



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

FIFTH SECTION

CASE OF L.T. v. UKRAINE

(Application no. 13459/15)

JUDGMENT

Art 6 § 1 (criminal) and Art 6 § 3 (c) • Fair hearing • Defence through legal assistance • Criminal proceedings against the applicant resulting in her committal to a psychiatric facility • Art 6 applicable under its criminal limb • Unjustified exclusion of applicant from trial before the first-instance court, before her alleged mental disorder was confirmed by that court, resulting in her inability to challenge the charges against her and her committal • Trial court's failure to assess the applicant's ability to stand trial • Applicant also deprived of other procedural rights • State-appointed legal assistance seriously and manifestly deficient and damaging to applicant's rights and interests • Lack of due diligence on the part of the domestic courts in that respect • No appeal lodged contrary to applicant's wishes, decision having been left entirely to State-defence counsel's discretion • No right under relevant domestic law for an accused person to lodge an appeal in person against a judgment in criminal proceedings ordering coercive measures • Absence of any proper justification for not allowing applicant to lodge an appeal in person • Overall fairness of proceedings undermined

Prepared by the Registry. Does not bind the Court.

STRASBOURG

6 June 2024

FINAL

06/09/2024

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

In the case of L.T. v. Ukraine,

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

Mattias Guyomar, *President*,

Lado Chanturia,

Mārtiņš Mits,

Stéphanie Mourou-Vikström,

María Elósegui,

Kateřina Šimáčková,

Mykola Gnatovskyy, *judges*,

and Victor Soloveytschik, *Section Registrar*,

Having regard to:

the application (no. 13459/15) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Ukrainian national, Ms L.T. (“the applicant”), on 7 March 2015;

the decision not to disclose the applicant’s identity to the public (Rule 47 § 4 of the Rules of Court);

the decision to give notice to the Ukrainian Government (“the Government”) of the complaints under Article 5 §§ 1 (e) and 4, Article 6 and Article 2 of Protocol No. 7, and to declare the remainder of the application inadmissible;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the written comments submitted by Validity Foundation – Mental Disability Advocacy Center, a non-governmental organisation which was granted leave to intervene as a third party by the then President of the Fifth Section;

Having deliberated in private on 14 May 2024,

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

INTRODUCTION

1. The case mainly concerns the applicant’s complaint under Article 6 of the Convention of the unfairness of criminal proceedings against her which led to a decision to commit her to a psychiatric facility.

THE FACTS

2. The applicant was born in 1982 and lives in Poltava. She was represented by Mr O. Levytskyy, a lawyer practising in Kyiv.

3. The Government were represented by their Agent, most recently Ms M. Sokorenko, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT

5. On 13 November 2013 N., the wife of a man whom the applicant was allegedly stalking, filed a complaint with the police, alleging that the applicant had assaulted her in the street and consequently she had sustained bruising to her face and suffered pain in her neck. Criminal proceedings were instituted.

6. On 30 January 2014, in the presence of K. (a legal aid lawyer whom the investigating officer had invited to attend), the applicant was charged with intentionally inflicting minor bodily injury on N. and questioned. She denied inflicting any bodily injury on N.

7. In the course of the investigation, the investigator interviewed the victim and witnesses and carried out a reconstruction of the incident, without the applicant's participation. He also commissioned a psychiatric report on the applicant's state of mind at the time of the offence and whether there was a need for her to be placed in psychiatric detention.

8. On 5 June 2014, following an inpatient forensic psychiatric examination of the applicant, a panel of psychiatrists from the Dnipro Regional Psychiatric Hospital submitted report no. 120, which stated that the applicant suffered from chronic paranoid schizophrenia which manifested itself in a form of erotic delirium accompanied by an erotic interpretation of events which occurred; abnormal emotional reactions with a lowering of the threshold of aggression; and the subordination of her entire way of life to delusional ideas and the implementation of those ideas. The experts concluded that the applicant was incapable of understanding and controlling her actions and had been similarly incapable both at the time of the offence and during the assessment, and that her state of health warranted her placement in a psychiatric hospital under standard supervision. According to the applicant, she was not provided with a copy of the report and only became aware of the experts' conclusion during the subsequent court proceedings.

9. On 24 June 2014, in an application made before the Kyivskyy District Court of Poltava ("the District Court"), a prosecutor charged the applicant with intentionally inflicting minor bodily injury and asked the District Court to order her involuntary psychiatric confinement, as provided for in Article 94 of the Criminal Code.

10. On the same day the investigator granted K. access to the case file.

11. On 3 July 2014 the District Court held a preparatory hearing for the trial. The applicant and K. were present. According to the applicant, she had learned of that hearing, and thus the fact that the case had been transferred to the court, from a summons she had received on 2 July 2014. She had then tried to contact K., but to no avail. After the hearing, during which she learned that K. had familiarised himself with the case file in her absence and had not informed her of this, she tried to discuss the situation with him, but he refused

to cooperate, saying that she was free to instruct a private lawyer if she was dissatisfied with his conduct.

