



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

FIRST SECTION

CASE OF PROSHKIN v. RUSSIA

(Application no. 28869/03)

JUDGMENT

STRASBOURG

7 February 2012

FINAL

09/07/2012

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

In the case of Proshkin v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyeu,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 17 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 28869/03) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Sergey Anatolyevich Proshkin (“the applicant”), on 21 August 2003.

2. The applicant was represented by Ms L. Churkina, a lawyer practising in Yekaterinburg. The Russian Government (“the Government”) were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, the unlawfulness of his detention in 2003, inability to appeal against a detention order and the authorities’ failure to ensure his presence at hearings during the criminal proceedings against him.

4. On 16 November 2004 the Judge appointed as rapporteur requested the Government, pursuant to Rule 49 § 2 of the Rules of Court, to submit factual information concerning the grounds for the applicant’s detention after 27 January 2003.

5. On 5 July 2007 the President of the First 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1963 and lives in Perm.

7. On 18 October 1996 the applicant was involved in a traffic accident committed by a Mr P. The applicant, his wife and son were injured and the applicant's car was damaged. Criminal proceedings against Mr P. were discontinued in accordance with an amnesty law.

8. Mr P. and his mother complained to the police that they had been subjected to constant harassment by the applicant, who had repeatedly threatened them in a number of phone calls and had allegedly demanded money in compensation for pecuniary and non-pecuniary damage sustained as a result of the traffic accident.

9. On 29 March 1999 the Industrialniy District Court of Perm issued a decision, authorising the institution of criminal proceedings against the applicant on suspicion of aggravated defamation and insulting behaviour.

10. In July 1999 Mr P. petitioned the Perm Regional Prosecutor to detain the applicant and to subject him to a psychiatric examination because the harassment had not stopped and had even escalated to death threats against both Mr P. and his mother. Twenty days later Mr P.'s lawyer repeated the request.

11. On 24 September 1999 another set of criminal proceedings was instituted against the applicant who, in these proceedings, was under suspicion of having made death threats.

12. On 5 November 1999 the two sets of criminal proceedings were joined and the applicant's placement in custody was authorised. He was placed in temporary detention facility no. IZ-59/1 in Perm (hereinafter "facility no. 1").

13. The applicant lodged a complaint with the Industrialniy District Court, alleging that his arrest was unlawful.

14. On 25 November 1999 the District Court dismissed the complaint, confirming the lawfulness of the arrest. That decision was upheld on appeal by the Perm Regional Court on 22 December 1999.

15. On 6 December 1999 a prosecutor authorised an extension of the applicant's detention until 5 February 2000. On 18 January 2000 the Industrialniy District Court rejected the applicant's subsequent appeal against the extension, noting the gravity of the charges against him.

16. Whereas the investigation in the criminal case continued, the applicant was released on 4 February 2000 on a written undertaking not to leave the town.

17. On 31 August 2000 the Industrialniy District Court, having held hearings in the applicant's presence, found him guilty of aggravated

defamation and extortion, acquitted him of the remaining charges and sentenced him to seven years' imprisonment. On the same day the applicant was taken to facility no. 1.

18. Following the appeal hearing which the applicant attended, on 9 November 2000 the Perm Regional Court quashed the judgment, acquitted him of aggravated defamation and ordered a fresh examination into the charge of extortion. The applicant was released on the same day under a written undertaking not to leave the town.

19. In accordance with the order of the Regional Court, on 18 January 2001 the Industrialniy District Court authorised an additional investigation into the charge of extortion.

20. On 26 March 2002 the District Court further ordered a psychiatric assessment of the applicant. That decision was upheld on appeal on 30 April 2002 by the Perm Regional Court, which, in so far as relevant, held as follows:

“As appears from the case file materials, [the applicant] is accused of having committed criminal offences which resulted from the fact that in 1996 his family had been involved in a traffic accident caused by a driver, Mr P. Criminal proceedings against Mr P. were discontinued in accordance with an amnesty law. [The applicant] did not accept the outcome of the criminal case and began complaining to various institutions and authorities. Having received replies, he began making numerous written requests asking to have the authorities who had dealt with his complaints, including his lawyer who had represented his interests, held liable. In December 1999 the investigating authorities, having doubts that [the applicant] was mentally healthy, ordered a forensic psychiatric examination. Experts concluded that [the applicant] did not have a psychiatric illness, but [that] he was a psychopath. However, the stream of complaints and motions subsequently intensified; the circle of people against whom he asked [for a] criminal investigation to be opened due to their alleged failure to carry out their duties broadened. Having regard to those facts, [the District] court found that it was necessary to perform an additional examination.”

21. According to the Government, the examination was scheduled for 31 July 2002. However, the applicant refused to attend it and the Industrialniy District Court ordered his being brought for examination against his will.

22. On 26 October 2002 the applicant was apprehended in Perm and taken to the Serbskiy State Scientific Centre of Social and Forensic Psychiatry in Moscow (hereinafter “the Centre”). A month later the Centre issued an expert report finding that the applicant suffered from schizophrenia. The expert conclusions were based, *inter alia*, on the following considerations:

“[The diagnosis] is confirmed by the medical history, showing that since adolescence [the applicant] has acute premorbid personality traits such as hyperactivity, the urge to become a self-reliant person [and] an intense feeling of injustice, with subsequent slowly growing psychopathic changes (extreme straightforwardness, intolerance, contentiousness, rudeness, unsociability, arrogance) and a tendency to establish obsessive interests (all-absorbing passion for technical

equipment [and] jurisprudence) which transformed into affective, obsessive [and] absurd ideas, relations, querulous paranoia, litigiousness over an extremely broad number of subjects and involving a large number of people, which led to his incorrect behaviour, litigious activities and malfunctioning social adaptation.”

The applicant was released from the Centre on 21 November 2002.

23. Another psychiatric examination of the applicant was ordered by the Industrialniy District Court on 10 January 2003.

24. On 27 January 2003 the District Court issued two decisions authorising the applicant’s arrest on the grounds that he had been charged with a particularly serious criminal offence and the forensic psychiatric examination had established that he “suffered from schizophrenia [and] presented a danger to society”. The decisions, one handwritten and the other one typed, were identical in wording save for one difference. By the first decision the District Court ordered the applicant’s placement in a psychiatric hospital. By the second decision it authorised his detention in detention facility no. 1 in Perm. The applicant attended the hearing.

