



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

FIRST SECTION

CASE OF SHULEPOVA v. RUSSIA

(Application no. 34449/03)

JUDGMENT

STRASBOURG

11 December 2008

FINAL

11/03/2009

This judgment may be subject to editorial revision.

In the case of Shulepova v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 20 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 34449/03) 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, Ms Valentina Aleksandrovna Shulepova (“the applicant”), on 26 September 2003.

2. The applicant, who had been granted legal aid, was represented by Mr A. Koss, a lawyer practising in Kaliningrad. The Russian Government (“the Government”) were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant complained, in particular, of her allegedly unlawful detention in a psychiatric hospital and the unfairness of the proceedings by which the lawfulness of her detention had been examined.

4. On 28 November 2005 the President of the First Section decided to communicate the above complaints to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1934 and lives in the Kaliningrad Region.

1. The applicant's detention in a mental hospital

6. At the beginning of February 1999 the applicant complained to her doctor Ms K. about the neighbours, who had allegedly subjected her to electromagnetic emissions, attempted to contaminate her with HIV, created noises and draughts and tortured her in a multitude of other ways. She threatened to pour acid on them.

7. On 10 February 1999 the applicant was examined by a medical panel comprising two psychiatrists and three general practitioners affiliated with the Baltiysk Town Medical Association. The panel concluded that the applicant suffered from a paranoid personality disorder and was hallucinatory and aggressive. She was therefore dangerous to the public and to herself. The doctors also found that the applicant suffered from hypertension.

8. On the same day she was taken to the Kaliningrad Regional psychiatric hospital No. 1 (hereinafter "the hospital").

9. On 12 February 1999 the applicant was examined by the hospital psychiatrists, who diagnosed her with involutional paranoid psychosis and concluded that she needed compulsory treatment.

10. On the same day the hospital applied to a court for approval of the applicant's confinement.

11. On 16 February 1999 the Leningradskiy District Court of Kaliningrad ordered that the applicant should provisionally remain in the hospital until the application was examined. The hearing was scheduled for 18 February 1999.

12. On 18 February 1999 the hearing did not go ahead. The record indicated that the applicant was unable to appoint a representative owing to her grave mental state.

13. On 26 March 1999 the applicant consented to medical treatment. She remained in the hospital until 21 April 1999.

14. On 13 May 1999 the court proceedings were discontinued as the hospital had withdrawn its application.

2. Judicial review of the detention

15. After her discharge, the applicant complained to the prosecutor's office about her allegedly unlawful confinement.

16. By letter of 1 February 2000, the Head of the Law-Enforcement Supervision Department of the Kaliningrad Regional prosecutor's office acknowledged that from 16 to 26 March 1999 she had been unlawfully held in the hospital without a judicial decision and advised her that measures would be taken to remedy the situation.

17. On 11 April 2002 the Leningradskiy District Court informed the prosecutor's office that it would take measures to avoid similar violations in

future and undertook to observe the time-limits for examining applications from hospitals.

18. In the meanwhile on 21 February 2000 the applicant sued doctor K. and the hospital in tort. She contested the findings of the medical panels of 10 and 12 February 1999, claiming that she had not suffered from any mental disorder and that it had not been necessary to confine her. She further argued that her detention had been unlawful as it had not been based on a court order. She sought compensation in respect of non-pecuniary damage. In reply, the hospital's representative argued that the medical findings in the applicant's case had been correct and her confinement lawful. He asked the court to reject the applicant's claims in full.

19. On 22 June 2000 the Leningradskiy District Court of Kaliningrad found that there had been no reason to question the findings of the medical panels and that the applicant's detention had been lawful.

20. On 25 October 2000 the Kaliningrad Regional Court quashed the judgment and remitted the case. It held that the first-instance court had omitted to address the applicant's criticism of the findings of the medical panels of 10 and 12 February 1999 and had failed to verify whether her confinement had been justified by her mental condition.

21. On 31 May 2001 the Leningradskiy District Court found that expert advice was necessary to assess the applicant's mental condition in February 1999. It commissioned the hospital's medical specialists to perform a psychiatric examination on the applicant. The experts were asked to determine whether the findings of the medical panels of 10 and 12 February 1999 had been correct and whether the applicant's state of mental health in February 1999 had warranted compulsory psychiatric treatment.

22. On 30 July 2002 the experts examined the applicant's medical file, in particular the reports of 10 and 12 February 1999, and concluded that the medical findings contained in those reports had been correct and that the applicant's involuntary placement into the hospital had been justified, taking into account her serious mental condition in February 1999.