12. On the same day, 3 July 2014, the applicant asked the District Court to grant her access to the court's case file, including the prosecutor's application and any accompanying material. She received no reply.

13. On 4 July 2014 the applicant asked the Poltava Legal Aid Centre to replace K. with another lawyer, arguing that he had acted contrary to her interests.

14. On the same day the applicant asked the prosecutor's office to allow her to study the material in her criminal case file and make copies of the documents contained therein. In its reply of 7 July 2014, the Poltava regional prosecutor's office noted that the applicant had to act through her legal counsel, as she was a person in respect of whom coercive measures of a medical nature were sought.

15. On 8 July 2014 the applicant complained to the District Court of K.'s inactivity and lack of cooperation, and requested that another lawyer be appointed for her. She also filed an application challenging the conclusions of her forensic medical examination and requesting a new forensic psychiatric assessment.

16. On 9 July 2014 the District Court held a hearing in the case. The applicant was represented by a new legal aid lawyer, D., who had been appointed on 8 July 2014 to replace K., who had fallen ill. According to the official audio-recording of the hearing made available to the Court, at the beginning of the hearing the prosecutor asked the court to hear the case in the absence of the applicant, as a minor witness was afraid to come to court to testify because he feared for his life and health. Relying on Article 512 of the Code of Criminal Procedure (see paragraph 39 below), the prosecutor argued that the applicant's presence was not mandatory. D. stated that she was not in a position to give an opinion on the matter as she had not yet seen the case file, and she asked the court to grant her time to study the case. The District Court allowed the prosecutor's request and ordered the applicant to leave the courtroom. It ruled that since the case involved underage witnesses and concerned the application of coercive medical measures, the proceedings should be conducted in the applicant's absence, with her interests being represented by her defence counsel.

17. The judge then decided to adjourn the hearing until 14 July 2014 in order to give D. time to familiarise herself with the case file. At the same time, he asked D. not to inform the applicant of the date of the next hearing. In response to D. arguing that it was her duty to inform her client of the hearing, the judge assured D. that it would be fine with him if the applicant was not informed of the hearing.

18. On 10 July 2014 the applicant submitted a written request to the District Court for access to the documents in the case file, including the forensic psychiatric report. Referring to her request of 4 July 2014, she noted

that the public prosecutor had refused to allow her access and stated that she wished to challenge that report at the trial. There is no response to that request in the case file.

19. On 14 July 2014 the District Court held a trial hearing in the presence of the prosecutor, the victim and D. The applicant was not informed of the hearing. The District Court heard testimony from the victim and witnesses for the prosecution. It also studied the forensic psychiatric report of 5 June 2014 and examined other documents. D. did not challenge the admissibility of any piece of evidence and did not raise any objections or comments. During her closing statement, which lasted about twenty-four seconds, D. submitted that she had nothing to say and further stated that based on her personal experience of communicating with the applicant, and having regard to the forensic psychiatric report, she would leave the decision to the discretion of the court.

20. On the same day the District Court delivered its judgment. It found that the applicant had committed the offence of intentionally causing N. bodily harm. The court also found, on the basis of the forensic psychiatric report of 5 June 2014, that the applicant could not be held responsible for the offence in question and required involuntary medical treatment in a psychiatric facility under standard supervision. The judgment was amenable to appeal within thirty days.

21. D. did not lodge an appeal against the judgment of 14 July 2014.

22. On 16 July 2014 the applicant wrote to the District Court, complaining that she had not been informed of the time and date of the hearing and asking for a copy of the judgment of 14 July 2014. In particular, she submitted that she had not known that a judgment had been delivered in her case until 15 July 2014, following a telephone call from D., who had explained that she herself had not been aware of the date of the hearing in advance and had therefore not been able to inform the applicant of the hearing. A copy of the judgment was sent to the applicant as requested.

23. As it transpires from the applicant's claim under Article 41 of the Convention (see paragraph 86 below) on 23 July 2014 she concluded a legal aid agreement with a lawyer of her choosing, Mr Levytskyy (who later became her representative before the Court (see paragraph 2 above). According to the applicant's claim for just satisfaction, that lawyer assisted her in drafting appeals against the judgment of 14 July 2014. In their observations in reply to the applicant's claims for just satisfaction, the Government questioned the amount sought, stating, *inter alia*, that the lawyer had not invoiced the applicant for this assistance until 2023, i.e. nine years after the alleged provision of the service, whereas the legal aid agreement of 23 July 2014 provided that he should have submitted an annual report on the work carried out.

24. On 28 July 2014 the applicant again asked the District Court to grant her access to the case file, noting that her previous requests remained unanswered. Apparently, this was to no avail.

