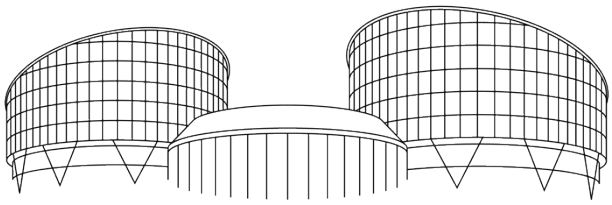

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 44914/09
Svetlana Aleksandrovna NEDOROSTKOVA
against Russia

STATEMENT OF FACTS

The applicant, Ms Svetlana Aleksandrovna Nedorostkova, is a Russian national, who was born in 1958 and lives in St Petersburg. She is represented before the Court by Mr D. Bartenev, a lawyer practising in St Petersburg.

A. The circumstances of the case

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

1. Placement of the applicant in a psychiatric hospital

On 1 May 2007 the applicant was taken to a psychiatric hospital under the involuntary admission procedure (see "Relevant domestic law and practice" below). On 2 May 2007 she was examined by a panel of doctors who issued a report on her psychiatric condition.

On an unspecified date, the hospital brought court proceedings, seeking a judicial authorisation of the applicant's admission to the hospital. They referred to the above report in support of their claim.

On 4 May 2007 the Gatchina Town Court of the Leningrad Region granted the application of the hospital for involuntary admission, mentioning a possibility that the applicant might sustain substantial health damage, if left at liberty. The court relied on section 29 of the Psychiatric Care Act (see below).

On 13 July 2007 the applicant was discharged from the hospital.

On an unspecified date, the applicant brought appeal proceedings against the judgment of 4 May 2007. On 29 November 2007 the Leningrad Regional Court set aside this judgment because of the "serious violations" of the procedural requirements during the trial hearing. The appeal court

stated that the applicant should have been properly legally represented or assisted in the first-instance proceedings, and that the court had wrongly admitted the applicant's former husband as a representative while there had been no authority form. Moreover, despite the statutory requirements, the representative had acted "against the interest" of the applicant when he insisted on the applicant's admission to the hospital. In view of the above, the appeal court ordered a re-examination of the case.

On 14 December 2007 the Town Court re-examined the case. Having heard the applicant and her lawyer Mr Bartenev, the court dismissed the hospital's initial application for admission. The court considered that the hospital had not substantiated their application in compliance with the requirements of section 29 of the Psychiatric Care Act.

On 28 February 2008 the Regional Court upheld the judgment.

Thereafter, the applicant sued the hospital claiming compensation in respect of non-pecuniary damage caused by the unlawful deprivation of liberty from 1 to 13 May 2007 when she had been kept in the hospital against her will.

On 7 October 2008 the Town Court rejected her claim for damages, considering that the applicant had been admitted and kept in the hospital on the basis of a court decision.

On 5 February 2009 the Regional Court upheld the first-instance judgment in the civil case. Apparently, the appeal court did not hold an oral hearing. The applicant obtained a copy of the decision of 5 February 2009 on an unspecified date.

On 20 May 2009 the applicant applied for supervisory review of the civil court judgments. On 13 July 2009 a judge of the Regional Court examined her application and dismissed it, thereby refusing to submit it for examination by the Presidium of the Regional Court. There was no court hearing. The applicant received a copy of the decision of 13 July 2009 on an unspecified date.

2. Proceedings before the Court

On 3 August 2009 Mr Bartenev sent a letter to the Court expressing an intention to lodge an application on behalf of the applicant in relation to a violation of her right under Article 5 § 5 of the Convention (the refusal of compensation in domestic proceedings). The lawyer stated that the detailed complaint, together with an authority form, would be submitted later on.

On 26 August 2009 the Court acknowledged receipt of this correspondence and indicated that the completed application form should be dispatched by 21 October 2009 at latest.

On 21 October 2009 Mr Bartenev dispatched to the Court the completed application form dated 7 October 2009 and an authority form of the same date.