25. The applicant provided the Court with copies of the two decisions, both bearing the presiding judge’s signature and the court’s stamp. The Government explained that on 27 January 2003 the presiding judge had issued a handwritten detention order authorising the applicant’s admission to a psychiatric hospital. Subsequently, the court registry had prepared a typed version of the same decision. The Government argued that the case file materials had not contained the second decision ordering the applicant’s detention in facility no. 1. The applicant was taken into custody in the court house and taken to detention facility no. 1.

26. The applicant lodged an appeal against the decision of 27 January 2003. He complained that there had been no evidence that he was a danger to society and that, accordingly, there was no need to detain him. As follows from the stamp on the statement of appeal, the Perm Regional Court received it on 29 January 2003.

27. On 31 January and 1 February 2003 the applicant lodged additional statements of appeal, further challenging the grounds for his arrest. Stamps on the statements show that they reached the Perm Regional Court on 31 January and 2 February 2003 respectively.

28. The applicant’s appeals against the decision of 27 January 2003 never received a reply.

29. It appears that on 17 and 18 February 2003 the Industrialniy District Court held trial hearings. While the applicant’s lawyer and mother attended, the applicant was not brought to the courthouse. The District Court did not issue any formal decision addressing his absence from the trial. However, as it follows from the case file, the matter was raised and discussed leading to the presiding judge’s conclusion that the applicant’s presence was unnecessary.

30. On 18 February 2003 the Industrialniy District Court held that the applicant had committed aggravated extortion but relieved him from criminal responsibility, finding that he was mentally incapacitated. The District Court ordered the application of compulsory measures of a medical nature to the applicant and his placement in a psychiatric hospital for intensive care. The relevant part of the decision read as follows:

“... Having regard to the fact that [the applicant] suffers from a mental illness, he is inclined to reoffend, including by committing particularly serious [criminal offences], he distinguishes himself by [behaving] aggressively, by [being] intolerant to other individuals, it is necessary to commit him to compulsory treatment in a special psychiatric hospital with intensive care”.

31. On 20 February 2003, in response to the District Court’s order of 10 January 2003, the Perm Regional Clinical Psychiatric Hospital issued an expert report, confirming the findings made by the experts of the Centre.

32. On 15 April 2003 the Perm Regional Court held an appeal hearing. The applicant was not brought to it, despite his requests to that effect. Both his lawyer and his mother were present. The Regional Court examined the applicant’s complaint of failure to ensure his presence at the trial hearings and found that the District Court had acted lawfully because the domestic law did not require his presence. It also pointed out that the applicant had been represented by his mother and a lawyer. Having been fully convinced by the District Court’s findings, the Regional Court upheld the decision of 18 February 2003.

33. In the meantime, the Industrialniy District Prosecutor filed a motion with the District Court seeking a declaration of the applicant’s incapacity. The prosecutor argued that the applicant should be deprived of legal capacity for reason of insanity.

34. On 6 May 2003 the Industrialniy District Court found that the applicant suffered from a chronic mental illness, he was unable to appreciate his conduct and its danger to society or to control his actions, and he was in need of constant supervision. The District Court declared the applicant legally incapacitated. The applicant did not appeal against that decision.

35. According to the Government, the applicant was detained in facility no. 1 in Perm until 24 July 2003 because his transfer to a specialised psychiatric hospital in Kaliningrad was delayed as the Russian authorities had failed to obtain a visa permitting the applicant’s transit through Lithuania. Relying on a statement by a representative of the Ministry of Justice of the Russian Federation, the Government submitted that during the entire period of his detention in facility no. 1 the applicant had been detained in a cell designated for mentally ill inmates.

36. On 24 July 2003 the applicant’s transfer to a psychiatric hospital in Kazan was authorised. The hospital, however, refused to admit him because he did not have a valid identity document. The applicant therefore continued being detained in detention facility no. 1 until 18 August 2003. On that date

he was sent to the psychiatric hospital in Kazan. On 4 June 2004 he was released from the hospital.

II. RELEVANT DOMESTIC LAW

A. Detention

37. Until 1 July 2002 criminal-law matters were governed by the Code of Criminal Procedure of the Russian Soviet Federalist Socialist Republic (Law of 27 October 1960). From 1 July 2002 the old CCrP was replaced by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001, “the CCrP”).

1. Preventive measures

38. “Preventive measures” or “measures of restraint” include an undertaking not to leave a town or region, a personal guarantee, bail and detention on remand (Article 98 of the CCrP).

2. Authorities ordering detention on remand

39. The Russian Constitution of 12 December 1993 provides that a judicial decision is required before a defendant can be detained or his or her detention extended (Article 22).

The CCrP requires a judicial decision by a district or town court on a reasoned request by a prosecutor supported by appropriate evidence (Article 108 §§ 1, 3-6).

3. Grounds for ordering detention on remand

40. When deciding whether to remand an accused in custody, the competent authority is required to consider whether there are “sufficient grounds to believe” that he or she would abscond during the investigation or trial or obstruct the establishment of the truth or reoffend (Article 97). It must also take into account the gravity of the charge, information on the accused’s character, his or her profession, age, state of health, family status and other circumstances (Article 99).

41. The CCrP sets a general rule permitting defendants to be detained on remand if the charge carries a sentence of at least two years’ imprisonment. In exceptional cases, the Code permits detention of defendants on a charge carrying a sentence of less than two years’ imprisonment, if they have previously defaulted, have no permanent residence in Russia or if their identity cannot be ascertained. A defendant should not be detained on remand if a less severe preventive measure is available (Articles 97 § 1 and 108 § 1).

4. Proceedings to examine the lawfulness of detention

(a) As regards detention “during the investigation”

42. An appeal may be lodged with a higher court within three days against a judicial decision ordering or extending detention on remand. The appeal court must rule on the appeal within three days of its receipt (Article 108 § 10). The right to appeal against a judicial decision belongs to a defendant, his representative and legal guardian, a prosecutor, a victim and his representative (Articles 127 § 1 and 354 § 4).

(b) During the judicial proceedings

43. At any time during the judicial proceedings the court may order, vary or revoke any preventive measure, including detention on remand (Article 255 § 1). Any such decision must be given in the deliberation room and signed by all the judges on the bench (Article 256).

44. An appeal against such a decision lies to a higher court. It must be examined within the same time-limit as an appeal against the judgment on the merits (Article 255 § 4).