25. On 12 August 2014 the applicant appealed in person against the judgment of 14 July 2014. She argued, *inter alia*, that she had been convicted of a crime which she had not committed, and that the District Court had arbitrarily excluded her from the hearing and proceeded in her absence, depriving her of the opportunity to present her case, examine witnesses and defend herself in person. The applicant further complained that she had been deprived of access to the case file, including the prosecutor's request for compulsory medical treatment and the forensic psychiatric report on which the order for her psychiatric confinement was based. The applicant contested the findings of that report and the manner in which her forensic examination had been conducted. Lastly, she submitted that the State-appointed lawyers who had represented her had been manifestly ineffective and had refused to take steps to protect her interests, including filing an appeal against the judgment of 14 July 2014. In her defence, she submitted a number of pieces of evidence, including positive references from her places of residence and work.

26. On 2 September 2014, at the applicant's request, the Poltava Regional Court of Appeal ("the Court of Appeal"), which was dealing with the applicant's appeal, granted her full access to the case file and the trial records.

27. At a hearing on 9 September 2014, which was held in the presence of the applicant, the prosecutor expressed his opinion that the proceedings should be terminated as the applicant had no right to appeal. D. supported the prosecutor's view. The Court of Appeal decided to terminate the appeal proceedings without examining the merits of the case. It found that in such a case, under Ukrainian law, only the applicant's defence counsel or legal guardian had the right to appeal.

28. The applicant lodged an appeal on points of law, maintaining her complaints and relying on Article 6 of the Convention, among other things. She also requested, as an interim measure, that enforcement of the judgment of 14 July 2014 be suspended.

29. On 22 September 2014 the Higher Specialised Court for Civil and Criminal Matters returned the applicant's appeal on points of law unexamined, for the same reasons as those given by the Court of Appeal, noting that under the applicable law, the applicant had no standing to lodge the appeal in person.

II. THE APPLICANT'S PLACEMENT IN A PSYCHIATRIC HOSPITAL

30. On 22 September 2014 the District Court sent a copy of the judgment of 14 July 2014 to the Poltava Regional Psychiatric Hospital and the local police division for implementation.

31. On 3 October 2014 the applicant, who until that date had remained at liberty, was summoned to a police station and then forcefully taken to the hospital.

32. By a decision of the District Court of 2 April 2015, the applicant was released from the hospital for compulsory outpatient treatment. The decision was based on a request made by the hospital, which had indicated that the applicant's mental health had improved and remained stable.

33. On 17 November 2015 the District Court put an end to the compulsory psychiatric measures following an application by the applicant's treating psychiatrist, who considered that her compulsory psychiatric treatment was no longer necessary.

RELEVANT LEGAL FRAMEWORK

I. THE CRIMINAL CODE OF 5 APRIL 2001 (AS IN FORCE AT THE RELEVANT TIME)

34. The relevant provisions of the Criminal Code on the liability of persons who commit criminal offences in a state of insanity are described in *Anatoliy Rudenko v. Ukraine* (no. 50264/08, § 54, 17 April 2014).

II. THE CODE OF CRIMINAL PROCEDURE OF 13 APRIL 2012

35. Chapter 39 (Articles 503 to 516) of the Code of Criminal Procedure of Ukraine ("the CCP"), as in force at the relevant time, laid down the procedural framework for examining a criminal case against a person who had been charged with committing a criminal offence in a state of insanity or who had become mentally ill after committing a criminal offence and could no longer bear criminal responsibility and serve a sentence.

36. In accordance with Article 506, a person in respect of whom compulsory medical measures were envisaged or in respect of whom proceedings on the application of such measures were pending enjoyed the rights of a suspect and an accused to the extent determined by his or her mental state as established by a forensic psychiatric examination, and exercised those rights through his or her defence counsel or legal guardian.

37. Article 506 further provided that if the nature of a person's mental disorder or mental illness prevented procedural actions from being conducted with his or her participation, the relevant prosecutor or court could decide to conduct the procedural actions in question without that person's participation.

38. Article 507 provided for the mandatory participation of defence counsel in criminal proceedings regarding the application of coercive measures of a medical nature.

39. By virtue of Article 512 of the CCP, the participation of a person in respect of whom the relevant proceedings were pending was not mandatory, and he or she could take part if the nature of his or her mental disorder so permitted.

40. Under Article 513, when issuing a decision, the court in question had to determine the following questions: (i) whether a criminal offence had taken place; (ii) whether that criminal offence had been committed by the person whose criminal case was being examined; (iii) whether the person had committed the criminal offence in a state of insanity; (iv) whether the person suffered from a mental illness that precluded the application of a criminal punishment; and (v) whether a compulsory medical measure should be applied and which specific measure should be applied.

If the court found it proven that a criminal offence had been committed by the person concerned in a state of insanity, or that after committing a criminal offence the person had become mentally ill and could no longer bear criminal responsibility, the court had to take a decision on the application of compulsory measures of a medical nature.

If the court did not find it proven that a criminal offence had been committed, or established that it had been committed by another person, the court had to refuse to apply compulsory measures of a medical nature and terminate the criminal proceedings.

