



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

FIFTH SECTION

CASE OF ANATOLIY RUDENKO v. UKRAINE

(Application no. 50264/08)

JUDGMENT

*This version was rectified on 3 August and 3 September 2014
under Rule 81 of the Rules of Court*

STRASBOURG

17 April 2014

FINAL

17/07/2014

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

In the case of Anatoliy Rudenko v. Ukraine,

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

Mark Villiger, *President*,

Angelika Nußberger,

Boštjan M. Zupančič,

Ann Power-Forde,

Ganna Yudkivska,

Helena Jäderblom,

Aleš Pejchal, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 25 March 2014,

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

PROCEDURE

1. The case originated in an application (no. 50264/08) 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, Mr Anatoliy Petrovych Rudenko (“the applicant”), on 2 October 2008.

2. The applicant, who had been granted legal aid, was represented by Mr M. A. Tarakhkalo, a lawyer practising in Kyiv. The Ukrainian Government (“the Government”) were represented by their then Agent, Mr N. Kulchytskyy.

3. The applicant complained, in particular, under Article 5 §§ 1, 3 and 4 of the Convention in respect of his pre-trial detention and Article 5 § 1 (e), as well as Article 8, in respect of his psychiatric internment.

4. On 4 February 2013 those complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Kryvyy Rig.

6. In 2005-2006 the applicant created a local non-governmental organisation, as well as several newspapers.

7. On 16 November 2006 the Kryvvy Rig Transport Prosecutor's Office instituted criminal proceedings against him on suspicion of interfering with gas pipeline repairs in July 2006.

8. On 17 May 2007 the Kryvvy Rig City Prosecutor's Office opened another criminal case in respect of the applicant, on suspicion of extortion from a local politician, Ms B. As noted in the ruling, on 4 January 2006 the applicant had sent a letter to Ms B., demanding 20,000 Ukrainian hryvnias (the equivalent of about 3,000 euros) under the threat of dissemination of some discrediting information about her. He had also threatened her with physical violence in the presence of several witnesses.

9. The two aforementioned criminal cases were joined.

10. On 4 June 2007 the applicant was detained.

11. On 6 June 2007 the Dzerzhynskyy District Court of Kryvvy Rig ("the Dzerzhynskyy Court") ordered that he remain in pre-trial detention. It referred to complaints by the victim, as well as her representative, about numerous telephone calls from the applicant during which he had made threats of violence. The court also noted that the applicant had refused to comply with the investigator's summonses and had stated that he was considering absconding.

12. On 11 June 2007 an outpatient forensic psychiatric expert examination of the applicant was carried out in the Kryvvy Rig Psychoneurological Dispensary. The expert discerned indications of a paranoid personality disorder with a tendency towards "forming fixed ideas". An inpatient examination was recommended for a more precise diagnosis.

13. On 14 June 2007 the Dzerzhynskyy Court ordered an inpatient forensic psychiatric examination of the applicant at Dnipropetrovsk Psychoneurological Centre with a view to establishing his ability to stand trial in the extortion case. The court referred to the expert's recommendation of 11 June 2007. It also noted that the applicant had been showing "inadequate behaviour". Furthermore, the case file contained copies of threats and clearly slanderous statements he had made to the victim and certain third parties.

14. On 15 June 2007 the Dnipropetrovsk Regional Court of Appeal ("the Court of Appeal") dismissed the applicant's appeal against the detention order of 6 June 2007.

15. On 20 June 2007 another case was opened against him on suspicion of extortion. This time the applicant was suspected of having threatened Mr S. and his family and of having extorted 3,000 US dollars from Mr S. in May 2007.

16. On 27 June 2007 the applicant was taken to the Dnipropetrovsk Regional Psychiatric Hospital for an inpatient forensic psychiatric examination in the framework of the criminal case regarding the charge of extortion from Ms B.

17. On 25 July 2007 the investigator in charge applied to the Dzerzhynskyy Court for an extension of the applicant's pre-trial detention (which was to expire on 4 August 2007) till 17 August 2007, because more time was required to complete the investigation. In particular, the following investigative measures were still to be carried out: completion of the applicant's forensic psychiatric examination, a confrontation between the applicant and Mr S., and the questioning of a number of witnesses.

18. On the same date the Dzerzhynskyy Court granted the aforementioned application and endorsed its reasoning.

19. On 26 July 2007 the inpatient forensic psychiatric examination of the applicant (see paragraph 16 above) was completed. The experts examined, in particular, the applicant's personal history and the case-file materials, including the wording of his alleged threats to Ms B. They also carried out a psychological and psychiatric evaluation. The commission worded its conclusions as follows:

“Mr Rudenko has never suffered, and is not suffering now, from any chronic psychiatric illness. He has showed in the past, and presently shows, a paranoid personality disorder.

This conclusion is confirmed by his medical history, the materials of the criminal case file, and the results of the present clinical psychiatric examination which discloses that throughout his life the applicant has manifested such personality traits as egocentrism, extremely high self-esteem, tendency to make categorical and subjective judgments, susceptibility and extreme sensitivity to failure and situations infringing on his personal interests, a tendency towards a distorted perception of reality and the attitudes of those around him, militant and persistent assertion of his rightness and importance, subjectivism, rigidity of opinions and emotions, a tendency to be tendentious and contrived in forming judgments, and tenacity in the defence and implementation of his ideas.

The aforementioned personality characteristics are not manifested to a large degree, are not accompanied by serious abnormalities of memory, thinking, critical abilities or psychotic symptoms and would not have undermined his ability to be aware of and to control his actions at the time of the offence he has been charged with. [...]

The present psychiatric condition of [the applicant] is such that he is aware of and can control his actions (or inactivity).

He does not require involuntary medical treatment.”

20. On 9 August 2007 the investigator declared the pre-trial investigation complete and provided the applicant with access to the case file.

21. On 14 August 2007 the case was referred to the court for trial.

22. On 9 September 2007 the applicant requested the Dzerzhynskyy Court to replace his detention with release on bail in the amount of 20,000 Ukrainian hryvnias (at the time, equivalent to about 2,900 euros). He submitted that he had no criminal record, was well integrated socially and that remanding him in custody had been an unjustified preventive measure.

