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

THIRD SECTION

DECISION

Application no. 18095/11
A.L.
against Russia

The European Court of Human Rights (Third Section), sitting on 9 January 2018 as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 March 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr A.L., is a Russian national who was born in 1975 and lives in St Petersburg. The President of the Section decided under Rule 47 § 4 of the Rules of Court that the applicant's name should not to be disclosed to the public. He was represented before the Court by Mr D.G. Bartenev, a lawyer practising in St Petersburg.

2. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant has suffered from schizophrenia since his childhood. From the age of fourteen he was admitted almost every year to psychiatric hospitals and treated for his disorder, drug abuse, and pathological,

aggressive and violent behaviour. He also suffered from hepatitis B and C, asthma and gastritis.

5. In 1997 he was declared as lacking legal capacity and a series of legal guardians was appointed for him. Initially those were his mother and then his brother, who both died, and then his ex-wife, Ms L. In the following years he continued to be admitted to psychiatric facilities on a regular basis. Most of his periods at home lasted only a few days, when he binged on prescription drugs and alcohol.

6. In August 2009 the applicant was admitted to a psychiatric hospital where he became close to Ms S., a nurse, who had to leave her job on account of that relationship. In December 2009 the applicant requested that the municipal guardianship authority appoint Ms S. as his new guardian and she subsequently formally applied for that role.

7. On 5 January 2010 the applicant was discharged from hospital with Ms L.'s consent and lived for the next two weeks with Ms S.

8. On 18 January 2010 the municipal guardianship authority requested that the local psychiatric hospital readmit the applicant because Ms L. had been discharged from her guardianship role at her own request and the applicant was unable to live alone.

9. On 20 January 2010 the applicant was examined by a panel of medical professionals at the psychiatric hospital. It diagnosed him with progredient schizophrenia with psychopathological defects; it established that the applicant was unable to meet his own basic vital needs and to decide on day-to-day and social issues. The panel concluded that the gravity of the mental disorder necessitated his hospitalisation to which the applicant, as a person without legal capacity, could not consent himself.

10. On 22 January 2010 the Gatchina Town Court of the Leningrad Region ("the Town Court") held a hearing and authorised the applicant's placement in hospital. During the hearing a hospital representative and a prosecutor argued in favour of admission to hospital but a court-appointed lawyer objected to it. The applicant, who was notified of the hearing, was absent as his mental health was in a grave state, as certified by a medical certificate. The Town Court concluded that the applicant was in need of hospitalisation given the gravity of his disorder and his inability to take care of his own basic needs. Several months later the applicant and his representative Mr Bartenev lodged appeals against the decision, but they were dismissed on 7 October 2010 by the Leningrad Regional Court.

11. On 3 February 2010 the municipal guardianship authority examined an application for guardianship by Ms S. The authority refused her application, referring to a negative reference from a previous employer, her irregular working hours coupled with the applicant's inability to take care of himself as well as the danger to her child, who was a minor, in connection with the applicant's tendency to be aggressive. On 21 April 2010 the

Nevskiy District Court of St Petersburg upheld the refusal after examining witnesses and medical evidence.

12. In July 2010 the psychiatric hospital asked the guardianship authority to state its position on the applicant's continued hospitalisation.

13. By a letter of 6 July 2010 the authority informed the psychiatrists that it had no objection to the applicant being kept in hospital. It also stated that no guardian had been appointed for him.

14. On the same day, the applicant was examined by a panel of medical professionals. The panel examined his social and medical profile and noted that since adolescence he had been prone to vagrancy, aggression, abuse of toxic substances, marijuana, and alcohol. He had first been diagnosed with schizophrenia at the age of 13 and placed in a psychiatric facility. He had continued to exhibit psychopathological behaviour, including substance abuse, aggression, and threats of rape and murder against his relatives. The panel's report noted that the applicant's admission to hospital had been based on "social considerations", namely that he had no guardian, was unable to live alone, take care of his basic needs, or make independent decisions on matters of everyday life. The panel noted that over the previous six months the applicant had had several episodes of losing control of his bodily movements, irritability, anger, and sleep disturbances, which had been treated with anti-psychotic medication. They concluded that further treatment was necessary on account of his "helplessness".

15. On 22 July 2010 the Town Court authorised the applicant's continued stay in hospital, which was upheld by the Leningrad Regional Court on 9 September 2010. Continued hospitalisation on the same grounds was authorised in the course of 2011. Notably, during an examination by a panel of psychiatrists on 5 July 2011 the applicant argued that continued hospitalisation was unnecessary, but categorically objected to being transferred to any other type of facility providing psychiatric assistance.

16. On 10 February 2011 the applicant complained to the hospital administration about being kept in the facility. On 17 February 2011 he was given a written reply, which stated that his being kept there had been proven by his "helplessness", that is his inability to independently satisfy his own basic needs. It further mentioned measures and initiatives for his rehabilitation and reintegration into society taken by the hospital.

