

Press release issued by the Registrar

**CHAMBER JUDGMENT  
SHTUKATUROV v. RUSSIA**

The European Court of Human Rights has today notified in writing its Chamber judgment<sup>1</sup> in the case of *Shtukaturov v. Russia* (application no. 44009/05).

The Court held unanimously that there had been:

- a **violation of Article 6 § 1** (right to a fair hearing) of the European Convention on Human Rights concerning the proceedings which deprived the applicant of his legal capacity;
- a **violation of Article 8** (right to respect for private and family life) of the Convention on account of the applicant being fully deprived of his legal capacity;
- a **violation of Article 5 § 1** (right to liberty and security) concerning the applicant's confinement to a psychiatric hospital;
- a **violation of Article 5 § 4** concerning the applicant's inability to obtain his release from hospital; and,
- a **failure by the Russian Government to comply with its obligations under Article 34** (right of individual petition) as it had hindered the applicant's access to the Court.

The Court considered that the question of the application of Article 41 (just satisfaction) was not yet ready for decision. (The judgment is available only in English.)

## 1. Principal facts

The applicant, Pavel Vladimirovich Shtukaturov, is a Russian national who was born in 1982 and lives in St Petersburg. He has a history of mental illness and was declared officially disabled in 2003.

The case concerned the applicant's allegation, in particular, that he was deprived of his legal capacity without his knowledge and confined to a psychiatric hospital by his mother so that she could claim possession of property he had inherited from his grandmother.

On 3 August 2004 the applicant's mother asked Vasileostrovskiy District Court to deprive her son of his legal capacity. She claimed that he was incapable of leading an independent life and required a guardian. The applicant was not officially notified of those proceedings.

---

<sup>1</sup> Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On 28 December 2004, the district court held a hearing. The applicant, not notified, did not attend. The case was examined in the presence of the district prosecutor and a representative of a psychiatric hospital where the applicant had been placed in July 2004. After ten minutes' deliberations the district court declared the applicant legally incapable under Article 29 of the Civil Code. Article 29 provided for such a measure if a person could not understand the meaning of his actions or control them. The judgment relied on a psychiatric report of 12 November 2004 which, referring to the applicant's aggressive behaviour, negative attitude and "anti-social" lifestyle, concluded that he suffered from schizophrenia and was unable to understand his actions or control them. His mother was appointed his guardian and, as such, was authorised by law to act on his behalf in all matters.

Subsequently, the applicant, having come across a copy of the December 2004 judgment at his mother's home, contacted a lawyer of the Mental Disability Advocacy Centre. On 2 November 2005 they met to discuss his case and draft an appeal. The lawyer considered that the applicant was fully capable of understanding complex legal issues and giving relevant instructions.

On 4 November 2005, the applicant's mother admitted the applicant to a psychiatric hospital. The applicant and his lawyer requested permission to meet, which was refused. The applicant did, however, manage to get a form to his lawyer which authorised the lodging of an application with the European Court on his behalf. From December 2005, the applicant was refused all contact with the outside world. He also alleged that he was treated with strong medication against his will.

On numerous occasions between December 2005 and January 2006, the applicant asked the guardianship and public health authorities, the district prosecutor and the head of the psychiatric hospital to be discharged from hospital, without success. His lawyer also made similar unsuccessful requests.

In the meantime, the applicant's lawyer appealed against the decision of December 2004. It was rejected without being examined on the ground that the applicant had no legal capacity and could only appeal through his official guardian, his mother, who opposed his release and any review of the decision of December 2004.

On 6 March 2006 the European Court applied an interim measure under Rule 39 of its Rules of Court in which it indicated to the Russian Government that the applicant and his lawyer should be provided with the necessary time and facilities to meet and prepare the case before the Court. However, the authorities refused to comply with that measure as Russian law did not consider the European Court's interim measures binding. They also stated that the applicant could not act without the consent of his mother and that his lawyer could not therefore be considered his lawful representative.

The applicant was ultimately discharged from hospital on 16 May 2006 but his mother apparently readmitted him in 2007.

As a legally incapable adult, the applicant is not allowed to work, marry, join associations, travel or sell or buy property.

## 2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 10 December 2005.

Judgment was given by a Chamber of seven judges, composed as follows:

Christos **Rozakis** (Greek), *President*,  
Nina **Vajić** (Croatian),  
Anatoly **Kovler** (Russian),  
Khanlar **Hajiyev** (Azerbaijani),  
Dean **Spielmann** (Luxemburger),  
Giorgio **Malinverni** (Swiss),  
George **Nicolaou** (Cypriot), *judges*,

and also Søren **Nielsen**, *Section Registrar*.

## 3. Summary of the judgment<sup>1</sup>

### Complaints

The applicant alleged that he was deprived of his legal capacity without his knowledge. He further alleged that he was unlawfully confined to a psychiatric hospital where he was unable to obtain a review of his status or meet his lawyer and he received medical treatment against his will. He relied on Article 3 (prohibition of inhuman or degrading treatment), Article 5 (right to liberty and security), Article 6 § 1 (right to a fair hearing), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 34 (right of individual petition).