23. On 17 September 2007 the court held a preparatory hearing for the trial. It rejected the aforementioned request and decided to keep the preventive measure in respect of the applicant unchanged. The court noted that the considerations advanced by him had already been duly examined prior to his remand in custody. Furthermore, given the fact that the victim, Ms B., was a well-known local politician, the court decided to conduct the hearings *in camera*.

24. On 25 December 2008 the Dzerzhynskyy Court ordered another in-patient forensic psychiatric examination of the applicant, with a view to establishing his ability to stand trial in the criminal cases regarding the charges of extortion from Mr S. and the interference with the gas pipeline repairs (see paragraphs 7 and 15 above).

25. From 30 January to 26 February 2009 the applicant underwent an examination in the Dnipropetrovsk Regional Psychiatric Hospital.

26. On 26 February 2009 a commission of six experts (with the involvement of the three experts who had prepared the previous report of 26 July 2007) delivered its report on the basis of a psychological and psychiatric evaluation of the applicant and the case-file materials. The experts also heard several witnesses. In particular, they questioned a person who had worked with the applicant in the 1990s and who described him as an intelligent but impulsive person who had some strange ideas and liked to be the centre of attention. The applicant's former wife gave a similar description, having also noted that he was a kind person despite his difficult character. The applicant's current wife refused to be questioned. A general practitioner who had treated the applicant for some unspecified condition in 2007 submitted that he remembered the applicant for his emotionally-expressed nationalist ideas. A lawyer who had often encountered the applicant in court when acting as a representative described him as a bold and provocative person with a tendency to insult others. A circuit police officer, who had inspected the gas pipeline repairs site, submitted that he remembered the applicant on account of certain "hysterical outbursts" and that he had had the impression that the applicant had some mental issues. The general conclusions of the commission were worded as follows:

"At the time of the events [...] Mr Rudenko was suffering, and is suffering presently, from a chronic psychiatric illness in the form of a paranoid personality disorder with delusional inclusions (*"параноидное расстройство личности с бредовыми включениями"*).

This conclusion is confirmed by the anamnestic data, the materials of the criminal case file, the results of the present clinical psychiatric and experimental-psychological evaluation, which has disclosed that throughout his life the applicant has manifested such personality characteristics as egocentrism, rigidity in his attitudes, extremely high self-esteem, arrogance and extreme self-confidence, irrational feelings of injustice, a tendency to make categorical and subjective judgments, susceptibility and extreme sensitivity to failure and situations infringing on his personal interests, a tendency towards a distorted perception of reality and the attitudes of those around

him, militant and persistent assertion of his rightness and importance, rigidity of opinions and emotions, bluntness, a tendency to be tendentious and contrived in forming judgments, tenacity in the defence and implementation of his ideas coupled with a tendency towards inertia and philosophising, and, as a result of all the aforementioned and against the background of what he perceives as the difficult and unfavourable development of the criminal investigation and trial, he has formed some fixed and delusional ideas about being persecuted.

The aforementioned personality characteristics of [the applicant] manifest themselves to such a high degree that they can be considered to have undermined his ability to be aware of and to control his actions at the time of the offences he has been charged with. [...]

The present psychiatric condition of [the applicant] does not enable him to be aware of his actions (or inactivity) or to control them.

He requires involuntary medical treatment by way of admission to a psychiatric hospital with ordinary supervision.

As to the [similar] questions regarding [the charge of extortion from Ms B.], they were already resolved in the report of 26 July 2007.”

27. On 3 June 2009 the Dzerzhynskyy Court found the applicant guilty of extortion from Ms B. As to the charge of extortion from Mr S., the court held that there was insufficient evidence of the applicant’s guilt. It also established that the applicant had impeded the gas pipeline repairs. The court noted that the applicant could not be held accountable for the criminal offences in question and required involuntary medical treatment in a mental facility. It stated, in particular:

“It has been established that, at the time the offences were committed, Mr Rudenko behaved in a bold manner and without respect for the victims and others involved, that he made threats to the health and lives of the victims, and that he took deliberate steps to impede the gas pipeline repairs, thus endangering the health and lives of the public. Although Mr Rudenko has not made a direct attempt on anybody’s life, his present mental condition warrants his involuntary admission to a psychiatric hospital, because he is a dangerous person ...”

28. On 23 December 2009 the Court of Appeal quashed the decision of the first-instance court of 3 June 2009 as it had been delivered in the applicant’s absence. It stated that his presence had been obligatory unless he had expressly refused to attend or had been prevented from attending by the nature of his illness. The appellate court also noted that although the Dzerzhynskyy Court had found that the applicant’s guilt had not been proven in respect of the charge of extortion from Mr S., no decision had been taken as regards the termination of that part of the proceedings. The case was therefore remitted to the first-instance court for fresh examination. The appellate court also decided to keep the preventive measure in respect of the applicant (detention) unchanged, without explanation.

29. On 29 June 2010 the Dzerzhynskyy Court allowed the applicant’s waiver of the services of several lawyers who had been representing him.

Instead, it appointed a lawyer from the local bar association to represent his interests in the proceedings.

30. On 11 October 2010 the Dzerzhynskyy Court, at a hearing attended by the applicant and his appointed lawyer, ordered another forensic psychiatric examination of the applicant, with a view to answering the following questions: (1) whether the applicant was suffering from any mental illnesses at the time; (2) whether he was aware of and able to control his actions; and (3) whether the nature of his illness could be regarded as an impediment to his participation in court hearings. The applicant did not object in principle to such an examination, as long as it was carried out by an independent expert.

31. From 19 November to 16 December 2010 an examination was carried out at the Dnipropetrovsk Regional Psychiatric Hospital. According to the ensuing report, the applicant was suffering, at the time of the examination, from a “chronic paranoid personality disorder with delusional inclusions”. His psychiatric condition was deemed to prevent him from participating effectively in court hearings. As noted in the part of the report entitled “Psychological examination”, the applicant behaved in a free and friendly manner, demonstrating an advanced intellect and good memory and analytical skills, but also demonstrating a certain superiority and rigidity in his opinions. The overall findings of the report were practically identical to those of 26 February 2009.

