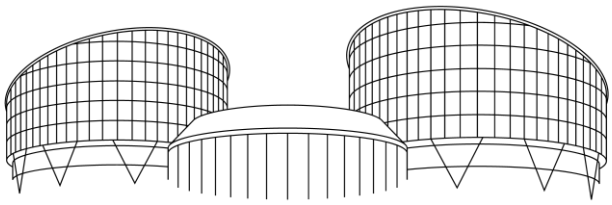

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

Application no. 42858/06
Leonid Vladimirovich VERSHININ
against Russia
lodged on 12 August 2007

STATEMENT OF FACTS

The applicant, Mr Leonid Vladimirovich Vershinin, is a Russian national, who was born in 1959 and lives in Radishchevo (the Moscow Region). The applicant is represented by his mother, Mrs Vershinina.

A. The circumstances of the case

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

1. Background to the case

The applicant lived in a private house. In 1997, as a result of an accident, his house has partially burnt. The applicant had to live in the attic of the house which was not designed for lodging. The applicant considered that in the circumstances the authorities were under an obligation to provide him with free housing at the expenses of the State. In September 2005 the applicant brought civil proceedings against the Administration of the Solnechnogorsk District of the Moscow Region seeking his placement on a "priority waiting list" of persons entitled to free housing. He also sought compensation of non-pecuniary damage caused by the authorities' refusal to put him on that list.

On 16 September 2005 the Solnechnogorsk District Court dismissed his claims as unfounded. The applicant appealed.

On 28 November 2005 the Moscow Regional Court upheld the judgment.

On 8 January 2006 the applicant lodged with the Russian General Public Prosecutor's Office a criminal-law complaint against the judges who had dealt with his civil case. In particular, the applicant, using abusive language, accused them of having taken briberies from the respondent in the amount

of about USD 30,000, of falsification of evidence, of terrorism, of abuse of power as well as of inciting racial and ethnic hatred.

On 26 January 2006 the applicant sent a letter to the State Duma of the Russian Federation. That letter contained similar accusations against the judges.

On 14 February 2006 an investigator interrogated the applicant and warned him about criminal liability for deliberately false denunciation. However, the applicant insisted on his allegations.

On an unspecified date in February 2006 the investigator issued a decision refusing to open a criminal case into the applicant's allegations since they were unsubstantiated.

2. Criminal proceedings against the applicant

On 13 March 2006 the applicant was arrested under suspicion of having committed two criminal offences under Articles 298 § 3 and 306 § 2 of the Russian Criminal Code: defamation in respect of a judge and deliberately false denunciation of his involvement in a serious crime (*клевета в отношении судьи и заведомо ложный донос*).

On 14 March 2006 the Meshanskiy District Court of Moscow remanded the applicant in custody. His detention on remand was subsequently extended at regular intervals by relevant detention orders.

On an unspecified date the investigator ordered an inpatient forensic psychiatric examination of the applicant to determine his sanity at the time of the impugned offences. The applicant was transferred to the Serbsky State Scientific Center for Social and Forensic Psychiatry in Moscow ("the Serbskiy Institute") where he was examined by a group of forensic experts. The examination took place between 29 May and 20 June 2006.

On 20 June 2006 the experts drew up a report and came to the conclusion that the applicant showed symptoms of paranoid development of his personality and was in need of an outpatient supervision and medical treatment by a psychiatrist. The experts also found the applicant to be sane at the time of the offences and fit to stand trial. They noted that the applicant had had no recorded history of mental disorder.

On 1 August 2006 the prosecution transferred the applicant's case to the Moscow City Court for examination.

The applicant was initially tried by jury; however, the presiding judge subsequently dismissed the jury (apparently because the compulsory measures of a medical character cannot be ordered by a jury) and tried the applicant alone.

On 2 October 2006, after having heard a number of witnesses and a victim, the court ordered an additional inpatient forensic psychiatric examination of the applicant by the Serbskiy Institute. According to the applicant, starting from 2 October 2006 and until the end of the proceedings he has not been brought to the court.

Between 26 October and 21 November 2006 the applicant underwent the additional examination in the Serbskiy Institute.

On 21 November 2006 the expert examination report was completed. The experts concluded that the applicant was suffering from a chronic mental disorder in the form of paranoid development of personality and needed compulsory medical treatment in a specialised mental hospital. The

experts based their assessment, inter alia, on the applicant's overvalued ideas which had found their expression in numerous written petitions to various State authorities "in a grotesque form". The experts also reached the conclusion that the applicant had been insane at the time of the impugned offences and also unfit to stand trial.

