to exist. The court may also terminate admission to a closed institution based on an application by the person himself or herself, the petitioner or at the initiative of the court. Before terminating a person's admission to a closed institution, the court shall obtain the opinion of the rural municipality or city government.

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

27. The applicant complained that her involuntary hospitalisation in the Psychiatric Clinic of the North Estonia Medical Centre on 6 November 2006 had not been "lawful" and "in accordance with a procedure prescribed by law" and that she had not received a fair hearing before the Harju County Court when it decided on 8 November 2006 to admit her to the closed institution. She relied on paragraphs 1 and 4 of Article 5 of the Convention, which read, in so far as relevant, 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 for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ...
>
> 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.
>
> ..."

28. The Court considers that the proceedings in question fall to be examined under Article 5 § 1 (e), as the applicant's initial admission was ordered in the course of proceedings brought by the authorities and no proceedings taken by the applicant to have the lawfulness of her detention decided (Article 5 § 4) were involved.

A. Admissibility

29. The Government argued that domestic remedies had not been exhausted in so far as the applicant's complaint concerned the quality of legal assistance because no complaints had been made to the domestic courts or the Estonian Bar Association in this respect. In any event, this complaint was manifestly ill-founded.

30. The applicant maintained that the issue of the lack of effective legal representation had been raised in the appeal to the Court of Appeal.

31. In respect of the Government's claim of non-exhaustion, the Court reiterates that the only remedies which Article 35 § 1 of the Convention requires to be exhausted are those that relate to the breaches alleged and which, at the same time, are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 75, ECHR 1999-V).

32. The Court does not consider that making a complaint to the Bar Association or lodging a civil claim against the lawyer would have had any positive effect on the applicant's situation in the proceedings related to her deprivation of liberty. It therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

33. Furthermore, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It

further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

34. The applicant argued that her involuntary hospitalisation on 6 November 2006 had not been "lawful" and "in accordance with the procedure prescribed by law" within the meaning of Article 5 § 1 (e). In particular, the Harju County Court had failed to reliably establish, contrary to the requirements of national law, that the applicant's mental disorder was "severe" and that she posed a danger to herself or others. Moreover, Estonian law lacked the preciseness and clearness required of "law" within the meaning of the Convention. Furthermore, the County Court had failed to consider less restrictive measures alternative to detention.

35. The applicant further argued that she had not been given a fair hearing in the proceedings related to her involuntary admission to the hospital. The proceedings had not been adversarial and the principle of equality of arms had not been complied with. She had not been heard either before or immediately after her admission had been ordered but had only been heard fifteen days later. Neither had she been provided with effective legal assistance.

(b) The Government

36. The Government maintained that a comprehensive and detailed opinion by two doctors had been submitted to the County Court. It had included information about the applicant's medical history as well as her recent behaviour and had comprised an assessment of the severity of her mental disorder. Her situation at the time of her detention had been assessed and she had been found to pose a danger to her daughter. In respect of possible alternatives to her involuntary admission, it had been noted that the applicant had refused voluntary inpatient treatment and had failed to follow outpatient treatment. As the doctors had given their opinion after the applicant had been detained in the hospital for nearly two days, their observations had also been based on the applicant's actual condition. There was no reason whatsoever to believe that the doctors had lacked impartiality or had wished any harm to the applicant.

37. The Government argued that the applicant's deprivation of liberty had been decided by a competent court in accordance with the procedure prescribed by law. As the applicant had been dangerous, the court had

issued a temporary injunction before hearing the applicant and appointing a lawyer to represent her. Thereafter, a lawyer had promptly been appointed for her and she had been heard at the earliest opportunity that her condition had allowed. According to a forensic psychiatric examination report which had been ordered in the course of the criminal proceedings and which had been drawn up on 17 November 2006 – that is, between the court ruling on the applicant's admission (8 November 2006) and her hearing by the court (23 November 2006) – the applicant had been mentally incompetent and unable to participate in the pre-trial investigation, give evidence in court or serve a punishment. Accordingly, the Government argued that the applicant's mental disorder had not allowed hearing her earlier.