32. On 5 April 2011 the prosecutor dropped the charges against the applicant as regards the interference with the gas pipeline repairs and the extortion from Mr S.

33. On 8 April 2011 the Dzerzhynskyy Court discontinued the proceedings against the applicant in so far as the aforementioned charges were concerned.

34. On the same date the court, following a hearing at which the lawyer earlier appointed for the applicant, but not the applicant himself, had been present, found the applicant guilty of extortion from Ms B. Relying on the medical reports concerning the applicant’s mental health, the Dzerzhynskyy Court held that, although the applicant had been aware of his actions when he had committed the offence in question, his mental health had subsequently deteriorated to an extent warranting involuntary medical treatment. The court therefore ordered that the applicant be admitted to a psychiatric hospital for treatment under ordinary supervision. The proceedings were stayed until the applicant’s recovery.

35. The applicant’s son (who had joined the proceedings as his representative) appealed. He complained, in particular, that the applicant had wrongly been denied his right to participate in the hearing. He also complained that the applicant’s right to be presumed to be of sound mind had been violated. He noted in this regard that the experts had reached opposite conclusions about the applicant’s mental health, without any

explanation for such a change in their position. Furthermore, the applicant's son submitted that neither the applicant nor his family had agreed to the appointed lawyer representing the applicant and that the lawyer had been acting contrary to the applicant's interests.

36. On 16 August 2011 the Court of Appeal upheld the decision on the involuntary medical treatment of the applicant. It noted that, as the medical experts had found, the nature of his illness had been an impediment to his participation in the court hearings. The appellate court also held that the application of the chosen measures in respect of the applicant was justified by the fact that he had committed a "socially dangerous" crime and that he was suffering from a mental illness.

37. On 14 September 2011 the applicant was transferred from the SIZO to the Geykivska Psychoneurological Hospital in the Dnipropetrovsk region ("the Geykivska Hospital").

38. On 4 October 2011 the applicant was examined by a panel of three doctors from the Geykivska hospital who concluded that his condition had stabilised and that he was not in need of any involuntary inpatient treatment. More specifically, the doctors observed that despite his chronic paranoid personality disorder with "delusional inclusions", the applicant had been demonstrating orderly behaviour and a stable mood, with no aggressive tendencies. He regretted his earlier behaviour and had submitted that he understood that it had been wrong. The panel therefore sought the lifting of the involuntary medical treatment order imposed by the court, and an order for outpatient psychiatric treatment to replace it.

39. On 14 October 2011 the Kryvyy Rig Court allowed the application of the Geykivska Hospital specialists.

40. On 19 October 2011 the same panel of the Geykivska Hospital specialists issued another report, in which they noted a drastic deterioration in the applicant's mood and behaviour: he had become irritated, angry and aggressive and had conflicts with other patients. Accordingly, the doctors retracted their earlier conclusion of 4 October 2011 as premature and asked the court to order that the applicant continue to be treated on an involuntary basis.

41. On 29 November 2011 the Court of Appeal quashed the decision of the Kryvyy Rig Court of 14 October 2011, with reference to the medical report of 19 October 2011.

42. On 20 December 2011 the Kryvyy Rig Court decided that the involuntary medical treatment of the applicant ordered on 8 April 2011 should be continued.

43. On 22 March 2012 the Higher Specialised Court for Civil and Criminal Matters rejected the applicant's cassation appeal (submitted via his son) against the lower courts' decisions of 8 April and 16 August 2011.

44. On 26 April 2012 the applicant was examined again by a panel of three specialists from the Geykivska Hospital (one member had been

replaced). They noted that he was well oriented and gave adequate replies to questions, was brief and monotonic, expressed some delusional ideas about being persecuted by criminals, and remained self-confident and categorical in his judgments. As a result, they considered that the applicant's involuntary medical treatment should be continued.

45. On 11 May 2012 the Kryvyi Rig Court ruled accordingly. Although the applicant, who was present at the court hearing, objected to that decision and submitted that he was in perfect health, the court considered, on the basis of the aforementioned medical report, that he was not able to critically assess his condition.

46. On 14 September 2012 the panel of doctors from Geykivska Hospital (in the same composition as on 26 April 2012) examined the applicant again. Their conclusions were similar to those set out in the report of 4 October 2011 (see paragraph 38 above).

47. On 8 October 2012 the Kryvyi Rig Court granted the specialists' request and lifted the order for involuntary medical treatment in respect of the applicant.

48. On 26 October 2012 the applicant was discharged from the hospital. There is no information in the case file on the resumption of or any developments in the proceedings that had been stayed earlier (see paragraph 34 above).

49. On 25 April 2013 he was examined by the Kharkiv Regional Bureau of Forensic Medical Examinations at his own request.

50. On 20 May 2013 the Bureau issued its report. It noted that the only condition the applicant had been diagnosed with in the course of his previous forensic psychiatric examinations was a paranoid personality disorder. Such a diagnosis could not be regarded as fully grounded as it did not comply with the diagnostics criteria of the international statistical classification of illnesses. In particular, while that diagnosis implied a lack of social integration, the applicant had always been well adapted socially and had run a successful business. The wording "delusional inclusions" also raised questions as to its clinical accuracy. The applicant's excessive personal involvement in various situations, as well as the fact that he had been overly emotional and made peculiar statements, did not imply delusion.

51. Generally, it was concluded that there was nothing in the case file to show that the applicant had suffered from any serious psychiatric disorder rendering him unaccountable for his actions. Even if, presumably, the applicant's behaviour in the stressful situation of his criminal prosecution and detention had disclosed some peculiarities, the report concluded that, given his sufficient social adaptation prior to the criminal proceedings and the absence of a record of any psychiatric issues in the past, the applicant had not suffered from a psychiatric disorder between January 2006 and July 2007 and between August 2007 and November 2012 which would have

warranted his involuntary treatment and prevented him from participating in court hearings.