If it was established that a person had committed a criminal offence in a state of insanity but had recovered by the time of the trial, or that as a result of changes in his or her health, there was no longer a need to apply compulsory medical measures, the court had to terminate the criminal proceedings on the application of compulsory medical measures.

Lastly, Article 513 provided that criminal proceedings for the application of compulsory medical measures could be terminated by the court if a person's insanity at the time of an offence was not established or if a person who had become mentally ill after committing a criminal offence recovered. In that case, the prosecutor had to initiate ordinary criminal proceedings.

41. Articles 393 and 425 of the Code identified defence counsel or a legal guardian as persons with standing to appeal against a decision on the application of compulsory measures of a medical nature.

42. On 14 November 2017 Law no. 2205-VIII introduced amendments to the CCP, making it mandatory for persons in respect of whom compulsory measures of a medical nature were sought to participate in the relevant hearing. The amendments also entitled persons who were subject to compulsory measures of a medical nature to apply to a court in person to terminate or modify the application of a compulsory measure of a medical nature.

III. RESOLUTION NO. 7 OF 3 JUNE 2005 OF THE PLENARY SUPREME COURT OF UKRAINE

43. The relevant parts read as follows:

L.T. v. UKRAINE JUDGMENT

“In order to ensure the correct and uniform application by the courts of the legislation on involuntary medical treatment and to eliminate shortcomings in judicial practice, the Plenary Supreme Court resolves as follows:

...

3. ... involuntary medical treatment may be ordered only if the case file contains a reasoned conclusion by psychiatric experts that the person in question is suffering from a mental illness or disorder which renders him or her mentally unfit or partially unfit to stand trial and which warrants the application of such measures ...

Courts must be critical in their assessment of the above-mentioned conclusions [and assess] whether they have a proper scientific basis [and are] convincing and well-reasoned. ... Those conclusions may be used in a case as evidence which has no predetermined probative value and [is] not binding on the court. However, any disagreement with them shall be reasoned in the ruling, verdict or resolution of the court.

...

10. Having regard to the provisions of Article 419 of the Code of Criminal Procedure, sections 3 and 25 of the [Psychiatric Assistance Act], and paragraph 5 of Principle 18 of the Annex to UN General Assembly Resolution 46/119 of 18 February 1992 on the protection of persons with mental illness and the improvement of mental health care ..., which provide that the patient and his representative shall be entitled to attend, participate in and be heard in person at any hearing, the courts must ensure that the person in respect of whom involuntary medical treatment is being considered (except when the nature of his condition prevents this) and his representative participate in the hearings, [if it has not received] a written waiver from that person of his right to attend ...”

IV. CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES, ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON 13 DECEMBER 2006 (RESOLUTION A/RES/61/106)

44. The UN Convention on the Rights of Persons with Disabilities is geared to promoting, protecting and ensuring full enjoyment of all the human rights and fundamental freedoms by people with disabilities and promoting respect for their intrinsic dignity. Ukraine ratified it on 16 December 2012. The relevant provision of that Convention reads as follows:

Article 13 – Access to justice

“1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

45. The applicant complained that the criminal proceedings against her had been unfair. She relied on Article 6 of the Convention, which, in so far as relevant, reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public 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. Admissibility

46. The Government did not raise any objection as to admissibility.

47. Regarding the applicability of Article 6 of the Convention, the Court notes that the applicant, owing to the domestic authorities’ decision on her mental state, could not be held criminally responsible (see paragraph 20 above) and that the compulsory measures ordered against her did not constitute a “punishment”. However, the Court has already found that the criminal limb of Article 6 of the Convention was applicable to proceeding on charges that the applicant had committed a criminal offence resulting in the application of compulsory measures of a medical nature (see *Valeriy Lopata v. Russia*, no.19936/04, §119 and 120, 30 October 2012, and *Vasenin v. Russia*, no. 48023/06, § 130, 21 June 2016). The Court sees no reason to reach a different conclusion in the present case: regardless of their outcome, the impugned proceedings did concern a criminal charge against the applicant and the task of the Ukrainian courts in the applicant’s case included establishing whether the applicant had committed a criminal offence and checking whether, in view of her state of mind, she had to bear criminal responsibility for the acts committed (see paragraph 40 above). It follows that Article 6 of the Convention applied in its criminal limb.

48. The Court finds that the complaint under Article 6 § 1 of the Convention is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

49. The applicant argued that the decision of the District Court to exclude her from the trial had had no legal basis and had been arbitrary. As a result of being excluded from the trial and denied access to the case file, she had been unable to participate effectively in the trial and present her own version of events, challenge evidence and confront witnesses.

50. She further submitted that the State-appointed counsel who had represented her had been manifestly passive and, contrary to her interests, had openly supported the prosecutor's position. Moreover, D. had not appealed against the judgment of 14 July 2014, even though such an appeal had been the only realistic way for the applicant to challenge her conviction and placement in the psychiatric facility, given that under domestic law, she had had no right to appeal in person.