2. *The Court's assessment*

(a) Whether the applicant was a "person of unsound mind"

38. According to the Court's case-law, except in emergency cases, three minimum conditions have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 § 1 (e) of the Convention. Firstly, the individual concerned must be reliably shown to be of unsound mind, that is to say, 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 admission. Thirdly, the validity of the extension of the period of compulsory admission depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Rakevich v. Russia*, no. 58973/00, § 27, 28 October 2003; and *Shtukaturov v. Russia*, no. 44009/05, § 114, 27 March 2008). The national authorities have a certain margin of appreciation regarding the merits of clinical diagnoses since it is in the first place for them to evaluate the evidence in a particular case: the Court's task is to review under the Convention the decisions of those authorities (see *H.L. v. the United Kingdom*, no. 45508/99, § 98, ECHR 2004-IX, and *Winterwerp*, cited above, § 40).

39. Turning to the present case, the Court notes the applicant's argument that Estonian law lacked the preciseness and clearness required of "law" within the meaning of the Convention, in particular insofar as the criterion of "danger" was concerned. The Court observes, however, that, pursuant to section 11(1)(2) of the Mental Health Act, one of the preconditions for compulsory admission was that "without inpatient treatment, the person may endanger the life, health or safety of himself or herself or others due to [a] mental disorder" (see paragraph 25 above). The Court considers such a definition sufficiently clear to describe, without excessive rigidity, the situations in which a person's compulsory admission could be ordered (see, for comparison, *Rakevich*, cited above, §§ 31-32).

40. The Court further observes that in the present case the applicant had suffered from mental illness for several years before her hospitalisation on 6 November 2006. According to the medical opinion presented to the County Court together with the psychiatric clinic's request for her involuntary treatment, the applicant's condition had recently become acute. She had become violent towards her partner and had put her child's well-being in danger. Her outpatient treatment had not proved effective. The Court considers that the medical opinion and the court's decision were sufficiently detailed in the circumstances of the present case, particularly given the time-frame within which the authorities had to act, as well as the limited duration of the applicant's compulsory admission. Furthermore, the Court has no reason to doubt the accuracy of the medical opinion and is satisfied that the applicant was shown to have been a "person of unsound mind" whose mental disorder warranted compulsory admission. It also notes that the assessment of the applicant's medical condition and her dangerousness were later confirmed by the forensic psychiatric opinion and other evidence gathered in the course of the criminal proceedings.

(b) Whether the applicant's detention was "lawful"

41. The lawfulness of detention for the purposes of Article 5 § 1 (e) presupposes conformity both with domestic law and with the purpose of the restrictions permitted by Article 5 § 1 (e). As regards conformity with domestic law, the Court reiterates that the term "lawful" covers procedural and substantive aspects of national law, overlapping to a certain extent with the general requirement in Article 5 § 1 to observe a "procedure prescribed by law" (see, *inter alia*, *Winterwerp*, cited above, § 39; *H.L. v. the United Kingdom*, cited above, § 114; and *Storck v. Germany*, no. 61603/00, § 111, ECHR 2005-V).

42. Although it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law, under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention and the Court can and shall therefore review whether this law has been complied with (see, *inter alia*, *Mooren v. Germany* [GC], no. 11364/03, § 73, ECHR 2009-...; *Benham v. the United Kingdom*, 10 June 1996, § 41, *Reports of Judgments and Decisions* 1996-III; and *Boris Popov v. Russia*, no. 23284/04, § 69, 28 October 2010).

43. The Court has also had regard to previous cases where the person who was deprived of his liberty was not given the opportunity to be heard by the courts (see, *Van der Leer v. the Netherlands*, 21 February 1990, §§ 23-24, Series A no. 170-A; and, *mutatis mutandis*, the above-cited cases of *Winterwerp* and *Shtukaturov*, at §§ 60-61 and §§ 71-73, respectively) and where a judicial detention order was given with substantial delay, in violation of domestic law (see *Rakevich*, cited above, § 35).