52. Furthermore, the Bureau expert criticised the report of 19 October¹ 2011 as having reversed the earlier conclusion of 4 October 2011 that the applicant had not been in need of involuntary psychiatric treatment without any persuasive grounds. This reversal had been made even though the description of the applicant's psychiatric condition had remained the same.

53. On 13 June 2013, following a request by the applicant's lawyer, an independent forensic psychiatric expert with thirteen years of work experience issued a report regarding the applicant's examinations of 26 July 2007, 26 February 2009 and 16 December 2010 (see paragraphs 19, 26 and 31 above). The expert considered only the first-mentioned report to be scientifically grounded. He criticised the other two for their incompliance with the rules of diagnostics and the absence of any explanation as to why the same behaviour of the applicant, which had earlier been regarded as normal, had later been considered as disclosing a psychiatric disorder. The expert also concluded that the applicant's right to attend court hearings in person had been restricted without any valid medical reason.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Criminal Code 2001

54. The relevant provisions read as follows:

Article 19

Mental capacity to stand trial

"1. A person shall be considered mentally fit to stand trial if at the time of the committal of the crime he was aware of and able to control his actions (or inactivity).

2. A person shall not be held criminally liable if, at the time of the committal of a socially dangerous act as laid down by this Code, he was in a state of insanity, meaning that he was not able to understand or control his actions as a result of a chronic psychiatric illness, temporary psychiatric disorder, dementia or other psychiatric condition. Involuntary medical treatment can be ordered in such cases by a court ..."

Article 92

The definition and purpose of involuntary medical treatment

"Involuntary medical treatment includes: outpatient psychiatric treatment; placement of a person who has committed a socially dangerous act falling under the Special Part of this Code in a special medical establishment with a view to his

1. Rectified on 3 September 2014: the text was "19 November 2011"

involuntary treatment; and measures taken to prevent a person committing a socially dangerous act.”

Article 93

Persons to whom involuntary medical treatment is applicable

“A court may order involuntary medical treatment in respect of persons who have

1) committed a socially dangerous act while being mentally unfit to stand trial (*у стані неосудності*);

2) committed a crime while having partial mental capacity to stand trial (*у стані обмеженої неосудності*);

3) committed a crime while being mentally fit to stand trial, but who have become mentally ill prior to the pronouncement of the verdict or during the enforcement of the sentence.”

Article 94

Types of involuntary medical treatment

“1. Depending on the nature and seriousness of the mentally ill person’s condition and the seriousness of the offence committed, and having regard to his dangerousness to himself and others, the court may order the following types of involuntary medical treatment:

- (1) involuntary outpatient psychiatric treatment;
- (2) admission to a psychiatric hospital with ordinary supervision;
- (3) admission to a psychiatric hospital with reinforced supervision; and
- (4) admission to a psychiatric hospital with strict supervision.

2. The court may order involuntary outpatient psychiatric treatment in respect of a person suffering from a psychiatric disorder who has committed a socially dangerous act if the mental health of that person does not warrant his placement in a psychiatric hospital.

3. The court may order a person’s admission to a psychiatric hospital with ordinary supervision if his mental health and the nature of the socially dangerous act he has committed warrant his placement and involuntary treatment in a psychiatric hospital.

4. The court may order admission to a psychiatric hospital with reinforced supervision in respect of a person who has committed a socially dangerous act which did not involve an attempt on the life of another and who does not present a danger to society given his mental condition, but who is in need of psychiatric confinement and treatment under reinforced supervision.

5. The court may order admission to a psychiatric hospital with strict supervision in respect of a person who has committed a socially dangerous act which involved an attempt on the life of another and who presents a particular danger to society given his mental condition, and who is in need of psychiatric confinement and treatment in conditions of strict supervision.

6. If the application of [such] measures in respect of a mentally ill person is not considered necessary, or after the termination of the application of such measures, the

court may entrust his guardianship to his relatives or guardians with mandatory medical monitoring.”

B. Code of Criminal Procedure 1960 (repealed on 20 November 2012 with the entry into force of the new Code of Criminal Procedure of 13 April 2012)

55. Article 156 limits the initial pre-trial detention term to two months and provides for the possibility of its extension up to eighteen months. It also stipulates that the term of a person’s inpatient psychiatric examination is to be included in his or her pre-trial detention.

56. Article 416 provides that enforced medical treatment shall be ordered only in respect of persons who are considered socially dangerous.

57. Under Article 419, the participation of a person in the judicial proceedings regarding his or her case must be ensured if it is not precluded by the nature of his or her illness.

C. Psychiatric Assistance Act 2000

58. Article 3 of the Act provides that every person must be considered as being of sound mind unless the existence of a psychiatric disorder is established on the grounds laid down by law and in compliance with the established procedures.

59. Pursuant to Article 7 a diagnosis of a psychiatric disorder must be established in compliance with the generally recognised international standards of diagnostics and the international statistical classification of illnesses. This provision further states that a psychiatric disorder diagnosis cannot be based on a person’s disagreement with the political, moral, legal, religious or cultural values existing in the society or on any other grounds directly unrelated to his or her psychiatric health.

60. Article 19 stipulates that involuntary medical treatment may be ordered by a court in compliance with the legally established procedure. The measures applied may be continued, changed or lifted by a court upon an application by the mental health facility in which the person is being treated, based on the conclusion of a panel of psychiatrists. Persons to whom such measures have been applied must undergo periodic examinations by a commission of psychiatrists at least every six months with a view to verifying whether the measures remain justified.

61. Under Article 25, persons receiving psychiatric assistance retain all the rights and freedoms enshrined in the Constitution and laws of Ukraine. Their rights and freedoms may be restricted only in cases provided for by the Constitution of Ukraine in compliance with the applicable legislation.

D. Resolution of the Plenary Supreme Court of Ukraine no. 7 of 3 June 2005

62. The relevant parts read as follows:

“In order to ensure correct and uniform application by the courts of the legislation on involuntary medical treatment and to eliminate shortcomings in the 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 rendering 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 as to whether they are scientifically grounded, convincing and well-reasoned. ... Those conclusions may be used as evidence in a case without any pre-established validity and are not binding for the court. However, any disagreement with them shall be reasoned in the ruling, verdict or resolution of the court.