(b) The Government

51. The Government argued that the criminal case had been heard in compliance with the requirements of Chapter 39 of the CCP, by an independent and impartial tribunal which had rendered a fair and reasoned judgment based on the evidence in the case file, such as statements of the victim and witnesses, a record of the reconstruction of the incident and the forensic psychiatric report.

52. Having admitted that the applicant had not been informed of the hearing of 14 July 2014 and had not participated in the trial, the Government submitted that under domestic law, defendants in cases like hers did not have to attend court hearings. At the same time, the law guaranteed that the interests of a mentally ill defendant would be protected through mandatory legal assistance. Therefore, the applicant's removal from the trial had not rendered the proceedings unfair and had not put her at a disadvantage *vis-à-vis* the prosecution, since her lawyer had attended the hearing and ensured her defence. Had the applicant considered that her lawyer – D. in particular – had acted improperly, she should have asked the trial court to replace that lawyer.

2. The third-party intervener

53. Validity Foundation – Mental Disability Advocacy Center, an international human rights non-governmental organisation based in Hungary, submitted, *inter alia*, that by virtue of equal recognition and equal standing before the law, persons with psychosocial disabilities could not be excluded from proceedings which concerned them. They had the right to be active agents, whether by directing the actions of their representatives or making

their own applications. It was discriminatory to presume that they could not participate effectively in such proceedings on account of their psychosocial disability. The intervener relied on instruments adopted by authoritative bodies, including the United Nations Special Rapporteur on Disability and the United Nations Committee on the Rights of Persons with Disabilities. The intervener concluded by submitting that stripping people with disabilities of their right to participate in person in proceedings against them or depriving them of direct access to legal remedies would amount to discrimination and be contrary to their right of access to justice, which was a core element of the rule of law.

3. The Court's assessment

(a) Personal attendance

(i) General principles

54. The Court reiterates that in accordance with the requirements of a fair trial, a person charged with a criminal offence should, as a general principle, be entitled to be present and participate effectively in the criminal proceedings against him or her. Moreover, subparagraphs (c), (d) and (e) of Article 6 § 3 guarantee to “everyone charged with a criminal offence” the right “to defend himself in person”, “to examine or have examined witnesses” and “to have the free assistance of an interpreter if he cannot understand or speak the language used in court”; it is difficult to see how an accused person could exercise these rights without being present (see *Vasenin v. Russia*, no. 48023/06, § 134, 21 June 2016).

55. The Court also reiterates that the object and purpose of Article 6 §§ 1 and 3 (c) presuppose the accused's presence. 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 or her state of mind at the time of the offence, and where the outcome of those proceedings could be of major detriment to him or her, it is essential to the fairness of the proceedings that he or she be present at the hearing and afforded the opportunity to participate in it together with his or her counsel (see *Pobornikoff v. Austria*, no. 28501/95, § 31, 3 October 2000; *Zana v. Turkey*, 25 November 1997, §§ 71-73, Reports 1997-VII; and *Kremzow v. Austria*, 21 September 1993, § 67, Series A no. 268-B).

(ii) Application of the general principles to the present case

56. The Court reiterates that the relevant provisions of the CCP indicate that the task of the domestic courts in the present case was to establish whether the applicant had committed an act constituting the criminal offence

of intentionally inflicting minor bodily injury while in a state of insanity, and, if so, to assess whether her mental condition required the application of a particular measure – psychiatric confinement (see paragraph 40 above). It was thus essential to the fairness of the proceedings that the applicant be present at the hearing and afforded the opportunity to participate in it together with her counsel.

57. However, although the applicant was present at the preliminary court hearing and appeared at the hearing on 9 July 2014, she was not given the opportunity to participate in the trial following her exclusion by the District Court (see paragraph 16 above). As a result, the trial took place in the applicant's absence and she was unable to challenge the charges against her and the conclusion that there was a need for her to be placed in a psychiatric facility and present evidence in this regard. The facts also suggest that the applicant was deprived of other procedural rights, including her right to study the case file.

58. The Court has found that, although not having an absolute character, the right of being heard in court 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 that an individual suffers from a mental illness or has been declared legally incapacitated cannot automatically lead to the exclusion of the exercise of that right altogether. It is the very vulnerability of a mentally ill defendant which should enhance the need to support his or her rights (see *G. v. France*, no. 27244/09, § 53, 23 February 2012). In this context, the authorities must show the requisite diligence in effectively ensuring the accused's right to be present, and must act particularly carefully when infringing that right, so as not to place mentally ill persons at a disadvantage compared with other defendants who do enjoy that right (see *Valeriy Lopata v. Russia*, no. 19936/04, § 125, 30 October 2012). The Court is not convinced that the Ukrainian authorities discharged that responsibility in the present case.