B. Compulsory measures of a medical nature

45. The Criminal Code of the Russian Federation, in force since 1 January 1997, and the Code of Criminal Procedure of the Russian Federation set out the grounds and procedure for the application of compulsory measures of a medical nature.

1. Criminal Code of the Russian Federation

Article 97. Grounds for the application of compulsory measures of a medical nature

“1. Compulsory measures of a medical nature may be applied by a court to individuals:

(a) who, in a state of insanity, committed an offence described in [...] the ... present Code;

(b) who, after having committed a criminal offence, became mentally ill, making it impossible to sentence him and execute that sentence;

(c) who committed a criminal offence and who suffer from a mental illness, which does not [reach the level of insanity];

(d) who committed a criminal offence and who were considered in need of treatment for alcoholism or drug abuse.

2. Compulsory measures of a medical nature shall only be applied to people [falling within the situations] listed in the first paragraph of the present Article in cases where the mental disorders are linked to the ability of those persons to cause substantial damage or to present a danger to themselves or other individuals.”

2. The Code of Criminal Procedure of the Russian Federation

Article 435. Placement in a psychiatric hospital

“1. When it is established that a person to whom detention on remand has been applied as a measure of restraint suffers from a mental illness, a court, upon a prosecutor’s motion and in accordance with the procedure laid down in Article 108 of the present Code, shall take a decision authorising a transfer of that person to a psychiatric hospital.

2. Placement of a person who is not detained on remand in a psychiatric hospital may be authorised by a court in accordance with the procedure laid down in Article 203 of the present Code.”

Article 443. A court decision

“1. When a court finds it proven that a criminal offence was committed by that person in a state of insanity or that after having committed a criminal offence the person became mentally ill, making it impossible to sentence him and execute the sentence, the court shall take a decision in accordance with Articles 21 and 81 of the Criminal Code of the Russian Federation reliving that person from criminal responsibility or from serving the sentence and authorising the application of compulsory measures of a medical nature to him...”

Article 444. Procedure for lodging appeals against a court decision

“A court decision may be appealed against by a representative, a victim and his representative, a legal guardian or close relative of a person in respect of whom a criminal case was examined, and by a prosecutor in accordance with Chapter 45 of the present Code.”

C. Judicial proceedings

The Code of Criminal Procedure of the Russian Federation

Article 247. Participation of a defendant.

“1. Presence of a defendant at a court hearing in a criminal case is mandatory, save in the circumstances which are listed in paragraph 4 of the present Article.

2. If a defendant fails to attend, the examination of a case should be adjourned.

...

4. A court hearing may be held in the defendant's absence if a defendant in a criminal case concerning a minor criminal offence or [a criminal offence] of average severity asks for the examination of that criminal case in his absence."

Article 376. Fixing an [appeal] court hearing.

"1. When [a judge] receives a criminal case with a statement of appeal, [he] shall fix the date, time and place of a court hearing.

2. An appellate court shall inform the parties of the date, time and place of the examination of a criminal case no later than 14 days before the hearing. The court shall determine whether [it is necessary] to call a defendant who is in custody.

3. If a defendant who is in custody informs [the court] of his willingness to take part in the examination of the appeal against the trial judgment, he has the right to take part in a hearing in person or can state his position by way of a video conference. The court shall determine the form of the applicant's participation in a hearing..."

46. Section 51 of the Russian Code of Criminal Procedure lays down procedural norms for the examination of a criminal case against a person who is charged with having committed a criminal offence in a state of insanity or who became mentally ill after having committed a criminal offence when he can no longer bear criminal responsibility and serve a sentence. By virtue of Section 51 of the CCrP, the courts shall examine a criminal case against such a person in an ordinary manner, save for specific rules laid down in that Section. Section 51 does not set any specific rules concerning the presence of a mentally ill person at trial and appeal hearings.

D. Legal capacity

47. Under Article 21 of the Civil Code of the Russian Federation of 1994, any individual aged 18 or more has, as a rule, full legal capacity, which is defined as "the ability to acquire and enjoy civil rights, create and fulfil civil obligations by his own acts". Under Article 22 of the Civil Code legal capacity can be limited, but only on the grounds defined by law and within a procedure prescribed by law.

48. Under Article 29 of the Civil Code, a person who cannot understand or control his or her actions as a result of a mental illness may be declared legally incapacitated by the courts and placed in the care of a guardian. All legal transactions on behalf of the incapacitated person are concluded by his guardian. The incapacitated person can be declared to have regained full

capacity if the grounds on which he or she was declared incapacitated cease to exist.

49. Article 135 (1) of the Code of Civil Procedure of 2002 (“the CCP”) establishes that a civil claim lodged by a legally incapacitated person should be returned to him without examination.

50. Article 281 of the CCP establishes the procedure for declaring a person incapacitated. A request for incapacitation of a mentally ill person can be brought before a first-instance court by a family member of the person concerned. On receipt of the request, the judge must commission a forensic psychiatric examination of the person concerned.

51. Article 284 of the CCP provides that the incapacitation request should be examined in the presence of the person concerned, the claimant, a prosecutor and a representative of the guardianship office. The person whose legal capacity is being examined by the court is to be summoned to the court hearing, unless his state of health prohibits him from attending it.

52. Article 289 of the CCP provides that full legal capacity can be restored by the court at the request of the individual’s guardian, a close relative, the guardianship office or a psychiatric hospital, but not of the person declared incapacitated himself.

E. Confinement to a psychiatric hospital

53. The Psychiatric Assistance Act of 2 July 1992, as amended (“the Act”), provides that any recourse to psychiatric assistance should be voluntary. However, a person declared fully incapacitated may be subjected to psychiatric treatment at the request or with the consent of his official guardian (section 4 of the Act).

54. Section 5 of the Act establishes that individuals suffering from mental disorders have all human rights and freedoms guaranteed by the Russian Constitution and federal laws. Limitations of their rights and freedoms are only allowed when specifically provided for by laws of the Russian Federation. Section 5 (3) of the Act provides that the rights and freedoms of persons with mental illnesses cannot be limited solely on the grounds of their diagnosis, or the fact that they have been subjected to treatment in a psychiatric hospital.

55. Under Section 5 of the Act, a patient in a psychiatric hospital can have a legal representative. However, pursuant to point 2 of Section 7, the interests of a person declared fully incapacitated are represented by his official guardian.