Where expert conclusions are incomplete or insufficiently clear, or where there is a need to clarify additional issues, the court must summon the [expert] to the hearing ... or order an additional or repeated expert assessment.

... 10. Having regard to the provisions of Article 419 of the Code of Criminal Procedure, Articles 3 and 25 of the [Psychiatric Assistance Act], as well as paragraph 5 of Principle 18 of the Annex to Resolution of the UN General Assembly no. 46/119 of 18 February 1992 ‘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 it) and his representative participate in the hearings, [if it has not received] a written waiver from that person of his right to attend ...”

III. RELEVANT INTERNATIONAL MATERIAL

63. The relevant extracts of the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by General Assembly resolution 46/119 of 17 December 1991 read as follows:

Principle 4.

Determination of mental illness.

“1. A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.

2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership in a cultural, racial or religious group, or for any other reason not directly relevant to mental health status.

3. Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in the diagnosis of mental illness.

4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.

5. No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness."

Principle 15

Admission principles

"1. Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission. ..."

Principle 16

Involuntary admission.

"1. A person may be admitted involuntarily to a mental health facility as a patient or, having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility if, and only if, a qualified mental health practitioner authorized by law for that purpose determines, in accordance with principle 4 above, that that person has a mental illness and considers:

(a) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(b) That, in the case of a person whose mental illness is severe and whose judgment is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (b), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.

2. Involuntary admission or retention shall initially be for a short period as specified by domestic law for observation and preliminary treatment pending review of the admission or retention by the review body. The grounds of the admission shall be communicated to the patient without delay and the fact of the admission and the grounds for it shall also be communicated promptly and in detail to the review body, to the patient's personal representative, if any, and, unless the patient objects, to the patient's family. ..."

Principle 17

Review body

"1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions, have the assistance of one or

more qualified and independent mental health practitioners and take their advice into account.

2. The initial review of the review body, as required by paragraph 2 of principle 16 above, of a decision to admit or retain a person as an involuntary patient shall take place as soon as possible after that decision and shall be conducted in accordance with simple and expeditious procedures as specified by domestic law.

3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law.

4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law.

5. At each review, the review body shall consider whether the criteria for involuntary admission set out in paragraph 1 of principle 16 above are still satisfied, and, if not, the patient shall be discharged as an involuntary patient.

6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient.

7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility. ...”

Principle 18

Procedural safeguards

“... 5. the patient and the patient’s personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing. ...”

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION IN RESPECT OF THE APPLICANT’S PRE-TRIAL DETENTION

64. The applicant complained that his detention from 17 August to 17 September 2007 was in breach of Article 5 §§ 1 and 4 of the Convention. He also complained under Article 5 § 3 about the length of the entire period of his pre-trial detention. The relevant parts of the provisions relied on read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having

committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

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

A. Admissibility

65. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Lawfulness of the applicant's detention from 17 August to 17 September 2007 (Article 5 § 1)

66. The applicant complained that his detention during the above-mentioned period had not been covered by any judicial decision and had therefore been unlawful. He referred in that connection to the judgment in the case of *Kharchenko v. Ukraine*, in which the Court noted that it had already examined and found a violation of Article 5 § 1 of the Convention in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment had been submitted to the trial court (no. 40107/02, § 71, 10 February 2011).

67. The Government maintained that the applicant's detention was in compliance with the domestic legislation and that there were no reasons to consider it unlawful within the meaning of Article 5 of the Convention.

68. The Court observes on the facts of the case that the last extension of the applicant's detention during the pre-trial investigation expired on 17 August 2007. A few days earlier, the investigation had been officially closed, the applicant had been provided with access to the case file and the case had been sent to the court for trial. On 17 September 2007 the Dzerzhynskyy Court held a preparatory hearing for the trial, at which it decided to keep the applicant in detention as a preventive measure (see paragraphs 17-18 and 20-23 above).

69. Indeed, as pointed out by the applicant, the Court has previously examined a similar situation in other cases against Ukraine and found it to be incompatible with the requirements of lawfulness under Article 5 § 1 of

the Convention (see, for example, *Yeloyev v. Ukraine*, no. 17283/02, §§ 48-51, 6 November 2008; *Solovey and Zozulya v. Ukraine*, nos. 40774/02 and 4048/03, §§ 70-73, 27 November 2008; and *Kondratyev v. Ukraine*, no. 5203/09, §§ 110-112, 15 December 2011). Moreover, in *Kharchenko* (cited above, §§ 98 and 101), the Court held that such a situation, where continued detention before or during trial was not covered by any judicial decision, stemmed from a *legal lacuna* and was a recurrent structural problem in Ukraine. There are no arguments in this case capable of persuading the Court to reach a different conclusion.

70. Accordingly, the Court concludes that the applicant's detention from 17 August to 17 September 2007 was unlawful.

71. There has accordingly been a violation of Article 5 § 1 of the Convention in this respect.

2. Length of the applicant's pre-trial detention (Article 5 § 3)

72. The applicant contended that his pre-trial detention had been excessively long and had not been based on sufficient grounds.

73. The Government argued that, given the applicant's behaviour, in particular, the numerous threats he made to the victim, Ms B., and his failure to comply with the investigator's summonses, his pre-trial detention had been a justified preventive measure. They also considered its length reasonable.

74. The Court notes that the applicant was detained within the meaning of Article 5 § 1 (c) of the Convention from 4 June 2007 to 3 June 2009 and from 23 December 2009 to 8 April 2011. His pre-trial detention therefore lasted for three years and three and a half months.

75. The Court does not consider this period short in absolute terms (see and compare with *Doronin v. Ukraine*, no. 16505/02, § 61, 19 February 2009).