59. In particular, there is no indication that the decision to exclude the applicant from the trial was based on her inability to participate usefully in the criminal proceedings. In fact, the trial court never made a proper assessment in this regard. The case file suggests that the applicant, whose alleged mental disorder had not yet been confirmed by the trial court, was deprived of her right to participate in the proceedings at the request of the prosecutor, in order to ensure the presence of a witness for the prosecution (see paragraph 16 above). However, even assuming that there could have been a need to protect a minor witness, who was vulnerable, such an aim could only justify an exclusion of the applicant during the examination of that witness, not from the whole trial. Furthermore, it has not been alleged by the Government that the domestic court had before it any evidence convincingly demonstrating that the applicant's behaviour or mental condition precluded her stating her case in open court and defending herself adequately (see and

compare *G. v. France*, cited above, §§ 54 and 55, and *Vasenin*, cited above, § 139). Her submissions before the domestic authorities, which were provided to the Court, did not attest to that.

60. While it is true that under the domestic law in force at the material time, the applicant's presence was not mandatory, it was provided for if her state of health allowed her to participate usefully in the proceedings (see paragraph 39 above). Moreover, the Plenary Supreme Court of Ukraine, in Resolution no. 7 of 3 June 2005, specifically instructed the courts to ensure that persons in respect of whom involuntary medical treatment was being considered participated in hearings, except when the nature of their condition prevented this (see paragraph 43 above). However, as stated above, no assessment of the applicant's ability to stand trial was ever made by the District Court.

61. In view of the above, and given what was at stake for the applicant, the District Court, in order to ensure the fairness of the criminal proceedings, should not have decided on the applicant's case without observing her behaviour, verifying the accuracy of her statements and comparing them with those of the victim – whose interests needed to be protected – and the witnesses. Without looking at the quality of the applicant's legal representation at this juncture, the Court finds that the presence of defence counsel during the proceedings could not compensate for the applicant's inability to state her own case by appearing before the court (see *Valeriy Lopata*, cited above, § 128; see also, *mutatis mutandis*, *Duda v. Poland*, no. 67016/01, 19 December 2006).

62. Accordingly, the Court finds that the trial held in the applicant's absence did not satisfy the requirements of fairness enshrined in Article 6 § 1 of the Convention.

(b) Effective legal assistance

(i) General principles

63. The Court reiterates that it is of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal (see *Petrina v. Croatia*, no. 31379/10, § 47, 13 February 2014). Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes or chosen by the accused. It is a natural corollary that if the legal profession is independent from the State, the conduct of the defence is essentially a matter between the defendant and his or her counsel, whether counsel be appointed under a legal-aid scheme or privately financed (see *Cuscani v. the United Kingdom*, no. 32771/96, § 39, 24 September 2002). The competent national authorities are required under Article 6 § 3 (c) of the Convention to intervene only if a failure by legal-aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way (see

Kamasinski v. Austria, 19 December 1989, § 65, Series A no. 168, and *Daud v. Portugal*, 21 April 1998, § 38, Reports 1998-II).

64. The Court further reiterates that while the effectiveness of legal assistance does not necessarily call for a proactive approach on behalf of a lawyer and the quality of legal services cannot be measured by the number of applications or objections lodged by counsel with a court, manifestly passive conduct might at least give rise to serious doubts about the efficacy of the defence. This is particularly so if the accused strongly disputes the accusation and challenges evidence, or is unable to attend the trial and ensure his or her defence in person (see *Vasenin*, cited above, § 142).

(ii) Application of the general principles to the present case

65. The Court notes that in the course of the criminal proceedings the applicant was represented by State-appointed counsel, K. being succeeded by D. It further observes that both lawyers were essentially passive and did not appear to act in the applicant's best interests. There is nothing in the case file to suggest that the applicant's counsel challenged the admissibility of any evidence or made any application in her interests at any stage of the proceedings, despite the fact that the applicant herself consistently denied the charges and contested the results of her forensic psychiatric examination and the manner in which it had been conducted (see paragraphs 6, 15, 18 and 25 above). The position taken by D. and expressed in her final submissions is particularly striking (see paragraph 19 above).

66. The Court is also mindful of the applicant's argument that she could not effectively appeal against the judgment of 14 July 2014 because her lawyer had failed to lodge an appeal. It notes that in many cases, such a failure by a lawyer has led to a finding of a violation of Article 6 § 3 (c) of the Convention, taken in conjunction with Article 6 § 1 (see, for example, *Siyarak v. Russia*, no. 38094/05, §§ 30-33, 19 December 2013; *Orlov v. Russia*, no. 29652/04, §§ 109 and 117, 21 June 2011; and *Ananyev v. Russia*, no. 20292/04, §§ 55-56, 30 July 2009). Moreover, in the present case, not only did D. fail to lodge an appeal, but she also joined the prosecutor in advocating the termination of the appeal proceedings instituted by the applicant herself despite the importance of what was at the stake for the applicant and the existence of obvious grounds for appeal (see paragraph 27 above).