23. The applicant challenged the experts' report. She claimed that the experts were biased because they were employees of the hospital and asked the court to dismiss the report.

24. On 15 January 2003 the Leningradskiy District Court dismissed the applicant's claim. In particular, with reference to the medical reports of 10 and 12 February 1999 and 30 July 2002, it held that the applicant's placement in the hospital had been necessary because she had been a danger to the public and to herself. The court held that the expert report of 30 July 2002 was admissible evidence because the experts had been informed that they would be criminally liable for perjury. Moreover, the panel of 30 July 2002 had not included the psychiatrists who had examined the applicant on 12 February 1999.

25. As to the lawfulness of the applicant's detention from 10 to 26 March 1999, the court found as follows:

"... in accordance with section 33(3) of the [Psychiatric Treatment Act] a judge ordered that [the applicant] should remain in the hospital until the decision [on the hospital's application for her confinement] had been taken. The hospital's application was not examined within five days as required by section 34(1) of the Act because, owing to her mental state, [the applicant] could not participate in the hearing or name her representative, whose presence was mandatory under section 34(4) of the Act...

Since the judicial decision committing [the applicant] to the hospital was not set aside or amended, and the hospital had no right to discharge [the applicant] in defiance of the order, the court considers that in those circumstances the hospital was not responsible for [the applicant's] involuntary confinement until 26 March 1999."

26. The applicant appealed. In her grounds of appeal she complained, in particular, that the experts who had produced the report of 30 July 2002 had been partial.

27. On 2 April 2003 the Kaliningrad Regional Court upheld the judgment, finding that it had been lawful and justified. As to the experts, it held that the judgment had not been based solely on the report of 30 July 2002, but was corroborated by other evidence.

II. RELEVANT DOMESTIC LAW

28. Psychiatric medical care in Russia is governed by the Law on Psychiatric Treatment and Associated Guarantees of Citizens' Rights, enacted on 2 July 1992 ("the Psychiatric Treatment Act").

29. An individual suffering from a mental disorder may be taken to a psychiatric hospital against his will or the will of his legal representative and without a court decision having been taken if the individual's examination or treatment may only be carried out by in-patient care, and the mental disorder is severe enough to give rise to (a) a direct danger to that individual or to others, or (b) the individual's helplessness, that is, an inability to take care of himself, or (c) a significant impairment in health as a result of a deteriorating mental condition, if the affected individual were to be left without psychiatric care (section 29).

30. A person placed in a psychiatric hospital on the grounds listed in section 29 shall be subject to compulsory examination within forty-eight hours by a panel of psychiatrists of the hospital. The panel is required to take a decision as to the necessity of confinement. If no reasons for confinement are established and the individual expresses no intention of remaining in the hospital, he must be released immediately. If confinement is considered necessary, a representative of the hospital where the person is held is required to file, within twenty-four hours, an application for compulsory confinement with a court having territorial jurisdiction over the hospital. The application must contain the grounds for involuntary

confinement and must be accompanied by a reasoned conclusion of a panel of psychiatrists as to the necessity of the person's in-patient treatment in a psychiatric hospital. A judge who receives the application for a review must immediately order the person's detention in a psychiatric hospital for the term necessary for its examination (sections 32 and 33).

31. The judge is required to examine the application within five days of its receipt. The individual concerned has the right to participate in the hearing. If, according to the information provided by a representative of the psychiatric hospital, the individual's mental state does not allow him to take part in the hearing, the application must be examined by the judge on the hospital premises. The presence at the hearing of a public prosecutor, a representative of the psychiatric institution requesting confinement, and a representative of the individual concerned is mandatory (section 34). The Psychiatric Treatment Act does not contain any specific provisions for the appointment of a representative for the individual concerned.

32. After examination of the application on the merits, the judge must either allow or dismiss it. The judge's decision is subject to appeal within ten days by the person placed in the psychiatric hospital, his representative, the head of the psychiatric hospital, or by an organisation entitled by virtue of law or by its charter to protect citizens' rights, or by a public prosecutor. The appeal shall be made in accordance with the rules established in the Code of Civil Procedure (Section 35).

33. Complaints of unlawful actions by medical staff may be made to a court, a supervising authority or a public prosecutor (section 47).

34. The use of expert evidence in court is governed by the Law on State Forensic Examinations ("the Forensic Examinations Act") enacted on 31 May 2003. It establishes that a forensic expert must be independent from the court, the parties to the proceedings and other interested parties (section 7).