76. It accepts that the applicant's initial arrest may have been warranted by his alleged threats to the victim and his lack of cooperation with the police (see paragraph 11 above). However, after a certain lapse of time the judicial authorities were obliged to reassess his personal situation and to give express grounds for his continued detention (see, among many other authorities, *Tretyakov v. Ukraine*, no. 16698/05, § 59, 29 September 2011).

77. In the meantime, the applicant's detention was extended on the sole ground that additional time was required for the investigation to be completed (see paragraph 17 above). Furthermore, on 17 September 2007 his request for release on bail was rejected without any explanation as to why that less intrusive preventive measure was deemed inappropriate (see paragraphs 22-23 above). Likewise, on 23 December 2009 the appellate court failed to advance any reasons for keeping the applicant in pre-trial detention as a preventive measure (see paragraph 28 above).

78. The Court therefore considers that the domestic authorities failed to duly justify the applicant's continued pre-trial detention for three years and three and a half months (see *Pleshkov v. Ukraine*, no. 37789/05, §§ 36-37, 10 February 2011).

79. It follows that there has been a violation of Article 5 § 3 of the Convention.

3. Judicial review of the applicant's detention from 17 August to 17 September 2007 (Article 5 § 4)

80. The applicant additionally complained that, in the absence of any decision validating his detention during the above-mentioned period or any clear procedure for challenging it, he had not been able to obtain judicial review of the lawfulness of that detention.

81. The Government contested that view. They noted that the applicant had requested to be released on bail on 9 September 2007 and that his request had been examined by the court on 17 September 2007 (see paragraphs 22-23 above). Accordingly, the Government considered that the applicant had obtained an effective judicial review of the lawfulness of his pre-trial detention.

82. The Court notes that it has already found that Ukrainian law, as it stood at the relevant time, did not provide a procedure for reviewing the lawfulness of continued detention after the completion of a pre-trial investigation that satisfied the requirements of Article 5 § 4 of the Convention (see *Molodorych v. Ukraine*, no. 2161/02, § 108, 28 October 2010; *Pleshkov*, cited above, § 42; *Kharchenko*, cited above, § 100; *Tsygoniy v. Ukraine*, no. 19213/04, § 78, 24 November 2011; and *Taran v. Ukraine*, no. 31898/06, §§ 81-82, 17 October 2013). Namely, trial courts were not required to give reasons for their decisions authorising detention or to fix the term of such detention. Furthermore, the speed with which requests for release could be examined depended on the date set for a hearing.

83. The aforementioned problems have manifested themselves in the present case too.

84. The Court therefore holds that there has been a violation of Article 5 § 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION IN RESPECT OF THE APPLICANT'S CONFINEMENT IN A PSYCHIATRIC HOSPITAL

85. The applicant further complained, without referring to any provision of the Convention, that his confinement in a psychiatric hospital had been an arbitrary and unnecessary measure. The Court considers it appropriate to

examine this complaint under 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

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

B. Merits

1. The parties' submissions

87. The applicant argued that his confinement in a psychiatric hospital had been ordered by the authorities to punish him for his public activities and active political stance.

88. He submitted that instead of having been based on a psychiatric evaluation, the forensic psychiatric examination reports finding him to be suffering from a mental illness warranting involuntary inpatient psychiatric treatment had been based on a selective analysis of the facts and relied on some unverified witness statements.

89. Furthermore, the applicant noted that no explanation had ever been given for the drastic change in the position of the experts, who had first assessed his behaviour as normal, but later decided that the same behaviour was indicative of a mental illness.

90. He also submitted that all his forensic psychiatric examinations had been conducted with the involvement of the same experts (employees of the Dnipropetrovsk Regional Psychiatric Hospital).

91. Relying on the reports of the independent experts of 20 May and 13 June 2013 (see paragraphs 50-53 above), the applicant pointed to inconsistencies and inaccuracies in the forensic psychiatric reports which had provided the basis for his psychiatric internment. He insisted that there had been insufficient evidence to suggest that he was suffering from a mental disorder requiring his involuntary treatment in a psychiatric facility.

92. The applicant also submitted that the courts had failed to make the necessary effort to review his diagnosis or the need for his inpatient psychiatric treatment.

93. Lastly, he complained that he had been denied his right to attend and participate in the court hearings without any valid reason.

94. The Government contended that the applicant's involuntary confinement in a psychiatric hospital had been based on objective medical reports and on the courts' assessment of his behaviour at hearings.

95. Furthermore, the Government pointed out that the criminal offences he was charged with were "socially dangerous".

96. The Government interpreted his complaint as concerning only the fact of his admission to the psychiatric hospital, but not his further retention therein.

97. The applicant disagreed with that interpretation, submitting that he had complained to the Court about the entire period of his confinement in the psychiatric hospital.

2. The Court's assessment

(a) General case-law principles

98. The Court reiterates that Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual and as such its importance in a democratic society is paramount (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X, and *Storck v. Germany*, no. 61603/00, § 102, ECHR 2005-V).

99. The 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 by objective medical expertise 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 *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33).

100. The Court has held on numerous occasions that it gives certain deference to the national authorities in deciding whether an individual should be detained as a "person of unsound mind". It will not substitute the decisions of States on how to apply the Convention rights to concrete factual circumstances. It is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75). It is not the Court's task to reassess various medical opinions, which would fall

primarily within the competence of national courts; however, it must ascertain for itself whether the domestic courts, when taking the contested decision, had at their disposal sufficient evidence to justify the detention (see *Herz v. Germany*, no. 44672/98, § 51, 12 June 2003).

101. In order to defer to the judgment of domestic authorities, who are indeed better placed to assess the facts of a given case, the Court must be satisfied that they have assessed and scrutinised the pertinent issues thoroughly. These principles are fully applicable to situations of deprivation of liberty, given the fundamental importance of this right in a democratic society. Domestic courts must subject deprivations of liberty to thorough scrutiny so that the detained persons enjoy effective procedural safeguards against arbitrary detention in practice (see *Župa v. the Czech Republic*, no. 39822/07, § 51, 26 May 2011).