17. Such rehabilitation began with an evaluation by the applicant of his ability to live independently and defining his goals in the process. An individual plan of cognitive and social training was drawn up by medical personnel and accepted by him. The plan included at least fifty sessions on basic needs, and cognitive and social skills, for example setting personal goals, communication skills, concentration, enhancing his memory, cognitive focus and perceptive differentiation, rational thinking, understanding others, personal hygiene, daily schedules and routine, healthy diet, cooking, using home appliances, clothes, safety, paying bills, "clever"

spending and saving money. The rehabilitation programme included individual and group sessions, training and art therapy. Implementation of the program was subsequently closely monitored, including records of his progress during the sessions.

18. Around the same time the municipal authorities attempted to find a legal guardian for the applicant. They approached surviving relatives, all of whom refused, and posted adverts in a local newspaper and on the Internet. All of the attempts proved unsuccessful.

19. On 15 March 2011 the municipal authorities informed the hospital that they had not found a candidate to become the applicant's guardian and that they could not act as one. They further mentioned their attempts to find suitable social care arrangements for the applicant with the assistance of the social security authorities.

20. On 23 March 2011 the municipal authorities were informed by a social care facility that the applicant could be admitted with permission from an attending psychiatrist once a stable remission of his mental disorder had been achieved.

21. On 19 June 2012 the hospital, acting as the applicant's guardian, issued an advance notice to the guardianship authority as follows:

> "... In view of the [applicant's] stable mental condition and the relative efficacy of his medical and rehabilitative treatment, there is a growing likelihood that the ensuing evaluation will result in an end to involuntary hospitalisation. If the panel of psychiatrists reaches such a conclusion, [the applicant] will be released for outpatient treatment. Accordingly, you are requested to make living arrangements for after his release, taking into account his personal situation and individual needs in terms of social assistance. If it proves impossible to resolve the issues related to guardianship, the social and living arrangements and care for [the applicant] as a person suffering from a mental disability, you are requested to give reasons and arrange for a meeting between social workers and the hospital in order to discuss measures aimed at securing [the applicant's] rights."

22. On 5 July 2012 the applicant was examined by a medical panel reviewing the need for him to be kept in hospital. The relevant parts of the report read as follows:

> "The clinical history during the stay in the hospital has been characterised by emotional deterioration and incidents of explicit mental disturbance ... Short-term relapses in his mental state... were promptly reversed by changes in medication. [A psycho-neurological nursing facility refused to accept the applicant owing to his history of drug and alcohol abuse] ... the applicant currently refuses any transfers to nursing facilities.
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> The patient has taken part in training courses aimed at strengthening his cognitive functions and restoring the social skills necessary for living outside hospital. He was active during the training sessions. He has been examined every six months by a medical panel to decide on the need for continued treatment in hospital. A judicial authorisation for his continued hospitalisation has been obtained every year ...
>
> The patient agrees that he will be unable independently to provide for his everyday needs or adapt to society ...

> [The applicant's] condition requires his placement and treatment in a psychiatric facility. His mental condition is serious and determines his helplessness, that is his inability to independently provide for his own vital needs, his loss of autonomous living skills, his not receiving his allowance or being able to make use of money."

23. On 27 July 2012 the Town Court held a hearing on the issue of the applicant being kept in hospital. During the hearing a hospital representative noted, *inter alia*, that the applicant had acquired certain skills relating to daily routines through his training but was still unable to make independent decisions on social and everyday matters. The guardianship authority stated that the applicant had no guardian and that it could not take on that role because the applicant needed constant supervision, including weekends and public holidays. The applicant and his representative maintained that outpatient treatment was preferable. The applicant further stated that he was capable of preparing "packaged food" and keeping to his treatment plan.

24. On the same day the Town Court granted the request, noting the need to resolve the guardianship issue. On 4 October 2012 the Regional Court upheld the judgment.

25. On 22 December 2012 the applicant was discharged from hospital as he no longer required inpatient treatment. The discharge records state that his mental health was stable, that he had successfully taken part in a social rehabilitation training programme, had acquired the necessary social and everyday skills and was no longer "helpless", and that joint measures approved by the municipal authorities had provided for social care after his discharge.

26. On 22 March 2013 the guardianship authority initiated proceedings for restoring the applicant's legal capacity. However, the proceedings remained pending because the applicant refused to undergo an inpatient medical examination aimed at re-evaluating his mental health. In parallel, the guardianship authority continued its efforts to find him a legal guardian.

COMPLAINTS

27. The applicant complained under Article 5 §§ 1 and 4 of the Convention of an alleged lack of grounds for his placement and continued confinement against his will in a hospital psychiatric facility and about his absence from the hearing of 22 January 2010. He further complained under Article 8 of the inadequacy of the guardianship arrangements in his case.

THE LAW

28. The Court must start by examining the applicant's complaints under Article 5 §§ 1 and 4 of the Convention.

29. In *Winterwerp v. the Netherlands* (24 October 1979, § 39, Series A no. 33), the Court set out three minimum conditions which have to be satisfied for the "detention of a person of unsound mind" to be lawful within the meaning of Article 5 § 1 (e): except in emergency situations the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical evidence; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder.