THE LAW

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

35. The applicant complained that she had been unlawfully detained in a psychiatric hospital from 10 February to 26 March 1999. She relied on Article 5 § 1 (e) of the Convention, which 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:

...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants...”

A. Admissibility

36. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments by the parties

37. The applicant maintained that her deprivation of liberty had not been authorised “in accordance with a procedure prescribed by law”. In particular, the hospital’s application had not been examined by a court within five days as required by domestic law. The decision of 16 February 1999 ordering her provisional detention had been made in her absence and in the absence of a representative. It could not therefore constitute a lawful basis for her detention.

38. The Government argued that the applicant’s confinement had been necessary as she had been suffering from paranoid psychosis. On 10 and 12 February 1999 she had been examined by psychiatrists who had found her hallucinatory and aggressive. As she had threatened violence against her neighbours, the psychiatrists had concluded that she was dangerous to others and that it was necessary to commit her to a psychiatric institution. Her hypertension condition had also called for her placement in hospital to prevent her health from deteriorating. The necessity of her internment had been later reviewed and confirmed by experts and courts.

39. The Government further submitted that the applicant’s detention had been duly authorised by a court, which had made an order on 16 February 1999 for her to remain in detention until the examination of the hospital’s application for confinement. The application had never been examined owing to the applicant’s serious mental condition which had prevented her from participating in the hearing or appointing a representative, whose presence was mandatory. In the Government’s opinion, the court order of 16 February 1999 had provided a basis for the applicant’s detention until 26 March 1999, the date on which she had consented to in-patient treatment.

2. The Court's assessment

(a) Whether the applicant was reliably shown to be “a person of unsound mind”

40. The Court reiterates that the term “a person of unsound mind” does not lend itself to precise definition since psychiatry is an evolving field, both medically and in social attitudes. However, it cannot be taken to permit the detention of someone simply because his or her views or behaviour deviate from established norms (see *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, § 37).

41. Detention of a person considered to be of unsound mind must be in conformity with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion, and with the aim of the restriction contained in sub-paragraph (e). In this latter respect the Court reiterates that, according to its established case-law, an individual cannot be considered to be of “unsound mind” and deprived of his liberty unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (see *Johnson v. the United Kingdom*, judgment of 24 October 1997, *Reports of Judgments and Decisions* 1997-VII, § 60, with further references).

42. No deprivation of liberty may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert. It may be acceptable, in urgent cases or where a person is arrested because of his violent behaviour, that such an opinion be obtained immediately after the arrest. In all other cases a prior consultation is necessary. Where no other possibility exists, for instance due to a refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind (see *Varbanov v. Bulgaria*, no. 31365/96, § 47, ECHR 2000-X).

43. Turning to the present case, the Court notes that before her confinement in a psychiatric hospital the applicant had been examined by a medical panel including two psychiatrists who had concluded that she suffered from a paranoid personality disorder, experienced hallucinations and was dangerous to the public and herself. Upon arrival at the hospital she was again examined by medical specialists, who confirmed that diagnosis (see paragraphs 7 and 9 above). The Court is therefore convinced that there was reliable and objective medical evidence showing that the applicant was of unsound mind. Moreover, given that she had threatened violence against her neighbours and was found to be aggressive, the Court accepts that her

mental disorder warranted compulsory confinement. Finally, there is no reason to believe that the applicant was kept in confinement longer than her condition required.

44. The Court concludes from the above that the applicant was reliably shown to be “a person of unsound mind” within the meaning of Article 5 § 1 (e) of the Convention and that her mental disorder was of a kind and degree justifying her compulsory confinement during the entire period under consideration.

(b) Whether the applicant was deprived of her liberty “in accordance with a procedure prescribed by law”

45. The Court reiterates that the words “in accordance with a procedure prescribed by law” essentially refer back to domestic law; they state the need for compliance with the relevant procedure under that law. However, the domestic law must itself be in conformity with the Convention, including the general principles expressed or implied therein. The notion underlying the term in question is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary (see *Winterwerp*, cited above, § 45).

46. 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 of review of such compliance (see *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports* 1996-III, § 41).

47. The applicant was involuntary held in a psychiatric hospital from 10 February to 26 March 1999. Before 16 February 1999 her detention had not been based on a judicial decision, while after that date she was kept in custody on the basis of a provisional detention order issued by the Lenigradskiy District Court. The Court will examine the lawfulness of the applicant’s detention during these two periods.