56. Section 34 regulates the procedure for involuntary placement of a mentally ill individual in a psychiatric hospital. A judge is to examine a request for involuntary admission to a psychiatrist hospital in the presence of an individual whose placement in the hospital is sought. Section 35 provides that only a judicial order may serve as grounds for admission of an

individual to a psychiatric hospital. Such an order may be appealed against within ten days by the individual whose detention in a psychiatric hospital was authorised, his representative, the head of the psychiatric hospital or a prosecutor (Section 35 § 3 of the Act).

57. Section 37 (2) of the Act establishes the list of rights of a patient in a psychiatric hospital. In particular, the patient has the right to communicate with his lawyer without censorship. However, under Section 37 (3) the patient's doctor may limit the patient's rights to correspond with other persons, have telephone conversations and meet visitors.

58. Section 47 of the Act provides that the doctors' actions can be appealed against before the courts.

F. Changes in the application of Russian law on mentally ill individuals following the Court's judgment in the case of *Shtukaturov v. Russia* (no. 44009/05, 27 March 2008)

59. On 27 February 2009 the Constitutional Court of the Russian Federation issued Decree no. 4-P, having declared unconstitutional a number of provisions of the Russian Code of Civil Procedure and the Psychiatric Assistance Act limiting rights of mentally ill persons to participate in incapacitation proceedings and to appeal against court decisions stripping them of legal capacity.

60. In Resolution no. 6 of 7 April 2011 the Plenary Supreme Court of the Russian Federation held that a person whose admission to a psychiatric hospital was authorised or whose detention in hospital was extended by a court has the right to appeal against that decision, along with his lawyer, legal guardian or other persons authorised to do it by the Russian Code of Criminal Procedure (§ 8). The Plenary Supreme Court also stressed that, unless the accused's state of mental health precludes it, an individual against whom criminal proceedings are pending should have the opportunity to make use, personally, of every procedural right guaranteed by Articles 46 and 47 of the Code of Criminal Procedure (the right to be informed of the charges against him and to receive related procedural documents, the right to give explanations and make statements or to remain silent, the right to legal assistance, the right to submit evidence, the right to lodge requests, complaints, etc. and to participate in their examination by a court, the right to an interpreter, the right to appeal against actions/inaction on the part of the courts, prosecutors, investigators, etc., the right to attend hearings before the trial and appeal courts, as well as hearings concerning detention matters, and so on). The courts should take into account expert reports, medical and other evidence, including that provided by the psychiatric hospital, to determine whether the individual's state of mental health permits him/her to fully benefit from his/her procedural rights (§ 10).

61. The Plenary Supreme Court insisted that it was the trial court's task to duly and timeously inform the person of the date, time and place of any court hearing so as to provide him/her with an opportunity to submit various procedural requests, including that for his/her attendance (§ 13).

THE LAW

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

62. The applicant complained under Article 5 § 1 of the Convention that his detention between 27 January and 18 August 2003 in facility no. 1 had been unlawful, having been based on two incompatible detention orders. Article 5, in so far as relevant, reads 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:...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

(e) the lawful detention... of persons of unsound mind...”

A. Submissions by the parties

63. The Government argued that on 23 January 2003 a prosecutor had petitioned for the applicant's arrest, taking into account the fact that the latter had suffered from a serious mental disorder, confirmed by the expert opinion of 21 November 2002, and, given the nature of the crime he had been accused of, had presented a danger to the life and limb of the victim and witnesses. The Industrialny District Court had accepted the motion and had authorised the applicant's detention. A single detention order had been issued on that occasion calling for the applicant's placement in a psychiatric hospital. The Government stressed that no other detention order had been found in the case file materials.

64. The Government further submitted that in view of the fact that there had been no “suitable” psychiatric hospital in the Perm Region and in line with established judicial practice, the applicant was to have been sent to a psychiatric hospital in Kaliningrad. However, his transfer had been delayed

because the Lithuanian authorities had refused to issue him with a transit visa. A further delay in the applicant's admission to the hospital had been caused by the refusal of the administration of the psychiatric hospital in Kazan to admit him in the absence of valid identification documents. The Government concluded by stating that the applicant's detention in facility no. 1 in Perm had been reasonable and lawful, having been based on a valid court order issued in compliance with the requirements of the Russian Code of Criminal Procedure and upheld by the appeal court.

65. The applicant disagreed with the Government, insisting that on 27 January 2003 the District Court had issued two detention orders, the first one authorising his admission to a psychiatric hospital and the second one prescribing his detention in a regular detention facility. Accordingly, his detention from 27 January to 18 August 2003 had not been carried out "in accordance with a procedure prescribed by law" and had been unlawful. Furthermore, he had been detained for almost seven months in a regular detention facility although the authorities had cited his mental illness as the primary ground for his detention and the Government did not dispute that the domestic courts had intended to detain him in a psychiatric hospital.

B. The Court's assessment

1. Admissibility

66. The Court reiterates that Article 5 § 1 sub-paragraphs (a) to (f) of the Convention contain an exhaustive list of permissible grounds for deprivation of liberty and no deprivation of liberty will be lawful unless it falls within one of those grounds (see, *inter alia*, *Guzzardi v. Italy*, 6 November 1980, § 96, Series A no. 39; *Witold Litwa v. Poland*, no. 26629/95, § 49, ECHR 2000-III; and *Saadi v. the United Kingdom* [GC], no. 13229/03, § 43, ECHR 2008-...). However, the applicability of one ground does not necessarily preclude that of another: detention may, depending on the circumstances, be justified under more than one sub-paragraph (see *Eriksen v. Norway*, 27 May 1997, § 76, *Reports of Judgments and Decisions* 1997-III, and *Erkalo v. the Netherlands*, 2 September 1998, § 50, *Reports* 1998-VI).

