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

Press Release
issued by the Registrar of the Court

ECHR 136 (2025)
05.06.2025

Compulsory psychiatric hospitalisation led to multiple violations of rights

In today's **Chamber** judgment[1] in the case of Spivak v. Ukraine (application no. 21180/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 §§ 1 and 4 (right to liberty and security) of the European Convention on Human Rights,

a violation of Article 3 (prohibition of inhuman and degrading treatment) on account of both Mr Spivak's treatment and the conditions in which he was held in a psychiatric hospital, and

a violation of Article 13 (right to an effective remedy).

The case concerned Mr Spivak's compulsory psychiatric treatment at the National High Security Psychiatric Hospital in Dnipro as ordered by a criminal court in October 2012. It had found that he had committed attempted murder, but was exempt from criminal responsibility on the basis of his mental state at the time of the offence. He had been unable to initiate court proceedings to review the lawfulness of his continued confinement or to challenge the medical treatment administered against his will. He had been discharged in October 2014.

The Court found in particular that Mr Spivak's continued psychiatric detention in the hospital after the termination of coercive medical measures by a court had been unlawful. It also found that the hearings on the continuation of his compulsory in-patient medical treatment had not met the basic requirements of justice.

The Court furthermore held that Mr Spivak had been held in inadequate, overcrowded conditions in hospital, and had been unable to properly challenge the necessity of the compulsory treatment that the doctors there had prescribed for him.

A legal summary of this case will be available in the Court's database HUDOC (link)

Principal facts

The applicant, Gennadiy Igorovych Spivak, is a Ukrainian national who was born in 1980 and lives in Kamyanske (Ukraine).

On 15 December 2011 Mr Spivak was arrested at the home of an acquaintance. He was found in a state of severe emotional distress and alcohol intoxication, covered in blood and with physical injuries. He was charged with attempted murder of the acquaintance.

The police took him for psychiatric examination, with the subsequent report noting that he had "not previously suffered from – nor [was] he currently suffering from – any mental illness", but concluding that he needed compulsory hospitalisation in a psychiatric hospital.

With reference to this report, the Dniprovskyi District Court of Dniprodzerzhynsk found Mr Spivak had committed attempted murder, but he was exempt from criminal responsibility on the basis of his mental state at that time. Mr Spivak asserts that he did not appeal because the forensic psychiatric

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

report had clearly stated that he was mentally healthy and therefore he assumed hospitalisation would only be for a short period.

On 6 December 2012 the applicant was transferred from a detention facility to the National High Security Psychiatric Hospital in Dnipro. On 11 March 2013 he was diagnosed with organic personality disorder. On three occasions the hospital recommended that his compulsory treatment should be continued, and those decisions were upheld by the Ukrainian courts. Mr Spivak was not present at these proceedings.

While there, Mr Spivak was compulsorily treated with, among other drugs, neuroleptic medication. Concerning Mr Spivak's conditions of detention, according to him, on arrival, he was shaved all over and told he wouldn't leave the hospital for at least five years. He alleged, among other things, that the rooms were overcrowded, in particular at one point he was confined for two weeks with two other individuals in a room measuring 2.2 by 3 m; toilet visits were at the discretion of staff; inmates were forced to clean up after themselves; he was allowed to shower only once a week.

On 13 October 2014, this time with Mr Spivak present, the District Court refused to allow the continued application of coercive medical measures. It noted, in particular, that Mr Spivak had gone into a "twilight" state only once, and that he was neither aggressive nor suffering from delusions. Following various other court proceedings, that ruling became final on 24 October 2014.

He was discharged on 28 October 2014.

The applicant brought a civil claim against the hospital which was partly successful: his compulsory hospitalisation between 24 and 28 October 2014 was found to be unlawful as it lacked any legal basis and he was awarded about EUR 256 in compensation. The outcome, if any, of a criminal complaint he made is unknown.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman and degrading treatment), 5 §§ 1, 4 and 5 (right to liberty and security), and 13 (right to an effective remedy), Mr Spivak alleged, in particular, that his confinement had been contrary to the law, that he had been forcibly administered neuroleptics without medical necessity, that he had not had a procedure to challenge his continued psychiatric confinement or the prescribed medical treatment, and that he had been held in inappropriate conditions.