67. In view of the foregoing, the Court concludes that the legal assistance provided to the applicant was seriously and manifestly deficient. Far from protecting the applicant's rights and interests, her State-appointed defence counsel appear to have mirrored the prosecution's position, both on substantive issues and on such an important procedural issue as the applicant's presence at the trial. The Court has already found that the applicant was unfairly deprived of an opportunity to attend the trial and present her own version of events and evidence (see paragraph 62 above). It

thus considers that the defects in the legal assistance which the applicant received were particularly salient and damaging, given her inability to correct or reduce in any way the negative impact that such assistance had on the outcome of the proceedings against her.

68. As regards the Government's argument that the applicant should have notified the trial court of the poor quality of legal representation she was receiving and requested a change her lawyer, the Court notes that the failure of K. and D. to provide effective legal assistance was manifest and that the applicant did complain about it. She asked the authorities, including the District Court, to replace K. (see paragraphs 13 and 15 above). As regards D., that representative appeared for the first time at the hearing on 9 July 2014 from which the applicant was excluded and which was eventually adjourned. The next and final hearing in the case was held by the District Court in the applicant's absence, and it was not disputed by the Government that the applicant had not even been aware of that hearing. It would appear that D. ultimately followed the judge's instruction not to inform her client of the date of the hearing in the case, even though she herself believed that this was contrary to her duty as defence counsel (see paragraph 17 above). In her appeals to the higher courts, the applicant expressly complained about the manifestly ineffective assistance of counsel K. and D., including D.'s refusal to lodge an appeal against the judgment of 14 July 2014 (see paragraphs 25 and 28 above). In such circumstances, it was for the domestic courts to intervene and appoint new counsel or to adjourn the hearing until such time as the applicant could be adequately represented (*ibid.*). However, the courts dismissed the applicant's appeals on formal grounds, relying on the fact that the appeals could only have been lodged by the applicant's lawyer, whereas the lawyer's refusal to do so was one of the aspects of the applicant's complaint.

69. Finally, while it appears that in July 2014 the applicant obtained some legal advice from a lawyer she chose, which apparently helped her formulate her appeals (see paragraph 23 above), the Court notes that the Government have not argued that this fact should lead to the conclusion that the applicant was not in need of State-provided legal assistance or that the deficiencies in the latter did not affect the fairness of the proceedings.

70. In the light of the above, the Court finds that the quality of the legal assistance provided to the applicant in the present case and the lack of due diligence on the part of the domestic courts in the matter fell short of the requirements of Article 6 §§ 1 and 3 (c) of the Convention.

(c) Access to an appeal

(i) General principles

71. The Court reiterates that the right of access to an appeal court in criminal matters is no more absolute than in civil matters and the State, which

is permitted to place limitations on the right of appeal, enjoys a certain margin of appreciation in relation to such limitations (*Deweert v. Belgium*, 27 February 1980, § 49, Series A no. 35; *Kart v. Turkey* [GC], no. 8917/05, § 67, ECHR 2009 (extracts)). However, these limitations must not restrict the exercise of the right in such a way or to such an extent that the very essence of the right is impaired. They must pursue a legitimate aim and there must be a reasonable proportionality between the means employed and the aim sought to be achieved (*Guérin v. France* [GC], 29 July 1998, § 37, *Reports of Judgments and Decisions* 1998-V).

(ii) *Application of the general principles to the present case*

72. The Court notes that on 14 July 2014 the District Court decided on the criminal charge against the applicant, establishing that she had committed a criminal offence. It found that she could not bear criminal responsibility, owing to her mental health, and ordered her confinement in a psychiatric institution. It is uncontested that, in principle, the applicant had the right under domestic law to have her case examined on appeal, both as to the facts and as to the law. However, as is apparent from Article 393 of the CCP, as a person subject to coercive measures of a medical nature, the applicant was not entitled to lodge an appeal against the judgment of 14 July 2014 herself and had to do so through her defence counsel, who at that time was her State-appointed defence lawyer, D. (see paragraph 41 above). It thus appears that the decision as to whether or not to appeal against the decision of the District Court was left entirely to the discretion of D. In other words, the applicant herself was deprived of the opportunity to defend herself on appeal in relation to the merits of the charges and challenge the order placing her in a psychiatric hospital.

73. In this connection, the Court does not overlook that the applicant apparently consulted a lawyer of her own choosing before filing an appeal submitted by her in person, without a legal representative (see paragraph 23 above). The extent to which that lawyer was involved in the drafting of the statement of appeal is unclear. Importantly, the Government have not argued that he was entitled under domestic law to file an appeal on behalf of the applicant despite the fact that her defence counsel at the time was D. and did not consider that any such possibility, if it existed, rendered unproblematic the prohibition on the applicant filing an appeal herself. Therefore, there is no reason for the Court to deal with this issue.

