



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

FIRST SECTION

Application no. 5525/11  
Lyudmila Vasilyevna MIFOBOVA  
against Russia  
lodged on 6 January 2011

**STATEMENT OF FACTS**

1. The applicant, Ms Lyudmila Vasilyevna Mifobova, is a Russian national, who was born in 1958 and lives in Magadan.

**A. The circumstances of the case**

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

*1. Psychiatric assistance to the applicant in 2008*

3. In April 2008 the administration of Magadan Region forwarded for review to the Magadan Regional Psychoneurological Clinic (MRPC) the letters sent by the applicant to the President of the Russian Federation, governor of the region, and 11 other administrative bodies.

4. On 17 April 2008 the Chief Psychiatrist of the MRPC requested the Magadan Town Court to order involuntary psychiatric examination of the applicant, because in the opinion of the resident psychiatrists her letters revealed high levels of emotional stress, crystallised delusions, and probability of unlawful actions against the persons involved in her delusions. He further stressed that the MRPC attempted to convince the applicant to voluntarily commit to the examination, but she refused. On 28 April 2008 the Magadan Town Court returned the application for involuntary psychiatric examination.

5. On 11 October 2008 after a heated conflict in the town hall the applicant was brought to the police station and then transferred to the MRPC for urgent treatment.

6. On 13 October 2008 a clinical psychiatric evaluation report was issued by the panel of three psychiatrists in the MRPC. The applicant was diagnosed with paranoid schizophrenia and paranoid syndrome. The panel

took notice of her belief in her affectionate relationship with the mayor of Magadan, attempts to directly contact him over the phone and in person, sense of persecution by the mayor's aids, and intense conflicts during her visits to the town hall.

7. Involuntary treatment was recommended for the applicant in view of her persistent refusal to commit herself voluntarily, failure to acknowledge her medical condition, and significant damage to her health due to aggravation of her psychiatric condition in absence of psychiatric assistance.

8. The application for involuntary treatment was submitted by the MRPC to the Magadan Town Court under Article 29 "c" of the Law of the Russian Federation on Psychiatric Assistance and Guarantees of the Citizens' Rights Related to Its Administration of 1992 (Psychiatric Assistance Act).

9. On 17 October 2008 the Magadan Town Court terminated proceedings on the MRPC's application, because the applicant agreed to voluntarily undergo the necessary treatment, signed the consent form in the courtroom, and the representative of the MRPC withdrew the application for involuntary treatment.

10. Between 17 October 2008 and 26 December 2008 the applicant stayed in the in-patient facility of the MRPC and followed the course of anti-schizophrenia treatment.

## *2. Psychiatric assistance to the applicant in 2010*

11. By the letter of 6 May 2010 the Mayor's Office of Magadan requested the Chief Psychiatrist of the MRPC to take "prophylactic measures" within his competence in respect of the applicant. The letter stated that she persistently stalked the employees of the Mayor's Office, demanded unspecified payments to be made to her, insulted and threatened persons dealing with her.

12. On 19 May 2010 a psychiatrist examined the applicant and established that she did not follow her medication treatment and thus her schizophrenia was in acute state. The psychiatrist recommended involuntary treatment and issued the relevant medical referral.

13. On 20 May 2010 the applicant was interned in the MRPC.

14. On 21 May 2010 a clinical psychiatric evaluation report was issued by the panel of three psychiatrists in the MRPC. The applicant was diagnosed with progressive paranoid schizophrenia. The panel took notice of her general medical and clinical history, the events of 2008, reappearance of persecutory and grandiose delusions. The prevalent weight was given to the applicant's treatment in 2008, while the other factors were only briefly mentioned.

15. Involuntary treatment was recommended for the applicant in view of her failure to acknowledge her medical condition, significant damage to her health due to aggravation of her psychiatric condition in absence of psychiatric assistance, and her immediate danger to herself and other persons.

16. The application for involuntary treatment was submitted by the MRPC to the Magadan Town Court under Article 29 "a" and "c" of the Psychiatric Assistance Act of 1992.

17. On 26 May 2010 the Magadan Town Court after considering the testimony of the applicant and the MRPC's representative, medical evidence, written statements from the witnesses and documentary evidence ordered involuntary treatment. The applicant's representative Mr L. (her son, who also suffers from schizophrenia) was duly notified about the hearing, but did not appear.