67. The Court considers that in the instant case the applicant's detention from 27 January to 18 August 2003 should be divided into two separate periods, having regard to the subparagraphs of paragraph 1 of Article 5 of the Convention under which each particular period of detention fell. The Court observes that on 27 January 2003 the Industrialniy District Court authorised the applicant's detention, finding that the gravity of the charges against him and his presenting a danger to society in view of his mental illness warranted the deprivation of liberty. On 18 February 2003 the District Court found that the applicant had committed extortion. It, however,

concluded that the applicant's mental illness precluded him from bearing criminal responsibility and serving a sentence. He was to be admitted to a psychiatric hospital for compulsory treatment. Accordingly, the Court considers that the detention of the applicant from 27 January to 18 February 2003 falls within Article 5 § 1 (c) of the Convention as it was effected for the purpose of bringing him before the competent legal authority on criminal charges based, as was not disputed by the parties, on a reasonable suspicion of his having committed the offences he was charged with. In turn, the period from 18 February to 18 August 2003 falls within subparagraph (a) of Article 5 § 1 of the Convention as it resulted from a "conviction" by a "competent court". Furthermore, as follows from the Government's submissions, since the applicant – who was suffering from a mental disorder – was to be detained after 27 January 2003 in a psychiatric institution, his detention starting from that date until 18 August 2003 also falls within the ambit of Article 5 § 1 (e) of the Convention (see, for similar reasoning, *Erkalo*, cited above, § 51, and *Morsink v. the Netherlands*, no. 48865/99, § 62, 11 May 2004).

68. Having divided the applicant's detention between 27 January and 18 August 2003 into two separate periods, the Court must further determine whether the applicant has complied with the admissibility requirements defined in Article 35 § 1 of the Convention, in particular the six-month rule. The applicant lodged his application with the Court on 21 August 2003 – that is, more than six months after the first period of detention came to an end on 18 February 2003. He, however, challenged the grounds for his detention during the first period by lodging an appeal statement before the Perm Regional Court. The appeal was never examined (see paragraph 28 above). The applicant was not apprised of the outcome of the appeal proceedings and he was not served with any decision explaining the reason for the Regional Court's silence. In fact, he only learned about the fate of his appeal from the Government's submissions. In those circumstances, the Court considers that the later date should be regarded as the final decision for the purposes of Article 35 § 1 of the Convention. The applicant, therefore, has not failed to comply with the six-month requirement and his complaint concerning the lawfulness of his detention from 27 January to 18 February 2003 cannot be rejected pursuant to Article 35 § 4 of the Convention.

69. The Court further notes that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Detention from 27 January to 18 February 2003

70. The Court observes at the outset that Article 5 of the Convention protects the right to liberty and security. This right is of primary importance “in a democratic society” within the meaning of the Convention (see, amongst many other authorities, *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12; *Assanidze v. Georgia* [GC], no. 71503/01, § 169, ECHR 2004-II; and *Ladent v. Poland*, no. 11036/03, § 45, ECHR 2008-...).

71. All persons are entitled to the protection of this right, that is to say, not to be deprived, or continue to be deprived, of their liberty, save in accordance with the conditions specified in paragraph 1 of Article 5 (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 77, ECHR 2010-...). Against this background, it must, therefore, be established whether the detention of the applicant during the period under consideration was “in accordance with a procedure prescribed by law” and “lawful” within the meaning of Article 5 § 1 of the Convention. Where the “lawfulness” of detention is in issue, including the question whether “a procedure prescribed by law” has been followed, the Convention essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof. It requires at the same time that any deprivation of liberty should be in conformity with the purpose of Article 5, which is to prevent people from being deprived of their liberty in an arbitrary fashion (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, 12 February 2008).

72. Turning to the circumstances of the present case, the Court finds it established that on 27 January 2003 the Industrialniy District Court issued two decisions authorising the applicant’s placement in custody. Those decisions only differed in one respect: the place of the applicant’s detention. Despite the Government’s argument that the decision authorising the applicant’s detention in an ordinary detention facility was not attached to the case file, the Court sees no reason to doubt the authenticity of the two decisions presented to it by the applicant. Both decisions bear the signature of the same presiding judge and the official stamp of the court’s registry (see paragraph 24 above). The Court is also unable to interpret the difference in the texts of the decisions as a mere clerical error committed when a handwritten version of the decision of 27 January 2003 was transformed into a typed one. That conclusion is supported by the fact that following the applicant’s arrest in the courthouse he was taken to detention facility no. 1, where he was kept for almost seven months.

73. The Court once again reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 state the

obligation to conform to the substantive and procedural rules of national law. It further observes that it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether the law has been complied with (see *N.C. v. Italy*, no. 24952/94, § 42, 11 January 2001, with further references). The Court notes that the Government did not indicate any legal provision that permitted the District Court to simultaneously issue two decisions authorising the applicant's detention in a psychiatric hospital and in an ordinary detention facility. The Government also did not argue that it was possible under domestic law to alter the operative part of a detention order after it has been read out in open court. In these circumstances, the Court is bound to conclude that the situation created by the District Court on 27 January 2003 left the applicant in a state of uncertainty as to the legal basis for his detention, a state incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see, *mutatis mutandis*, *Shukhardin v. Russia*, no. 65734/01, § 84, 28 June 2007, and, by contrast, *Douiyeb v. the Netherlands* [GC], no. 31464/96, § 52, 4 August 1999). Without speculating on the motives which drove the presiding judge to amend the operative part of the detention order, the Court is mindful of the Government's submission that there was no psychiatric institution in the Perm Region suitable for detention of individuals such as the applicant (see paragraph 64 above). However, whatever the reasons on which the presiding judge's decision to amend the detention order of 27 January 2003 was based, the Court finds that his actions were arbitrarily disregarding the fundamental principle of fairness.

74. In conclusion, for the purposes of the applicant's complaint under Article 5 § 1 of the Convention, the Court finds it established that the flaw in the initial authorisation of the applicant's detention on 27 January 2003 amounted to a "gross and obvious irregularity" and was of such a nature so as to render the underlying period of his detention until 18 February 2003 unlawful (see *Mooren v. Germany* [GC], no. 11364/03, §§ 82-87, 9 July 2009).

75. Accordingly, the Court finds that there has been a violation of Article 5 § 1 of the Convention in respect of that period of the applicant's detention.

(b) Detention from 18 February to 18 August 2003

76. The Court observes that on 18 February 2003, having established that the applicant had committed a criminal offense, the Industrialniy District Court authorised his detention in a psychiatric hospital for compulsory treatment of his mental disorder. According to the Government,

the applicant's admission to the psychiatric hospital was delayed by six months: initially due to the Lithuanian authorities' refusal to issue a transit visa for him to be transferred to a hospital in Kaliningrad; and subsequently in view of a lack of identification documents, which precluded the applicant's admission to a psychiatric hospital in Kazan.