74. In any event, in the Court's opinion, the fact that the applicant did not have the opportunity to lodge an appeal in person is difficult to reconcile with Article 6 of the Convention, which calls for a person charged with a criminal offence to have the right to participate effectively in the proceedings against him or her. It is undoubtedly possible to envisage situations in which an accused person's mental state renders him incapable of exercising his procedural rights and the delegation of those rights to another person is

justified. However, the Court will not accept the presumed mental illness of the applicant alone as an implicit and blanket limitation of her procedural rights, including her right to appeal, particularly where no assessment of her capacity to participate in person in the proceedings leading to her medical detention was made by the courts (see, *mutatis mutandis*, *O.G. v. Latvia*, no. 66095/09, § 62, 23 September 2014, and *Proshkin v. Russia*, no. 28869/03, § 92, 7 February 2012, in which the Court examined a similar issue from the standpoint of Article 5 § 4 with regard to a detained person). The importance of what was at stake – the applicant’s confinement in a psychiatric hospital – compels this conclusion.

75. Moreover, as evidenced by the circumstances of the present case, the applicant’s lawyer, D., did not lodge an appeal, against the applicant’s wishes and despite the existence of potentially valid grounds of appeal. As the applicant could not access that legal remedy directly, this had irreversible consequences for the outcome of the proceedings and her rights.

76. In this regard, the Court cannot but note with concern that while the domestic legislation in force at the material time concerning participation in hearings and the initiation of judicial review of ongoing psychiatric detention was amended in 2017 (see paragraphs 42 above), no changes were made as regards such an important aspect as an accused person’s right to lodge an appeal in person against a judgment in criminal proceedings ordering coercive medical measures.

77. All in all, the Court finds that, in the circumstances of the present case, the rejection of the applicant’s appeal was an unjustified limitation on her procedural rights and, consequently, was incompatible with the requirements of Article 6 of the Convention.

(d) Conclusion

78. In assessing the overall fairness of the trial, the Court, having regard to all the above mentioned factors, notably the applicant’s unjustified exclusion from the trial before the first-instance court, combined with the ineffective legal assistance provided to her and the absence of any proper justification for not allowing her to lodge an appeal in person in her criminal case, concludes that the applicant’s rights were adversely affected to such an extent as to undermine the overall fairness of the proceedings. The Court accordingly finds a violation of Article 6 §§ 1 and 3 (c) of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

79. On the basis of the same facts, the applicant also complained that she had had no access to an appeal in her criminal case, that her placement in a psychiatric hospital had been unlawful, and that she had not been able to initiate a review of the lawfulness of her ongoing medical confinement. She

relied on Article 5 §§ 1 and 4 of the Convention and Article 2 of Protocol No. 7.

80. Having regard to the facts of the case, the submissions of the parties, and its above findings relating to Article 6 of the Convention, the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine separately the admissibility and merits of the remaining complaints (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

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

83. The Government considered this claim unsubstantiated.

84. As to the non-pecuniary damage, the Court reiterates that where, as in the instant case, an individual has been the victim of proceedings that have entailed breaches of the requirements of Article 6 of the Convention, a retrial or the reopening of the case, if he or she so requests, represents in principle an appropriate way of redressing the violation (see *Cudak v. Lithuania* [GC], no. 15869/02, § 79, ECHR 2010, with further references). The Court considers that in the present case, an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6. While it cannot speculate as to the outcome of the domestic proceedings had the position been otherwise, the Court does not find it unreasonable to regard the applicant as having been deprived of a real opportunity. In addition, the applicant has sustained non-pecuniary damage and the finding of a violation of the Convention would not constitute sufficient just satisfaction. Having regard to the nature of the violations found and making its assessment on an equitable basis, as required by Article 41, the Court awards the applicant EUR 5,400 in respect of non-pecuniary damage.

B. Costs and expenses

85. The applicant also claimed EUR 5,100 for the costs and expenses incurred before the domestic courts and the Court. She submitted a copy of an agreement with her representative under which she had undertaken to pay

the representative's legal fees at EUR 50 per hour, and a detailed statement of the time which the representative had spent on the case, amounting to 102 hours in total, including preparation of the applicant's appeals against the judgment of 14 July 2014.

86. The Government considered that the claim was unjustified and excessive. They questioned in particular the involvement in the domestic proceedings of the applicant's representative before the Court (see paragraph 23 above).

87. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant EUR 3,800 for costs and expenses in the proceedings before it.

C. Default interest

88. 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* admissible the complaint under Article 6 of the Convention concerning the fairness of the criminal proceedings in view of the applicant's absence from the trial hearings, the poor quality of the legal assistance provided and the lack of access to an appeal;
2. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention;
3. *Holds* that there is no need to examine the admissibility and merits of the complaints under Article 5 of the Convention and Article 2 of Protocol No. 7;
4. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 5,400 (five thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 3,800 (three thousand eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account indicated by Mr Levytsky;
- (iii) 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;

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

Done in English, and notified in writing on 6 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Registrar

Mattias Guyomar
President