102. The Court has observed in its case-law that the meaning of the term “persons of unsound mind” is continually evolving as research in psychiatry progresses and increasing flexibility in treatment is developing. Nevertheless, sub-paragraph (e) of Article 5 § 1 cannot be taken as permitting the detention of a person simply because his or her views or behaviour deviate from the norms prevailing in society. To hold otherwise would not be reconcilable with the text of Article 5 § 1, which sets out an exhaustive list of exceptions calling for a narrow interpretation (see, as a classical reference, *Winterwerp*, cited above, § 37).

103. The Court further notes that the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is in conformity with national law; it must also be necessary in the particular circumstances (see, for the application of these principles in the context of Article 5 § 1 (e), *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III, and *Stanev v. Bulgaria* [GC], no. 36760/06, § 143, ECHR 2012).

104. Lastly, in order to comply with Article 5 § 1 (e) of the Convention, the proceedings leading to the involuntary placement of an individual in a psychiatric facility must necessarily provide clearly effective guarantees against arbitrariness given the vulnerability of individuals suffering from mental disorders and the need to adduce very weighty reasons to justify any restriction of their rights (see *Zagidulina v. Russia*, no. 11737/06, § 53, 2 May 2013).

(b) Application of the above general principles to the present case

105. It has not been disputed by the parties in the present case that the applicant’s psychiatric internment amounted to a deprivation of his liberty within the meaning of Article 5 § 1 (e) of the Convention. The Court sees

no reasons to hold otherwise (see *Stanev*, cited above, §§ 121-132, ECHR 2012).

106. Contrary to the Government's argument (see paragraph 96 above), the Court considers that the applicant's complaint concerns both his admission to the Geykivska Hospital for involuntary psychiatric treatment and his subsequent retention there.

(i) The applicant's admission to the Geykivska Hospital for involuntary psychiatric treatment

107. The Court notes that the applicant's psychiatric confinement was based on several collective expert opinions. While this factor can be viewed as an indication that the measure was not applied arbitrarily, it is not sufficient in itself to render further analysis unnecessary (see *M. v. Ukraine*, no. 2452/04, §§ 59-67, 19 April 2012).

108. More specifically, the Court observes that prior to his admission to the psychiatric facility the applicant was examined by specialists from the Dnipropetrovsk Regional Psychiatric Hospital on three occasions:

- In their report of 26 July 2007 they held that he had been aware of his actions in January 2006 (when the episode with Ms B. occurred) and that he did not require involuntary psychiatric treatment at the time of the examination (see paragraph 19 above).
- In the later report of 26 February 2009 doctors from the same hospital concluded that the applicant had not been aware of his actions in July 2006 (when the episode with the gas pipeline repairs had occurred) and in May 2007 (when the episode with Mr S. took place), and that he required involuntary psychiatric treatment as of the time of his examination given the deterioration of his mental health against the background of the criminal proceedings against him (see paragraph 26 above).
- In yet another report of 16 December 2010 the same hospital specialists reiterated their conclusions of 26 February 2009 and stated that the applicant could not effectively participate in the court hearings given his psychiatric condition (see paragraph 31 above).

109. Furthermore, the Court does not lose sight of the findings of the other psychiatric experts of 20 May and 13 June 2013 criticising the earlier reports (of 26 February 2009 and 16 December 2010), in particular on account of the inaccuracy of the diagnosis (see paragraphs 50-53 above).

110. It is not for the Court to reassess the above-mentioned reports, which were drawn up by professional psychiatric experts and which contained opposite conclusions, and to decide which of them was right and which was wrong. It is, however, its task to verify whether the domestic courts scrutinised the respective reports with the requisite diligence and provided adequate reasoning for their decision to order the applicant's

psychiatric internment (see also *Raudevs v. Latvia*, no. 24086/03, § 71, 17 December 2013, not yet final).

111. The Court notes that the thorough scrutiny requirement was emphasised by the Plenary Supreme Court of Ukraine in its Resolution no. 7 of 3 June 2005, in which the courts were instructed to base their decisions regarding involuntary medical treatment only on reasoned conclusions by psychiatric experts (see paragraph 62 above). Moreover, pursuant to the Resolution, the courts had to be critical in their assessment of those conclusions and to summon the respective experts in case of any incompleteness or ambiguity.

112. There is no indication in the present case, however, that the domestic courts undertook any such critical assessment of the expert reports on the applicant's mental condition and need for involuntary psychiatric treatment. They did not seek any explanation as to why the same behavioural patterns consistently manifested by the applicant (egocentrism, overly high self-esteem, tendency to make categorical judgments, extreme sensibility to failure, and so on – see paragraphs 19, 26 and 31 above) had been assessed as not disclosing any psychiatric illness on one occasion and as disclosing such an illness on another occasion. Thus, while the applicant's behaviour, as described in the respective forensic psychiatric examination reports, remained the same, the dynamics of his mental health according to those reports were as follows: in January 2006 he was in good mental health; in July 2006 and in May 2007 he was mentally ill and could not be held accountable for his actions; in July 2007 he did not suffer from any mental illness and was aware of and able to control his actions; and in February 2009 and in December 2010 he was considered mentally ill again. The drastic changes in the experts' conclusions remained without any reasoning, even though that had been one of the arguments raised in the appeal of the applicant's son acting as his representative (see paragraph 35 above).

113. The Court further notes that all the forensic psychiatric reports leading to the involuntary medical treatment of the applicant were drawn up by specialists from the same hospital, without a second, independent opinion being sought.

114. Lastly, the Court notes that, despite the importance of the issue at stake for the applicant, he was not heard in person and was not granted an opportunity to comment on the experts' findings at the court hearing which resulted in the delivery of the decision on his involuntary psychiatric confinement (see, for a converse example, *Klouten v. Germany* (dec.), no. 48057/10, § 53, 19 March 2013). There appear to be no valid reasons justifying his exclusion from the proceedings. Thus, the experts who described the applicant's behaviour as "free and friendly [...], disclosing an advanced intellect and good memory and analytical skills, [while] demonstrating a certain superiority and rigidity in his opinions" gave no

explanation as to why his psychiatric condition was considered to preclude his effective participation in court hearings (see paragraph 31 above).