48. As to the first period, the Court observes that the applicant was taken to a psychiatric hospital on 10 February 1999 after a medical panel concluded that she needed compulsory in-patient treatment. Two days later the hospital applied to a court for approval of her involuntary confinement. The Psychiatric Treatment Act required the court receiving such an application to issue a provisional detention order immediately (see paragraph 30 above). However, it was not until 16 February 1999, four days later, that the court made such an order. The Government did not provide any explanation for that delay. It follows that the applicant’s detention at least from 13 to 16 February 1999 was incompatible with the procedure prescribed by domestic law.

49. As to the second period, the Court notes that on 16 February 1999 the Leningradskiy District Court issued a provisional detention order authorising the applicant's confinement during the period necessary for examination of the hospital's application. Under section 34 of the Psychiatric Treatment Act, the court was required to examine the hospital's application for confinement within five days of its receipt (see paragraph 31 above). In the present case the hospital's application was never examined.

50. The Court has already found a violation of Article 5 § 1 of the Convention in a similar case where the hospital's application for confinement was not examined within the five-day time-limit provided for in the Psychiatric Treatment Act. The Court found that that omission rendered the applicant's detention unlawful (see *Rakevich v. Russia*, no. 58973/00, §§ 31-35, 28 October 2003).

51. The Court sees no reason to reach a different conclusion in the present case. It is not convinced by the Government's argument that the provisional detention order of 16 February 1999 provided a sufficient lawful basis for the applicant's detention until 26 March 1999. The order of 16 February 1999 was provisional in nature and was not attended by procedural guarantees. In particular, it was issued by a court without hearing the applicant or her representative. Its validity was limited to five days and its aim was to allow a period of time for the court to prepare for a hearing and an in-depth examination of the hospital's application with the participation of both parties. It could therefore serve as a basis for the applicant's detention only for five days after it had been issued. The Government did not point to any legal provision which permitted the applicant's detention after its expiry. It follows that the applicant's detention after the expiry of the five-day time-limit established in section 34 of the Psychiatric Treatment Act and until 26 March 1999 did not have a legal basis in domestic law. This conclusion is supported by the prosecutor's letter of 1 February 2000 acknowledging that the applicant's detention from 16 to 26 March 1999 had been unlawful (see paragraph 16 above).

52. As to the Government's argument that the application for confinement could not be examined due to the applicant's serious mental condition, which prevented her from participating in the hearing or appointing a representative, the Court notes that the Psychiatric Treatment Act envisaged situations where a person was too ill to participate in the hearing. It did not permit the courts to adjourn the hearing indefinitely, as was done in the applicant's case, but required them to provide for a representative and to hold a hearing on the hospital premises (see paragraph 31 above). The domestic authorities did not comply with the procedure prescribed by the Psychiatric Treatment Act.

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

54. The applicant complained that the proceedings concerning the lawfulness of her detention had been unfair because the court-appointed experts had been biased. She relied on Article 6 § 1 of the Convention which reads as follows:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

55. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

56. The applicant submitted that the experts appointed by the court to assess the necessity of her involuntary confinement in the hospital had been employees of that hospital. In her opinion, the proceedings had been rendered unfair by the experts' partiality.

57. The Government argued that the Forensic Examinations Act required experts to be independent and impartial (see paragraph 34 above). They bore personal responsibility for their findings and were not allowed to receive instructions from the parties or the court. In the Government's opinion, the mere fact that the experts who had given the expert opinion of 30 July 2002 had been employees of the hospital where the applicant had received treatment had not violated the principle of equality of arms. The panel had not included any of the experts who had examined the applicant on 12 February 1999. Moreover, the expert report of 30 July 2002 had not been the only piece of evidence before the court. The court had also relied on other medical documents and the parties' submissions.

2. The Court's assessment

58. The Court considers it appropriate to start its assessment, even in the absence of any disagreement between the parties as to the applicability of Article 6 § 1, with the question of whether the proceedings determined the applicant's civil rights and obligations.