77. The Court accepts, in the light of the parties' submissions, that the applicant's detention as such during the period under consideration was lawful under domestic law. However, it once again notes that for the purposes of Article 5 of the Convention, the lawfulness of the applicant's detention under domestic law is not in itself decisive. It must also be established that his detention during the relevant period was in conformity with the purpose of Article 5 § 1 of the Convention, that is that it was devoid of arbitrariness (see *Witold Litwa*, cited above, §§ 72-73).

78. In this connection, the Court observes that there must be some relationship between the ground of permitted deprivation of liberty relied on and the place and conditions of detention. In principle, the "detention" of a person as a mental health patient will only be "lawful" for the purposes of sub-paragraph (e) of paragraph 1 if effected in a hospital, clinic or other appropriate institution (see *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 48, ECHR 2003-IV, with further references). The Court reiterates the Government's argument that pending the transfer of the applicant to a psychiatric hospital he had been kept in a cell for mentally ill inmates in detention facility no. 1. The Government did not explain the difference in detention arrangements in a cell for mentally ill detainees and from that of a regular cell of the detention facility. Further, they did not argue that the applicant had received either regular medical attention in respect of his illness or that the conditions of his detention had constituted a therapeutic environment. Given this fact, the Court considers that the cell where the applicant was detained could not be regarded as an institution appropriate for the detention of persons of unsound mind (see, for similar reasoning, *Aerts v. Belgium*, 30 July 1998, § 49, *Reports* 1998-V).

79. The Court has already had a number of opportunities to examine complaints similar to the one raised by the applicant in the present case, having accepted that domestic authorities may need a certain amount of time to select the most appropriate custodial clinic for a convicted applicant suffering from a mental disorder and that a certain disparity between available and required capacity in custodial clinics is inevitable (see, for example, *Morsink*, cited above, §§ 66-68, and *Brand v. the Netherlands*, no. 49902/99, §§ 60-66, 11 May 2004). At the same time, the Court has stressed that a reasonable balance must be struck between the competing interests involved. On this point, reiterating the importance of Article 5 in the Convention system, the Court has been of the opinion that in striking this balance particular weight should be given to the applicant's right to liberty, taking into account that a significant delay in admission to a

custodial clinic and thus the beginning of the treatment of the person concerned would obviously affect the prospects of the treatment's success. In particular, the Court has found that, in the absence of exceptional and unforeseeable grounds, a delay of six months in the admission of a person to a custodial clinic was impermissible (see *Brand*, cited above, § 66).

80. The Court sees no reason to reach a different conclusion in the present case. It cannot find that, in the circumstances of the present case, a reasonable balance was struck. The Government cited two circumstances producing a six-month delay in the applicant's admission to hospital: the inability to obtain a visa and the absence of identification documents. Without encroaching on the State's right to determine an appropriate psychiatric institution for the applicant, the Court cannot accept the authorities' determination, for such a long period and despite the impossibility of obtaining a Lithuanian transit visa, to admit the applicant to a hospital in Kaliningrad. The Court is particularly mindful of the absence of an argument on the Government's part that other hospitals in Russia were unable to accommodate the applicant. It further goes without saying that the authorities' failure to comply with the rather pedestrian task of serving the applicant with appropriate identification papers cannot be accepted as grounds for delaying the applicant's placement in hospital.

81. To sum up, bearing in mind that the authorities' should have been aware of the necessity to comply with the visa formalities if they were to transfer the applicant to a hospital in Kaliningrad and that they were under an obligation to prepare in advance and provide the applicant with the requisite identification documents, the Court finds no indication in the instant case that, at the material time, the authorities were faced with an exceptional and unforeseen situation. It is therefore of the opinion that a delay of six months in the admission of the applicant to a psychiatric hospital cannot be regarded as acceptable. To hold otherwise would entail a serious weakening of the fundamental right to liberty to the detriment of the person concerned and thus impair the very essence of the right protected by Article 5 of the Convention (see *Morsink*, cited above, § 69).

82. There has, accordingly, been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 18 February to 18 August 2003.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

83. The applicant complained that his appeal against the detention order of 27 January 2003 had never been examined. He relied on Article 5 § 4 of the Convention which provides as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

A. Submissions by the parties

84. The Government confirmed that the Industrialnyi District Court had received the applicant's statement of appeal and the two subsequent amended statements against the detention order of 27 January 2003. Having provided the Court with copies of those statements, the Government stressed that the case file materials did not contain any indication that the appeal court had ever examined them. At the same time, relying on Article 444 of the Russian Code of Criminal Procedure, the Government noted that a decision authorising the application of compulsory measures of a medical nature to an individual could be appealed against by, *inter alia*, a lawyer, a legal guardian or a close relative of that individual. A person declared legally incapacitated cannot exercise the procedural rights of a defendant because he is unable to assess and control his actions in view of the state of his mental health. The Government noted that neither the applicant's lawyer nor his legal guardian had appealed against the decision of 27 January 2003.

85. The applicant, firstly, observed that the Government incorrectly relied on Article 444 of the CCrP, because the decision of 27 January 2003 had not concerned compulsory measures of a medical nature. Those measures had been applied by the judgment of 18 February 2003 when the District Court had examined the criminal case against him. Citing the Court's findings in the case of *Winterwerp v. the Netherlands* (24 October 1979, Series A no. 33), the applicant further argued that the domestic courts had entirely and without any justification or legal basis impaired the very essence of his right to judicial supervision of the lawfulness of his detention.

B. The Court's assessment

1. Admissibility

86. The Court notes that this complaint 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 and that it must therefore be declared admissible.

2. Merits

(a) General principles

87. The Court observes that Article 5 § 4 of the Convention entitles arrested or detained persons to a review bearing upon the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of their deprivation of liberty. This means that the competent court has to examine not only compliance with the procedural

requirements of domestic law but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Grauslys v. Lithuania*, no. 36743/97, § 53, 10 October 2000). In order to satisfy the requirements of Article 5 § 4 of the Convention, a “review of the lawfulness of the applicant’s detention” must comply with both the substantive and procedural rules of the national legislation and moreover be conducted in conformity with the aim of Article 5, namely to protect the individual against arbitrariness (see *Keus v. the Netherlands*, 25 October 1990, § 24, Series A no. 185-C).

88. The existence of the remedy required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Hađi v. Croatia*, no. 42998/08, § 41, 1 July 2010, with further references). The accessibility of a remedy implies, *inter alia*, that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy (see, *mutatis mutandis*, *Čonka v. Belgium*, no. 51564/99, §§ 46 and 55, ECHR 2002-I).