44. Turning to the present case, the Court notes that the applicant was not heard by the County Court before it ruled on her compulsory admission. This, in itself, was not incompatible with domestic law, which, in urgent cases, allowed the person concerned to be heard subsequently. However, in such a case, the person concerned had to be heard "promptly" thereafter, as stipulated by Article 534 of the Code of Civil Procedure (see paragraph 26 above). In the present case, the applicant was not heard by the judge until fifteen days after the decision concerning her compulsory admission had been made. The Supreme Court found that no reasons – for example, that hearing the applicant would have caused significant damage to her health, or that she had clearly not been able to express her will – had been given for the fifteen-day delay and concluded that Article 534 § 3 had been violated (see paragraph 24 above). The Court sees no reason to come to a different conclusion. It also notes in this context that fifteen days constituted a considerable portion of the three-month admission period – the maximum duration allowed according to the procedure for interim measures under Article 534 of the Code of Civil Procedure.

45. As concerns the Government's argument that the applicant's mental state had not allowed hearing her earlier, based on the forensic psychiatric examination report made in the course of the criminal proceedings, the Court observes that, according to the information available, at no point did the domestic authorities substantiate the delay in the applicant being heard with that argument. Moreover, the report in question concerned the applicant's ability to participate in criminal proceedings against her. In the Court's opinion, the same criteria could not be applied to her eligibility to be heard in the proceedings related to her compulsory admission to the psychiatric clinic. Indeed, the applicant's mental incompetence, her inability to give evidence in court and to serve a punishment were closely linked to the reasons for her compulsory admission. To hold in such circumstances that her inability automatically extended to the proceedings concerning her compulsory admission would render her right to be heard in the latter proceedings virtually devoid of substance.

46. Lastly, the Court observes that in the present case the higher courts focused their review on the question of whether the applicant's compulsory admission was justified and whether the decision underlying her compulsory admission ought to be quashed. The Court does not underestimate the importance of these matters. However, it considers that an important aspect of the applicant's complaints also related to the very procedure by which she was deprived of her liberty. It notes in this context that although the Supreme Court found that the fifteen-day delay that elapsed before the County Court heard the applicant constituted a "violation of the norms of procedure", it drew no further conclusions from that assessment and afforded the applicant no redress.

47. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was not detained in accordance with a procedure prescribed by law. The Court considers that there is no need to examine the further arguments raised by the parties.

48. There has therefore been a violation of Article 5 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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."

A. Damage

50. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government submitted that, should the Court find a violation of the applicant's rights, a finding of a violation would constitute sufficient just satisfaction. In case the Court considered that to be insufficient just satisfaction, the Government left the amount of the award to the Court's discretion.

52. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by a finding of a violation. In view of the circumstances of the present case and ruling on an equitable basis, it therefore awards the applicant EUR 5,000 in respect of non-pecuniary damage plus any tax which may be chargeable on that amount.

B. Costs and expenses

53. The applicant also claimed EUR 2,118.60 for costs and expenses incurred before the Court. She submitted an agreement for the provision of legal services and a request for payment together with an appendix specifying the costs and expenses incurred in the proceedings.

54. The Government considered that sum excessive and emphasised that it had not yet been paid by the applicant. They called on the Court to accept only reasonable costs and expenses.

55. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Absence of proof of payment does not necessarily result in the

rejection of a claim for costs and expenses that is in itself well-founded (see *Krejčíř v. the Czech Republic*, nos. 39298/04 and 8723/05, § 137, ECHR 2009-...).

56. In the present case, regard being had to the documents in its possession and to the above criteria, the Court considers it reasonable that the sum claimed, namely EUR 2,118.60, should be awarded in full, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

57. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

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*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage and EUR 2,118.60 (two thousand one hundred and eighteen euros and sixty cents) in respect of costs and expenses, plus any tax that may be chargeable to the applicant on these amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 4 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President