59. The Court has earlier found in a number of cases that proceedings for review of lawfulness of detention of a person of unsound mind

determined that person's civil rights. Thus, in the *Aerts v. Belgium* case the applicant had been detained under Article 5 § 1 (e) as a person of unsound mind. Following his release, he instituted proceedings to review the lawfulness of his detention and sought compensation. The Court found that Article 6 § 1 applied under its civil head to the proceedings because "the right to liberty is a civil right" (see *Aerts v. Belgium*, judgment of 30 July 1998, *Reports of Judgments and Decisions* 1998-V, § 59). In two subsequent cases, which also concerned proceedings relating to the lawfulness of detention in psychiatric institutions, the Court found Article 6 to be applicable under its civil head with reference to the *Aerts* judgment. It dismissed the Government's objection of incompatibility *ratione materiae* despite the fact that the proceedings at issue concerned only the lawfulness of the detention without involving any related pecuniary claims (see *Vermeersch v. France* (dec.), no. 39277/98, 30 January 2001, and *Laidin v. France* (no. 2), no. 39282/98, §§ 73-76, 7 January 2003).

60. In the present case, as in the three above-mentioned cases, the applicant sought a judicial declaration that her detention in a mental hospital had been unlawful. Therefore, her civil right to liberty was at stake. In addition, she sought compensation for unlawful detention. The Court reiterates in this respect that the right to compensation is, by its very nature, of a civil character even where derived from public law (see *Georgiadis v. Greece*, judgment of 29 May 1997, *Reports of Judgments and Decisions* 1997-III, § 35, where the claims for compensation for unlawful detention were found to be civil in nature). The Court is therefore satisfied that the proceedings determined the applicant's civil rights.

61. The Court will next examine whether the appointment as experts of medical specialists employed by the respondent hospital rendered the proceedings unfair contrary to Article 6 § 1.

62. The Court reiterates that the appointment of experts is relevant in assessing whether the principle of equality of arms has been complied with. The mere fact that experts are employed by one of the parties does not suffice to render the proceedings unfair. Although this fact may give rise to apprehensions as to the neutrality of the experts, such apprehensions, while having a certain importance, are not decisive. The requirements of impartiality and independence enshrined in Article 6 of the Convention do not apply to experts. What is decisive, however, is the position occupied by the experts throughout the proceedings, the manner in which they performed their functions and the way the judges assessed the expert opinion (see *Zarb v. Malta* (dec.), no. 16631/04, 27 September 2005, and *Lasmane v. Latvia* (dec.), no. 43293/98, 6 June 2002). In ascertaining the expert's procedural position and his role in the proceedings, one must not lose sight of the fact that the opinion given by a court-appointed expert is likely to carry significant weight in the court's assessment of the issues within that expert's

competence (see *Sara Lind Eggertsdóttir v. Iceland*, no. 31930/04, § 47, ECHR 2007-..., and *Bönisch v. Austria*, 6 May 1985, § 33, Series A no. 92).

63. The applicant sued the hospital where she had been involuntarily confined as a person of unsound mind. She contested the diagnosis given by the hospital psychiatrists and their findings as to the necessity of her confinement. The domestic courts appointed the psychiatrists employed by the same hospital as experts instructed to assess the correctness of their colleagues' findings. The court subsequently relied on their opinion when rejecting the applicant's claim.

64. The Court has already examined a similar situation in the case of *Sara Lind Eggertsdóttir v. Iceland* (cited above). In that case the applicant sued a hospital for medical negligence. The court ordered an expert examination, asking the employees of that hospital to assess the performance of their colleagues and determine whether they had been medically negligent in their treatment of the applicant. When rejecting the applicant's claim, the court relied on the experts' finding that their colleagues had not been negligent. The Court found a violation of Article 6 § 1 on account of non-compliance with the principle of equality of arms. It took account of three factors: the nature of the task entrusted to the experts, the experts' hierarchical position in the respondent hospital, and their role in the proceedings, in particular the weight attached by the court to their opinion. As to the first factor, the Court observed that the experts were called upon to assist the court in determining the question of their employer's liability. As to the second factor, the Court noted that the experts' superiors had taken a clear stance on the issue by denying the hospital's responsibility. This fact could justifiably give rise to the fear that the experts would be unable to act with proper neutrality. As to the third factor, the Court found that the opinion given by the experts was decisive evidence in the proceedings. It concluded that as a result of the appointment of the respondent's employees as experts who played a dominant role in the proceedings, the applicant's position had not been on a par with that of the respondent hospital in the manner required by the principle of equality of arms (see *Sara Lind Eggertsdóttir*, cited above, §§ 47-55).

65. A similar situation obtains in the present case. Indeed, the experts appointed by the court were employees of the respondent hospital and owed a general duty of obedience and loyalty to their employer. They were asked to assess the accuracy of the diagnosis given by their colleagues and to review their finding as to the necessity of the applicant's involuntary confinement. They were thereby required to analyse the performance of their colleagues with the view to assisting the court in the determination of their employer's liability. Given that the hospital's representative had clearly expressed the hospital's position that the medical findings in the applicant's case had been correct and that the applicant's claims had been

unfounded, the applicant's apprehension as to the experts' neutrality can be considered as objectively justified.