The application was lodged with the European Court of Human Rights on 23 April 2015.

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

Mattias **Guyomar** (France), *President*,
María **Elósegui** (Spain),
Gilberto **Felici** (San Marino),
Andreas **Zünd** (Switzerland),
Kateřina **Šimáčková** (the Czech Republic),
Mykola **Gnatovskyy** (Ukraine),
Vahe **Grigoryan** (Armenia),

and also Victor **Soloveytchik**, *Section Registrar.*

Decision of the Court

Article 5 §§ 1, 4 and 5

The Government argued that Mr Spivak could no longer claim to be a victim as regards this confinement after 24 October 2014, as the authorities had expressly acknowledged the violation and he had received compensation. Mr Spivak averred that the compensation (the equivalent of 256 euros) had been derisory. The Court agreed with Mr Spivak that such damages would not be in line with what the Court would normally order. It therefore declared this complaint admissible.

Noting in particular the national courts' findings that Mr Spivak's detention after 24 October 2014 had been unlawful as it had lacked any legal basis, the Court held that this detention had been a serious breach of the right to liberty. There had therefore been a violation of Article 5 § 1.

The Court further held that the review of Mr Spivak's psychiatric confinement in hearings held in his absence had not been thorough and had been incompatible with the basic requirements of justice. It referred in particular to his not been able to attend the hearings, which had been necessary to assess him properly; to the Ukrainian court's failure to critically examine the hospital's submissions before deciding the case; to the Ombudsperson's stating that this had been a systematic problem in Ukraine; and to the practice of cursory examination of the cases, on the basis of hospital reports only; among other points. The Court further noted that Ukrainian law had not provided Mr Spivak with a right to initiate a review of his confinement on his own motion.

The Court concluded therefore that Mr Spivak had been unable to access an adequate review of the lawfulness of his detention, in violation of Article 5 § 4. The Court also held that there was no need to examine the complaint under Article 5 § 5.

Article 3

Mr Spivak had consistently maintained that neuroleptics had been administered to him not as a form of treatment, but as a form of punishment. The Court noted the administration of neuroleptics against the applicant's will was not in dispute, only the medical necessity of the treatment. It reiterated that where compulsory medical treatment was considered necessary, it had to be subject to rigorous oversight to prevent potential abuse.

In this case, Mr Spivak had not been able to refuse treatment, as it had been court ordered. However, the relevant legislation (the Psychiatric Assistance Act as well as Ministry of Health Regulations) made no provision for any appeal against a doctor's prescribed treatment. It was unclear even how the provision on requesting an alternative diagnosis would work in practice. The lack of any effective appeal or alternative diagnosis deprived patients of a crucial safeguard against arbitrariness. The six-month review schedule, the practice at the time, had been inadequate. Some of the other safeguards in law appeared to be mostly theoretical, and the Government were unable to provide any examples of patients successfully pursuing such matters through the prosecution service or by other means, despite their assertion that this was possible.

There had been a failure to put in place the requisite legal and regulatory framework as regards medical measures in psychiatric institutions, including regarding investigation of complaints about such measures. Given this failure and regard being had to Mr Spivak's treatment with neuroleptics, as recorded in his medical file, the Court concluded that there had been a violation of Article 3.

Concerning the conditions of Mr Spivak's stay in hospital, the Court noted that the Government had not rebutted any of his allegations. These allegations were corroborated by the 2014 report by the Ombudsperson, and the Government's own submissions.

These conditions must have caused Mr Spivak distress and hardship of a serious nature. There had been therefore a violation of Article 3.

Article 13

The Court reiterated that Ukraine had failed to put in place an adequate legal and regulatory framework and to take operative protection measures, including as regards reacting to complaints. It therefore held that there had been no adequate avenue for Mr Spivak to pursue his complaints in Ukraine, in violation of Article 13.

Just satisfaction (Article 41)

The Court held that Ukraine was to pay the applicant 25,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,950 in respect of costs and expenses.

The judgment is available only in English.

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