(b) Application of the principles to the present case

89. On the facts of the present case, the Court notes that on 27 January 2003 the District Court authorised the applicant’s arrest in view of the gravity of the charges against him and his being a danger to society owing to his suffering from schizophrenia. The applicant’s appeal against that decision, as well as the two subsequent additional appeal statements, was left without response.

90. In this respect, the Court reiterates that Article 5 § 4 of the Convention does not require setting up a second level of jurisdiction for the examination of applications for release from detention. Nevertheless, a State which institutes such a system must accord to detainees the same guarantees on appeal as at first instance (see *Toth v. Austria*, 12 December 1991, § 84, Series A no. 224, *Navarra v. France*, 23 November 1993, § 28, Series A no. 273-B, and *Solovyev v. Russia*, no. 2708/02, § 129, 24 May 2007).

91. The Government, citing Article 444 of the Russian Code of Criminal Procedure, argued that, by reason of his mental condition, the applicant had been stripped of the right to challenge the decision by which his detention had been authorised. In their opinion, it was for the applicant’s lawyer or a close relative to step in and file an appeal. The Court, however, is unable to accept the Government’s reading of Article 444. It observes that this legal provision only identifies those with the standing to appeal against a decision by which a trial court has authorised the compulsory psychiatric treatment of a defendant who had committed a crime and whom the trial court has found unable to bear criminal responsibility and to serve a sentence on account of mental illness (see paragraph 45 above). The Government did not rely on any other provision curtailing the applicant’s right to state his case

as regards the deprivation of his liberty before an appeal court. The Court therefore finds that it was open to the applicant under Russian law to personally lodge an appeal against the detention order of 27 January 2003 (see paragraph 42 above).

92. The applicant attempted to make use of the avenue open to him under Russian law. However, his appeal was never examined. The Court would like to reiterate that Article 5 § 4 of the Convention requires that certain procedural rights of a detained person must be respected. These need not be the same as the guarantees of “a fair hearing” under Article 6 § 1 of the Convention and they should take account of the possibility, in the context of the deprivation of liberty of persons of unsound mind, that those persons may be personally incapable of using their procedural rights. Accordingly, the prescribed minimum must ensure that that the mentally ill person has access to the courts and the opportunity to be heard either in person, if possible, or through a legal representative, where his condition demands this (see *Winterwerp v. the Netherlands*, cited above, § 60). The Court is prepared to tolerate certain limitations on the exercise of this right where justified by the circumstances (see, for instance, *X. v. Belgium*, no. 6692/74, Commission decision of 13 March 1975, Decisions and Reports (DR) 2, p. 108, concerning the introduction of a time limit on applications for release). In the present case, the Government did not cite any justification, apart from the applicant’s mental illness, for the court’s silence towards his appeal against the detention order. However, it would be inconceivable, in the opinion of the Court, that Article 5 § 4 of the Convention should afford procedural guarantees to a party whose detention matter is pending before a court without also protecting what makes it in fact possible to benefit from such guarantees – that is, the possibility to access the court by making an application to review the lawfulness of the detention. The effective and expeditious characteristics of judicial review of the lawfulness of detention are of no value at all if there are no judicial proceedings. The Court will not accept the state of mind of a detained person, on its own, as an implied and blanket limitation on his right to institute judicial review proceedings for the purpose of Article 5 § 4 of the Convention, particularly so when, as in the present case, no assessment of his ability to be personally involved in the proceedings leading to his detention was performed by the court and no formal court decision explaining the reasons behind the refusal to examine the appeal was issued. The importance of what is at stake – personal liberty – compels this conclusion.

93. In summary, the Court has frequently found violations of Article 5 § 4 of the Convention in cases raising issues similar to the one in the present case (see *Solovyev v. Russia*, cited above, §§ 130-134; *Ignatov v. Russia*, no. 27193/02, §§ 115-119, 24 May 2007; and *Makarenko v. Russia*, no. 5962/03, §§ 122-125, 22 December 2009). The Court notes

that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to the appeal court's disregard of its obligation to examine the issue of the applicant's arrest and to take cognisance of any arguments concerning the aspects of the lawfulness of his detention, the Court considers that the applicant was unable to obtain an adequate judicial response for the purposes of Article 5 § 4 and that his right to bring proceedings by which the lawfulness of his detention would be decided was infringed.

94. It follows that there has been a violation of Article 5 § 4 of the Convention on account of the failure to consider the substance of the applicant's appeal against the detention order of 27 January 2003.

III. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 and 3 (c) OF THE CONVENTION

95. Relying on Article 6 §§ 1 and 3 (c) of the Convention, the applicant further complained of failure to ensure his presence before the trial and appeal courts which had examined the criminal case against him. Article 6 §§ 1 and 3 (c) of the Convention read, in so far as relevant, as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;...”

A. Submissions by the parties

96. The Government submitted that the applicant's criminal case had been heard in compliance with the requirements of Section 51 of the Russian Code of Criminal Procedure. According to the Government, that Section did not prescribe mandatory attendance at court hearings by a mentally ill defendant. At the same time, it guaranteed the protection of the interests of a mentally ill defendant through mandatory legal assistance and representation by a legal guardian. The Government maintained that the applicant had been declared legally incapacitated on 20 February 2003, following which his legal guardian had been entrusted with the task of representing his interests and exercising procedural rights, including the

right to file a motion for the applicant's presence before the appeal court. However, such a request had never been filed. Furthermore, the applicant's lawyer had attended the hearings and had ensured the applicant's defence.

97. In their additional observations the Government amended their submissions, arguing that despite the fact that it was not until 6 May 2003 that the Industrialny District Court had declared the applicant legally incapacitated, the psychiatric expert report issued in November 2002 should be taken as a starting point for the transfer of the procedural rights of a defendant from the applicant to his legal guardian and his lawyer. The Government noted that in compliance with judicial practice at the material time, in the eyes of the Russian criminal justice system the applicant had been incapable of properly exercising his rights as a defendant after November 2002.

98. The applicant maintained his complaint, observing that he had had legal capacity throughout the entire criminal proceedings and that he therefore should have been afforded an opportunity to attend the trial and appeal hearings. The applicant also noted that Section 51 of the CCRP prescribes the examination in an ordinary manner of a criminal case involving an allegedly mentally ill defendant. It does not set out specific rules limiting the defendant's procedural rights or impairing his legal standing.