30. The Court has also consistently held that the notion of "lawfulness" in the context of Article 5 § 1 of the Convention may have a broader meaning than in the national legislation and that it presumes a "fair and proper procedure", including the requirement "that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary" (ibid., § 45). In that context the domestic proceedings must themselves offer the applicant sufficient protection against a potentially arbitrary deprivation of liberty (see *Shtukaturov v. Russia*, no. 44009/05, § 113, 27 March 2008).

31. Turning to the present case, the Court notes that the applicant's placement and continued confinement against his will in a hospital psychiatric facility satisfied the above-mentioned *Winterwerp* criteria.

32. The medical evidence available to the domestic authorities clearly demonstrated the existence of a true mental disorder of a kind and degree warranting hospitalisation. The applicant, who was diagnosed with schizophrenia while still a child, had a long history of repeated hospitalisation in psychiatric facilities, drug and alcohol abuse, and pathological, aggressive and violent behaviour. His placement in hospital in 2010 came as a result of a repeat confirmation of his diagnosis (progredient schizophrenia with psychopathological defects) and a professional medical assessment of his mental health as serious and his overall condition as "helpless", that is, the applicant was unable independently to meet his own basic vital needs and decide on day-to-day and social issues. On 22 January 2010 the Town Court held a hearing on the applicant's involuntary placement in hospital, duly considered all of the available evidence and granted the hospital's request. Over the next three years the applicant's condition was assessed every six months by a panel of medical professionals, who appropriately took note of the applicant's mental health situation and his progress in his treatment, if any. Each application to keep him in hospital was backed up by a detailed examination of his health, his

ability to cope with everyday life and his social skills, and his ability to take care of himself independently and to live alone without an appointed legal guardian. Continued hospitalisation was authorised each year by the Town Court, which each time examined the available medical evidence, heard the applicant, his representative, and considered the position of the hospital and the guardianship authority. His confinement ended and the applicant was discharged from hospital once the psychiatrists reached the conclusion that his mental health was stable, the social rehabilitation training programme successfully completed, the necessary social and everyday skills acquired and proper social care arrangements put in place.

33. The Court concludes that the applicant's involuntary placement and continued confinement in a hospital psychiatric facility were in compliance with Convention requirements, were medically justified and secured by a fair and proper procedure. The relevant complaints under Article 5 § 1 of the Convention are therefore inadmissible as manifestly ill-founded and must be dismissed under Article 35 §§ 3 (a) and 4 of the Convention.

34. As regards the applicant's absence from the hearing of 22 January 2010, it must be noted that that was due to his poor mental health, as certified by a medical certificate, and that his interests were represented by a court-appointed lawyer (see paragraph 10 above). Nothing in the material available to the Court casts any doubt on the validity of the medical certificate or the quality of the legal services provided by the lawyer. Accordingly, the Court concludes that the applicant's absence from the hearing was justified by valid medical reasons and reasonable procedural arrangements were put in place to compensate for that absence. The relevant complaint under Article 5 § 4 of the Convention is therefore inadmissible as manifestly ill-founded and must be dismissed under Article 35 §§ 3 (a) and 4 of the Convention.

35. The Court will also examine the applicant's complaint under Article 8 of the Convention of the inadequacy of the guardianship arrangements in his case. At the outset the Court must reiterate that in cases arising from individual petition its task is not to review the relevant legislation or practice in the abstract, but to examine the manner in which that legislation was applied in the particular circumstances of a case (see, among many other authorities, *Sahin v. Germany* [GC], no. 30943/96, § 87, ECHR 2003-VIII, and *N.C. v. Italy* [GC], no. 24952/94, § 56, ECHR 2002-X).

36. Turning to the present case, the Court discerns no lack of diligence or any arbitrariness or abuse on the part of the domestic authorities on the issue in question. The applicant's legal capacity was removed in 1997 and he had a succession of legal guardians until 2010. After the applicant's ex-wife was discharged from guardianship at her own request in 2010, the municipal and medical authorities assumed *de facto* guardianship over him. There is nothing in the available material to indicate that they abused their

position, neglected the applicant or attempted to secure any benefits for themselves. While making efforts to improve the applicant's mental health and his cognitive and social rehabilitation, they continually attempted to find and appoint a legal guardian capable of providing the requisite level of supervision. The domestic authorities on reasonable grounds refused an application by Ms. S, the only candidate at the material time, to become the applicant's legal guardian (see paragraph 11 above). The arguments advanced by them for that decision appear to be reasonable and convincing, namely, a negative reference from a previous employer, her irregular working hours coupled with the applicant's inability to take care of himself, and possible danger to Ms S.'s child given the applicant's tendency to be aggressive. The Court observes that when discharging their duties the municipal and medical authorities put in place social care arrangements and an individual rehabilitation program, which allowed the applicant to acquire the skills necessary for independent living and essentially facilitated his release from hospital.

37. In view of the above considerations, the Court concludes that the applicant's complaint under Article 8 of the Convention of the inadequacy of the guardianship arrangements in his case is manifestly ill-founded. It must therefore be dismissed under Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 1 February 2018.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President