66. As regards the experts' role in the proceedings, the Court observes that the main issue in the case was whether the findings of the medical panels of 10 and 12 February 1999 as to the necessity of the applicant's involuntary confinement had been correct. As the applicant contested those findings, the court appointed experts to review them. Having no medical qualifications, the judges of the court were bound to attach significant weight to the experts' opinion on the medical issue decisive for the outcome of the case. Indeed, the experts' opinion was the only evidence confirming the accuracy of the diagnosis made on 10 and 12 February 1999. It follows that the experts played a dominant role in the proceedings.

67. The Court further notes that the respondent hospital was not the only institution whose specialists possessed the requisite skills to perform a psychiatric examination of the applicant. The court could have obtained expert advice from psychiatrists employed by other psychiatric hospitals in the Kalinigrad region or other regions of Russia. Accordingly, there were no obstacles to finding independent experts (see, by contrast, *Zarb*, decision cited above, and *Emmanuello v. Italy* (dec.), no. 35791/97, 31 August 1999).

68. Finally, although it was open for the applicant to call an expert witness of her choice, the procedural position of that witness would not have been equal to the position of the court-appointed experts. Statements of court-appointed experts, who are by the nature of their status supposed to be a neutral and impartial auxiliary of the court, would carry greater weight in the court's assessment than an opinion of an expert witness called by a party (see *Sara Lind Eggertsdóttir*, cited above, § 49, and *Bönisch*, cited above, § 33).

69. The Court concludes from the above that by appointing the respondent's employees as experts, the domestic courts placed the applicant at a substantial disadvantage *vis-à-vis* the respondent hospital. Therefore, the principle of equality of arms has not been complied with.

70. Accordingly, there has been a violation of Article 6 § 1.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant complained that the judicial proceedings had been excessively long.

72. The period to be taken into consideration in the present case began on 21 February 2000, when the applicant lodged her claims. It ended on 2 April 2003, when the Kaliningrad Regional Court gave final judgment in the case. The proceedings lasted slightly more than three years and one month. During that period the applicant's case was examined twice before two levels of jurisdiction. The length of the proceedings does not appear

excessive. It follows that this complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage.

75. The Government considered that the claim was excessive and that the finding of a violation would in itself constitute sufficient just satisfaction.

76. The Court accepts that the applicant suffered distress and frustration resulting from her unlawful detention in a psychiatric hospital and unfair civil proceedings. The non-pecuniary damage sustained is not sufficiently compensated for by the finding of a violation of the Convention. However, the Court finds the amount claimed by the applicant excessive. Making its assessment on an equitable basis, it awards the applicant EUR 4,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

77. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the alleged unlawfulness of the applicant's detention and the alleged unfairness of the judicial

proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
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, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 11 December 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Malinverni is annexed to this judgment.

C.L.R.
S.N.

CONCURRING OPINION OF JUDGE MALINVERNI

1. I voted with all my colleagues in favour of finding a violation of Article 6 § 1 on account of the fact that the psychiatric experts appointed by the competent court to assess the necessity of the applicant's involuntary confinement in a psychiatric hospital had been doctors employed by that hospital.

2. After the finding that the requirements of independence and impartiality enshrined in Article 6 apply only to judges and not to experts (see paragraph 62), the subsequent reasoning of the judgment is based entirely on the principle of the equality of arms (see paragraphs 62 to 69), leading to the Court's conclusion that "by appointing the respondent's employees as experts, the domestic courts placed the applicant at a substantial disadvantage *vis-à-vis* the respondent hospital. Therefore, the principle of equality of arms has not been complied with" (paragraph 69).

3. One has the impression, however, when reading the relevant considerations in the judgment, that the real problem underlying the appointment of the experts is not so much a problem of equality of arms but one related to their independence and impartiality, as is in fact revealed by the Court's use of the word "neutrality" in paragraphs 62 and 65.

4. I would thus personally have found it preferable if the line of reasoning had been developed around the question of the independence and impartiality of the experts. Admittedly, under Article 6 those two guarantees apply only to judges. However, in an area such as that which forms the subject matter of the present case, the opinion of experts is of such importance that it is practically binding on the judge. Would it therefore be unreasonable to require that the expert too, like the judge, should be independent and impartial?