B. The Court's assessment

1. Admissibility

99. The Court notes that this complaint 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 and that it must therefore be declared admissible.

2. Merits

100. The Court reiterates that it flows from the notion of a fair trial that a person charged with a criminal offence should, as a general principle, be entitled to be present and participate effectively in the criminal proceedings (see *Colozza v. Italy*, 12 February 1985, §§ 27 and 29, Series A no. 89). In the present case, this requirement was not satisfied because the District Court decided the applicant's case in his absence. The applicant was also not given an opportunity to appear before the appeal court. The Court has, therefore, to decide whether the instant case involved any circumstances which were capable of justifying a complete loss by the applicant of the entitlement to be present.

101. The Court reiterates that the object and purpose of Article 6 §§ 1 and 3 (c) presuppose the accused's presence. The State is under an obligation to secure the attendance of an accused who is in custody (see, *mutatis mutandis*, *Goddi v. Italy*, 9 April 1984, § 29, Series A no. 76). It is of capital importance that a defendant appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of witnesses (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 33, ECHR 1999-I). The Court reiterates further that the trial court may exceptionally continue hearings where the accused is absent on account of illness, provided that his or her interests are sufficiently protected (see *Ninn-Hansen v. Denmark* (dec.), no. 28972/95, p. 351, ECHR 1999-V). However, where proceedings involve an assessment of the personality and character of the accused and his state of mind at the time of the offence and where their outcome could be of major detriment to him, it is essential to the fairness of the proceedings that he be present at the hearing and afforded the opportunity to participate in it together with his counsel (see *Kremzow v. Austria*, 21 September 1993, § 67, Series A no. 268-B; *Pobornikoff v. Austria*, no. 28501/95, § 31, 3 October 2000; and *Zana v. Turkey*, 25 November 1997, §§ 71-73, *Reports* 1997-VII).

102. In the present case the authorities did not ensure the applicant's appearance before the trial and appeal courts, alleging that domestic law did not call for his presence in view of his mental condition. The Court also observes the Government's submissions that the loss of legal capacity by the applicant, either on 20 February or 6 May 2003, resulted in the domestic courts' decision not to bring him to the hearings. The Government later amended their claim, arguing that the applicant's procedural rights, including that to a hearing, were automatically transferred to his mother and lawyer following his being declared mentally ill by the psychiatrists from the Serbskiy Centre in November 2002. While noting that it was not until 6 May 2003, i.e. almost a month after the termination of the criminal proceedings, that the applicant was pronounced legally incapacitated (see paragraph 34 above), the Court considers this to have no bearing on the case. It believes that, although not having an absolute character, the right of being heard enjoys such a prominent place in a democratic society and has such a fundamental value for the protection of an individual against arbitrariness on the part of public authorities, that the mere fact of the individual suffering from a mental illness, as well as his being declared legally incapacitated, cannot automatically lead to the exclusion of the exercise of that right altogether. It is the very weakness of a mentally ill defendant which should enhance the need for supporting his rights. In this context, authorities must show requisite diligence in ensuring the accused's right to be present in an effective manner and must act particularly carefully when infringing upon that right, so as not to place the mentally ill at a disadvantage when compared with other defendants who do enjoy such a

right (see, *mutatis mutandis*, *F.C.B. v. Italy*, 28 August 1991, § 33, Series A no. 208-B). The Court is not convinced that the Russian courts complied with that responsibility in the present case.

103. In particular, there is no indication that the Russian courts made a proper assessment of the applicant's ability to participate at a qualified level in the criminal proceedings against him. The applicant only appeared before the trial court once during, what appears to be, a short meeting aimed at authorising his detention on remand on 27 January 2003. The Court does not believe that this meeting was sufficient for the District Court to decide that his attendance at the trial hearings was undesirable. The absence of a formal decision dealing with the issue of the applicant's attendance also does not escape the Court's attention. Furthermore, the applicant never appeared before the appeal court judges. In turn, the Court does not see any evidence convincingly demonstrating that the applicant's behaviour or his mental condition precluded his stating his case in open court.

104. The Court further notes that the domestic courts decided on the criminal charge against the applicant, found him unfit to bear criminal responsibility owing to his mental health and ordered his confinement in a psychiatric institution. Their argument that the applicant's presence was not required purely on the grounds of his being a mentally disturbed person is striking, given that it was for the courts to determine whether he had committed the offence in a deranged state of mind and to assess whether his mental condition required compulsory medical care (see, *Romanov v. Russia*, no. 63993/00, § 109, 20 October 2005). The Court strongly believes that sentencing decisions concerning placement or treatment for mental disorder should be made by courts on the basis of valid and reliable standards of medical expertise and after taking into consideration the need for persons with a mental disorder to be treated in a place appropriate for their health needs. The Court considers that in a situation where the trial court was unconvinced by the expert findings of the Serbskiy Centre, considered another psychiatric examination of the applicant a necessity, but did not receive the results of the new expert assessment in time for conviction (see paragraph 31 above), it was particularly important that the judges should hear the applicant in person and be satisfied as to his condition. In view of what was at stake for the applicant the courts could not, if the criminal proceedings were to be fair, have decided on his case without observing the applicant's demeanour and directly assessing the evidence submitted by him. The presence of the applicant's lawyer and mother could not compensate for the applicant's inability to state his own case by appearing before the court (see, for similar reasoning, *Romanov*, cited above, § 112, and, *mutatis mutandis*, *Mamedova v. Russia*, no. 7064/05, 1 June 2006, and *Duda v. Poland*, no. 67016/01, 19 December 2006).

105. In view of the above considerations the Court finds a breach of Article 6 §§ 1 and 3 (c) of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

106. Lastly, the Court has examined the other complaints submitted by the applicant, including his complaints under Articles 5 § 1 and 13 of the Convention about his detention in 1999 and 2000 and those raised by the applicant in the application form lodged on 14 December 2006. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the remainder of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

107. 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.”

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the applicant's detention from 27 January 2003 to 18 August 2003, the authorities' silence in respect of the applicant's appeal against the detention order of 27 January 2003 and his absence at the hearings before the trial and appeal courts admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 27 January to 18 February 2003;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicant's detention from 18 February to 18 August 2003;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

Done in English, and notified in writing on 7 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President