### Decision of the Court

#### Article 6 § 1

The Court reiterated that, in cases concerning compulsory confinement, a person of unsound mind should be heard either in person or, where necessary, through some form of representation. However, the applicant, who appeared to have been a relatively autonomous person despite his illness, had not been given any opportunity to participate in the proceedings concerning his legal capacity.

Given the consequences of those proceedings for the applicant's personal autonomy and indeed liberty, his attendance had been indispensable not only to give him the opportunity to present his case, but also to allow the judge to form an opinion on his mental capacity. The Court therefore concluded that the decision of 28 December 2004, based purely on documentary evidence, had been unreasonable and in breach of the principle of adversarial proceedings enshrined in Article 6 § 1.

---

<sup>1</sup> This summary by the Registry does not bind the Court.

In the Court's opinion, the presence of a representative from the hospital and of the district prosecutor, who had remained passive throughout the ten-minute hearing, had not made the proceedings truly adversarial.

Furthermore, the applicant had not even been able to challenge the December 2004 judgment as his appeal had been rejected without examination.

The Court therefore concluded that the proceedings before Vasileostrovskiy District Court concerning the applicant's case had not been fair, in violation of Article 6 § 1.

#### Article 8

The Court noted that the interference with the applicant's private life had been very serious: it had resulted in him having become fully dependant on his official guardian in almost all areas of his life for an indefinite period. Nor could that interference be challenged other than through his guardian, who had opposed any attempts to discontinue the measure.

The Court recalled that it had already found the proceedings to deprive the applicant of his legal capacity as procedurally flawed. Indeed, it was particularly struck by the fact that the applicant's case had been decided after only one hearing lasting just ten minutes.

The district court's reasoning had also been inadequate, as it had relied solely on the medical report of 12 November 2004, which had not analysed sufficiently the degree of the applicant's incapacity. That report had not covered the consequences of the applicant's illness on his social life, health and pecuniary interests or how exactly he had not been able to understand or control his actions.

In such cases, Russian legislation only made a distinction between full capacity and full incapacity of mentally ill persons. It made no allowances for borderline situations. The Court referred, in particular, to a Recommendation issued by the Council of Europe's Committee of Ministers which outlined a set of principles for the legal protection of incapable adults in which it recommended that legislation be more flexible by providing a "tailor-made" response to each individual case.

The Court therefore concluded that the interference with the applicant's private life had been disproportionate to the legitimate aim pursued by the Russian Government of protecting the interests and health of others, in violation of Article 8.

#### Article 5 § 1

The Government had not explained why the applicant's mother had asked for her son's hospitalisation on 4 November 2005. No medical records had been provided concerning the applicant's mental condition on his admission to hospital, to prove for example that he had been examined by specialist doctors. It appeared then that the decision to hospitalise the applicant had been based purely on the applicant's legal status, as defined ten months earlier. The Court therefore considered that it had not been "reliably shown" that the applicant's mental condition had necessitated his confinement and concluded that his hospitalisation between 4 November 2005 and 16 May 2006 had not been "lawful", in violation of Article 5 § 1 (e).

#### Article 5 § 4

The applicant's hospitalisation had been requested by his mother and had therefore been regarded as "voluntary" under Russian domestic law. The courts had not been involved in deciding on the applicant's hospitalisation at any time or in any way. Furthermore, Russian law did not provide for automatic judicial review of confinement in a psychiatric hospital in situations such as the applicant's. The applicant could not, in effect, pursue independently any legal remedy to challenge his continued detention as he had been deprived of his legal capacity.

Nor could the applicant bring legal proceedings through his mother who opposed his release. It was also unclear whether an inquiry by the prosecution authorities had concerned the "lawfulness" of the applicant's detention and, in any event, an inquiry could not be regarded as a judicial review satisfying the requirements of Article 5 § 4.

Given, in particular, that the courts had assessed the applicant's mental capacity ten months before his admission to hospital, the Court found that the applicant's inability to obtain judicial review of his detention had amounted to a violation of Article 5 § 4.

#### Article 34

The Court was struck by the authorities' refusal to comply with the interim measure indicated to the Russian Government under Rule 39 of its Rules of Court. Although the applicant had eventually been released, met his lawyer and continued the proceedings before the Court, it had not in any way been connected with Russia having implemented the interim measure.

The Court concluded that, by having prevented the applicant for a long period of time from meeting his lawyer and communicating with him, as well as by failing to comply with the interim measure, the Russian Federation had prevented the applicant from complaining to the Court and had therefore failed to comply with its obligations under Article 34 to not hinder the right to individual petition.

#### Other articles

The Court noted that the applicant had not provided any evidence to prove that he had actually been treated with strong medication with unpleasant side-effects. Nor did he claim that his health had deteriorated as a result of such treatment. The Court therefore found that his allegations under Article 3 were unsubstantiated and rejected that part of the applicant's complaint.

The Court held unanimously that there was no need to examine separately the applicant's complaints under Articles 13 and 14.

\*\*\*

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

**Press contacts**

**Emma Hellyer** (telephone: 00 33 (0)3 90 21 42 15)

**Tracey Turner-Tretz** (telephone: 00 33 (0)3 88 41 35 30)

**Paramy Chanthalangsy** (telephone: 00 33 (0)3 90 21 54 91)

**Sania Ivedi** (telephone: 00 33 (0)3 90 21 59 45)

*The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.*