18. In reaching the decision to order involuntary treatment of the applicant the court relied on the following reasons:

- (a) the long history of suffering from a chronic psychiatric disorder and acute state of schizophrenia at the material time;
- (b) inability to control her behavior;
- (c) lengthy exposure to harsh weather conditions, while seeking encounters with the mayor on the street;
- (d) absence of a person able to provide her with necessary care;
- (e) personal appearance and behavior of the applicant in the courtroom, answers to the questions addressed to her;
- (f) previous history of in-patient psychiatric treatment and absence of prospects of improvement outside of specialized facility.

19. Only the operative part of the judgment was pronounced during the hearing and the applicant was never served with a copy of the full judgment.

20. On 10 June 2010 during her stay in the MRPC the applicant lodged an appeal against the judgment. Since she was not served with a copy of the judgment, the appeal claims had to be confined to the general statements on the absence of reasons for her internment. The appeal contained a request to be provided with a lawyer for the appeal proceedings, because the applicant was not allowed to use the phone in the MRPC or otherwise contact a representative of her choice.

21. On 6 July 2010 the Magadan Regional Court after considering the testimony of the MRPC's representative, the opinion of a prosecutor and reviewing the evidence upheld the judgment of the lower court in full.

22. The applicant was notified of the appeal hearing by the medical personnel, but was not transferred from the hospital to the courthouse in order to participate in it. Her request to be represented by a lawyer during the appeal hearing was neither specifically mentioned by the appellate court nor addressed in any way.

23. On an unspecified date in 2010 the applicant was released from the MRPC.

## **B. Relevant domestic law**

### *1. Code of Civil Procedure of 2002*

24. Article 304 of the Code of Civil Procedure of the Russian Federation (CCP), which entered into force on 1 February 2003, establishes the procedural guarantees afforded to a person placed in a psychiatric facility. In the relevant part it reads as follows:

### Article 304.

#### **Consideration of the application for involuntary placement of a citizen to a psychiatric facility or extension of the period of involuntary placement of a citizen, who suffers from a psychiatric disorder.**

“1. The application for involuntary placement of a citizen to a psychiatric facility or extension of the period of involuntary placement of a citizen, who suffers from a psychiatric disorder, shall be considered by the judge within five days from the date when proceedings were initiated. The court hearing is held in the courtroom or in the psychiatric facility. The citizen has the right to personally participate in the hearing concerning his involuntary placement to a psychiatric facility or extension of the period of his involuntary placement. In cases when according to the information provided by the representative of the psychiatric facility the citizen’s mental state prevents his personal participation in the court hearing concerning his involuntary placement to a psychiatric facility or extension of the period of his involuntary placement, the application for his involuntary placement to a psychiatric facility or extension of the period of his involuntary placement is considered by the judge in a psychiatric facility.

2. The case shall be considered with participation of the prosecutor, representative of the psychiatric facility, which applied to the court for involuntary placement of a citizen to a psychiatric facility or extension of the period of his involuntary placement, and a representative of the citizen, who is considered for involuntary placement or extension of the period of involuntary placement.”

### *2. Psychiatric Assistance Act of 1992*

25. The Psychiatric Assistance Act of 1992 in Article 5 section 2 provides the list of the rights of persons suffering from a psychiatric disorder including the right to be informed of their rights, nature of disorder, and treatment, the right to the least restrictive methods of treatment, and the right to assistance of a lawyer, legal representative or other person. Article 5 section 3 prohibits restricting the rights of persons suffering from a psychiatric disorder solely on the basis of their diagnosis or placement in a specialised facility.

26. Article 7 sections 1 and 3 of the Act (as in force at the material time) specified that persons suffering from a psychiatric disorder may have a representative of their own choosing. Administration of the psychiatric facility has an obligation to ensure a possibility to obtain legal representation by a lawyer except for urgent cases.

27. Provisions of Articles 33-35 of the Act regulating the placement of persons for involuntary treatment in a psychiatric facility are essentially similar to provisions of Article 304 of the Code of Civil Procedure reproduced in the relevant parts in paragraph 24 above.

### *3. Constitutional Court of the Russian Federation*

28. In its judgment of 27 February 2009 (no. 4-P) concerning legal incapacitation of persons suffering from a psychiatric disorder, the Constitutional Court pronounced its opinion on deprivation of these persons of liberty. In the relevant part it reads as follows:

“2.1 ... [A]s follows from Article 22 of the Constitution of the Russian Federation protecting everyone’s right to liberty and security of person, a person suffering from a psychiatric disorder may be deprived of liberty for the purpose of involuntary treatment only by a court decision made within a procedure prescribed by law. ... It

implies that judicial protection for this person should be fair, full and effective, including his right to qualified legal assistance and the right to have the assistance of a defense counsel of his own choosing (Article 48 of the Constitution of the Russian Federation) ...”