(ii) The applicant's detention in the Geykivska Hospital

115. The Court notes that the applicant was detained in the Geykivska Hospital from 14 September 2011 to 26 October 2012, that is, for one year one month and twelve days. During that period he was examined by a panel of specialists from the hospital on three occasions with a view to verifying the necessity of his continued involuntary psychiatric confinement: twenty days following his admission (on 4 October 2011); fifteen days later (on 19 October 2011); and again six months and seven days later (on 26 April 2012).

116. Accordingly, after the compulsory admission of the applicant on the basis of the court decisions, the practitioners of the Geykivska Hospital assumed effective control of his liberty and treatment for the whole period of his hospitalisation. There is no indication that, following his admission to the hospital, the applicant was subject to any assessment by an outside authority.

117. The Court finds the opportunity of patients to benefit from a second, independent psychiatric opinion, a principle also included in the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (see paragraph 63 above), to be an important safeguard against possible arbitrariness in decision-making where the continuation of confinement in involuntary care is concerned (see *X v. Finland*, no. 34806/04, § 169, ECHR 2012, and *M. v. Ukraine*, cited above, § 66).

118. The Court also notes that the initiative to launch proceedings in which the issue of whether the conditions for the applicant's confinement for involuntary treatment were still met laid solely with the authorities. As the Court has held in its case-law, such a system cannot be regarded as providing sufficient safeguards against arbitrariness (see *X v. Finland*, cited above, § 170).

(iii) Conclusion

119. In the light of all the foregoing, the Court considers that the domestic authorities failed to establish in a conclusive manner and with the requisite procedural safeguards against arbitrariness the existence and persistence of a genuine mental disorder whose nature or extent was such as to justify the applicant's admission to the Geykivska Hospital and his detention there. There has therefore been a violation of Article 5 § 1 (e) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

120. The applicant further complained that his diagnosis with a mental illness and his involuntary admission to a psychiatric facility constituted a violation of his right to respect for his private life under Article 8 of the Convention, which reads as follows:

“1. Everyone has the right to respect for his private ... life

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

121. The Court notes that this complaint is closely linked to that under Article 5 § 1 (e) and must therefore likewise be declared admissible.

122. However, having regard to the reasons which led the Court to find a violation of Article 5 § 1 (e) of the Convention, the Court considers that the present complaint does not give rise to any separate issue.

123. Consequently, the Court holds that it is not necessary to examine the complaint under Article 8 of the Convention separately.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

124. The applicant also complained under Article 3 of the Convention that he had suffered ill-treatment by other detainees in the Kryvvy Rig SIZO and that his complaints in that regard had not been duly examined. He further raised the following complaints: under Article 7 about his allegedly unfair criminal prosecution; under Article 8 about the alleged secret surveillance of him and his family by the security services for many years; under Article 9 about the fact that the investigator in charge of his case was a Muslim, which he considered to be unacceptable given his orthodox Christian faith; under Article 10 about the criminal cases against him having allegedly been related to his activities as a journalist; under Article 11 about the negative impact of his detention and psychiatric confinement on the NGO he headed; with reference to Article 12, about his complaints to various authorities having been without success; and under Article 2 of Protocol No. 7 about being limited in his ability to lodge appeals.

125. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

126. 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

127. The applicant claimed 386,455 euros (EUR) on account of loss of earnings during his pre-trial detention and psychiatric confinement. He also claimed EUR 40,000 in respect of non-pecuniary damage.

128. The Government considered the applicant's claims excessive, unfounded and unsubstantiated.

129. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it considers that the applicant must have undoubtedly suffered non-pecuniary damage as a result of the violations found and decides to award him EUR 18,000 under this head.

B. Costs and expenses

130. The applicant also claimed EUR 5,880 for the costs and expenses incurred before the Court, to be paid into his lawyer's account directly. In substantiation, he submitted a legal assistance contract signed by him and Mr Tarakhkalo on 5 April 2013. It stipulated an hourly charge-out rate of EUR 150. According to the contract, that payment would be made after completion of the proceedings in Strasbourg and within the limits of the sum awarded by the Court in costs and expenses. The applicant also submitted a report of 26 July 2013 on the work completed under the aforementioned contract. It specified that Mr Tarakhkalo had worked on the case for thirty-five hours (EUR 5,250) and that he had incurred administrative and postal costs in the amounts of EUR 420 and EUR 210 respectively.

131. The Government contested the claim as exorbitant and unsubstantiated.

132. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court notes that only the applicant is contractually bound to pay fees *vis-à-vis* Mr Tarakhkalo. Having regard to the documents submitted, the Court considers those fees to have been “actually incurred”

(see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 106, ECHR 2009).

133. However, the Court considers that the claim is excessive and awards it in part, in the amount of EUR 2,150 (which is equal to EUR 3,000 less EUR 850, the sum received by way of legal aid), plus any value-added tax that may be chargeable to the applicant. The net award is to be paid into the bank account of the applicant's lawyer, Mr Tarakhkalo, as indicated by the applicant (see, for example, *Belousov v. Ukraine*, no. 4494/07, §§ 116-117, 7 November 2013).

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY,

1. *Declares* the complaints under Articles 5 §§ 1 (c), 3 and 4 of the Convention in respect of the applicant's pre-trial detention, as well as his complaints under Article 5 § 1 (e) and Article 8 in respect of his psychiatric internment, admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;
3. *Holds* that there has been a violation of Article 5 § 1 (e) of the Convention on account of the applicant's admission to the Geykivska Hospital and his detention there;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
5. *Holds*, that there has been a violation of Article 5 § 4 of the Convention;
6. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;
7. *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 Ukrainian hryvnias at the rate applicable at the date of settlement:

- (i) EUR 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and
- (ii) EUR 2,150 (two thousand one hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses (the net award to be paid into the bank account of the applicant's lawyer, Mr Tarakhkalo);¹

¹ Rectified on 3 August 2014: the text was “plus any tax that may be chargeable to the applicant, in respect of costs and expenses”

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Mark Villiger
President