B. Relevant domestic law and practice

Article 303 § 1 of the Russian Code of Civil Procedure stipulates that an application for involuntary hospitalisation in a psychiatric facility should be submitted to a court within forty-eight hours after the patient is hospitalised. When the application is received by the judge and the proceedings are

initiated, the period of the patient's placement to the psychiatric facility is extended until the merits of the application are considered by the court.

An application for involuntary placement to a psychiatric facility, or extension of a period of involuntary placement, of a citizen who is suffering from a psychiatric disorder shall be considered by a judge within five days from the date on which the proceedings were initiated. The citizen has the right to personally participate in the hearing.

Section 29 of the Psychiatric Care Act provides that an involuntary admission to a psychiatric hospital may be ordered, before obtaining a court order, in respect of a person suffering from a mental disorder. Such admission is acceptable if (i) examination and treatment of this person can only be carried out within a hospital; (ii) the person's mental disorder is serious and (iii) entails immediate danger to himself or others or his helplessness (inability to satisfy autonomously his basic needs), or entails a substantial health damage due to the deteriorating condition and when otherwise the person would not receive psychiatric care.

In its decision no. 544-O-P of 5 March 2009, the Russian Constitutional Court considered that the above-mentioned judicial order should be issued within forty-eight hours after the person's admission to a hospital.

Relying on the Court's judgment in *Rakevich v. Russia* (no. 58973/00, § 32, 28 October 2003), the Constitutional Court stated that the notion of "substantial damage" in section 29 of the Act could not be subjected to an exhaustive definition since it is hardly possible to embrace in the law the whole diversity of conditions which involve psychiatric hazards. Furthermore, the Act requires the courts to review all cases of compulsory confinement on the basis of medical evidence, and this is a substantial safeguard against arbitrariness (decision no. 511-O-O of 17 July 2007).

COMPLAINTS

The applicant complains under Article 5 of the Convention that her deprivation of liberty from 1 May to 13 July 2007 was unlawful and that she was refused compensation for this deprivation of liberty.

QUESTIONS TO THE PARTIES

1. (a) What is the start date for calculating the six-month period in the present case? Noting that, apparently, there was no hearing on 5 February 2009, was a party to the proceedings entitled to the *ex officio* service of the appeal decision to take knowledge of its full text before lodging an application before the Court (cf. *Baryshnikova v. Russia* (dec.), no. 37390/04, 12 November 2009)?

(b) Noting that the complaint under Article 5 § 1 of the Convention was, arguably, first raised in the application form dated 7 October 2009 (and dispatched only on 21 October 2009), has the applicant complied with the six-month rule (*see Zverev v. Russia* (dec.), no. 16234/05, 3 July 2012)?

(c) Noting that the letter of 3 August 2009 was not accompanied by an authority form, should this date be accepted as the date of introduction for the present application before the Court, in particular as regards the issue under Article 5 § 5 of the Convention (see *Kaur v. the Netherlands* (dec.), no. 35864/11, 15 May 2012, with further references)?

2. (a) Was there a violation of Article 5 § 1 of the Convention on account of the applicant's deprivation of liberty from 1 to 4 May 2007 before a court order? Was the applicant's confinement during this period of time subject to judicial assessment, for instance as to its lawfulness or necessity? Having regard to the courts' findings in decisions of 29 November, 14 December 2007 and 28 February 2008, was there a violation of Article 5 § 1 of the Convention on account of the confinement from 4 May to 13 July 2007 under a court order?

(b) Has the applicant lost victim status on account of (i) the acknowledgment of unlawful or arbitrary deprivation of liberty during the relevant periods of time and (ii) adequate redress? Was her confinement during the above periods of time tainted by a "gross and obvious irregularity"?

3. Was there a violation of Article 5 § 5 of the Convention in the present case? Did the applicant have an enforceable right to compensation under Russian law? If the Court finds a violation of Article 5 of the Convention in the present case, will such judgment entitle the applicant to claim compensation under Russian law (see *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 189-190, ECHR 2012)?