### **C. Relevant Council of Europe documents**

#### *1. Committee of Ministers Recommendation No. R (83) 2 concerning the legal protection of persons suffering from mental disorder placed as involuntary patients*

29. On 22 February 1983 the Committee of Ministers recommended rules harmonizing placement of a person for involuntary treatment. In the relevant part the Recommendation provides:

##### **Article 3**

“In the absence of any other means of giving the appropriate treatment:

- a. a patient may be placed in an establishment only when, by reason of his psychiatric disorder, he represents a serious danger to himself or to other persons;
- b. states may, however, provide that a patient may also be placed when, because of the serious nature of his psychiatric disorder, the absence of placement would lead to a deterioration of his disorder or prevent the appropriate treatment being given to him.

##### **Article 4**

1. A decision for placement should be taken by a judicial or any other appropriate authority prescribed by law. In an emergency, a patient may be admitted and retained at once in an establishment on the decision of a doctor who should thereupon immediately inform the competent judicial or other authority which should make its decision ...

3. When the decision is taken by a judicial authority ... the patient should be informed of his rights and should have the effective opportunity to be heard personally by a judge except where the judge, having regard to the patient’s state of health, decides to hear him through sole form of representation. He should be informed of his right to appeal against the decision ordering or confirming the placement and, if he requests it or the judge considers that it would be appropriate, have the benefit of the assistance of a counsel or of another person.

4. The judicial decisions referred to in paragraph 3 should be open to appeal ...

##### **Article 6**

The restrictions on personal freedom of the patient should be limited only to those which are necessary because of his state of health and for the success of the treatment; however, the right of a patient:

- a. to communicate with any appropriate authority, the person mentioned in Article 4 and a lawyer, and
- b. to send any letter unopened,

should not be restricted.”

*2. Parliamentary Assembly Recommendation 1235 (1994) on psychiatry and human rights*

30. On 12 April 1994 the Parliamentary Assembly urging the Member States of the Council of Europe to guarantee respect of the psychiatric patients’ rights invited the Committee of Ministers to adopt a new recommendation, including among other the following rules:

**i. Admission procedure and conditions:**

“a. compulsory admission must be resorted to in exceptional cases only and must comply with the following criteria:

- there is a serious danger to the patient or to other persons;

- an additional criterion could be that of the patient’s treatment: if the absence of placement could lead to a deterioration or prevent the patient from receiving appropriate treatment;

b. in the event of compulsory admission, the decision regarding placement in a psychiatric institution must be taken by a judge and the placement period must be specified. Provision must be made for the placement decision to be regularly and automatically reviewed ...

c. there must be legal provision for an appeal to be lodged against the decision ...”

## COMPLAINTS

The applicant complained under Article 5 § 1 (e), Article 5 § 4 and Article 6 § 1 of the Convention that she was unlawfully deprived of liberty when placed for involuntary treatment in a psychiatric facility and that her fair trial rights were violated in these proceedings.

## QUESTIONS TO THE PARTIES

1. Was the applicant’s placement in Magadan Regional Psychoneurological Clinic for involuntary treatment in 2010 “lawful” and “in accordance with a procedure prescribed by law” within the meaning of Article 5 § 1 (e) of the Convention? In particular, was the applicant reliably shown to be of “unsound mind” (see *Winterwerp v. the Netherlands*, 6301/73, 24 October 1979, § 39, Series A no. 33)?

2. Having regard to the fact that the applicant did not receive a copy of the judgment ordering her involuntary treatment and her absence from the appeal hearing of 6 July 2010, was the requirement that any measure

depriving a person of liberty be free from arbitrariness respected (see *Winterwerp*, cited above, § 45)?

3. Were the proceedings before the Magadan Regional Court adversarial as required by Article 5 § 4 of the Convention (see *Sanchez-Reisse v. Switzerland*, 9862/82, 21 October 1986, § 51, Series A no. 107)? In particular, was the applicant provided with an opportunity to attend the hearings? If not, what was the reason for her absence from the court room? Could the applicant appoint a representative to attend the hearing? If not, were the domestic courts under an obligation to ensure legal representation of the applicant during trial proceedings and on appeal considering the circumstances of the case?