On an unspecified date the court ordered a second outpatient forensic psychiatric examination of the applicant by the Serbskiy Institute.

On 7 February 2007 the second expert examination report confirmed the findings of the previous report of 21 November 2006. In addition, the experts found that the applicant was a danger to the public, stating as follows:

> "Due to [the applicant's] mental state, taking into account that [he] shows, in subjectively meaningful situations, a tendency towards rapid formation of overvalued ideas which sometimes reach a delusional level with the broadening of the circle of persons brought into the focus of these emotions and are accompanied by rude emotional-volitional disturbances with non-corrective behaviour, by rejection of regime requirements, by lack of criticism towards his [emotional] state and by dissimulation, [the applicant] is a danger to the public and needs compulsory treatment in a specialised psychiatric hospital".

During the trial the Moscow City Court held a number of hearings in the applicant's absence. The court heard the applicant's legal aid counsel, his mother, a representative of the local guardianship authority as well as the public prosecutor. According to the applicant, he did not agree to the appointment of the legal aid counsel and was not given an opportunity to defend himself through legal assistance of his own choosing.

On 20 February 2007 the Moscow City Court found that the applicant's actions did contain all elements of corpus delicti of the relevant crimes (*признаки преступлений*). However, the applicant was exempted from criminal liability on the ground of his insanity. The court ordered his compulsory medical treatment in a psychiatric hospital.

The applicant's legal aid counsel appealed and asked the applicant be ordered an outpatient medical treatment.

On 5 April 2007 the Supreme Court of Russia examined the appeal. It heard the applicant's legal aid counsel, his mother and the public prosecutor. The applicant was absent from the appeal hearing. The court upheld the decision of 20 February 2007 in a summary fashion.

3. The applicant's compulsory confinement in a mental hospital

On an unspecified date in April 2007 the applicant was transferred from a remand prison to mental hospital no. 5 in Moscow.

According to the applicant, while in the hospital he was unable to initiate any proceedings for review of the lawfulness of his deprivation of liberty. He did not have access to the documents relating to his case which were kept by the hospital administration. All his complaints were also seized by the hospital administration.

On an unspecified date in June 2008 the applicant was released from the hospital.

4. Civil proceedings

While the applicant was in the mental hospital, a private person occupied his partially burnt house.

On 22 September 2008 the applicant brought civil proceedings against that person seeking his eviction.

On 17 February 2009 the Solnechnogorskiy Town Court of the Moscow Region granted the applicant's claim. On 23 May 2009 the judgment became final.

On 29 May 2009 enforcement proceedings were initiated. The outcome of the proceedings is unknown. According to the applicant, after his release from the mental hospital he had to live on the street waiting for outcome of the eviction proceedings.

B. Relevant domestic law and practice

1. Compulsory measures of medical nature

The Russian Criminal Code and Code of Criminal Procedure (in force at the material time) set out the grounds and procedure for the application, modification and termination of compulsory measures of medical nature.

(a) Criminal Code

Article 97. Grounds for the application of compulsory measures of medical nature

"1. Compulsory measures of medical nature may be applied by a court to a person:

(a) who committed a crime ... in the state of insanity;

(b) who, after having committed a crime, became mentally ill, which made impossible sentencing or execution of the sentence;

(c) who committed a crime and who suffers from a mental illness [which does not reach the level of insanity] ... ;

2. Compulsory measures of a medical nature shall only be applied ... in cases where the mental disorder [is such as to create the risk of] another substantial damage [caused by the person concerned] or where that person presents a danger to himself or to other persons."

Article 99. Types of compulsory measures of a medical character

"1. A court may apply the following measures of a medical character:

(a) compulsory outpatient supervision and medical treatment by a psychiatrist;

(b) compulsory medical treatment in an ordinary psychiatric institution;

(c) compulsory medical treatment in a specialised psychiatric institution;

(d) compulsory medical treatment in a specialised psychiatric institution under strict observation ..."

Article 102. Extension, modification or termination of the application of compulsory measures of medical nature

"1. The extension, modification or termination of the application of compulsory measures of medical nature shall be ordered by a court upon an application by the administration of the institution providing the treatment, on the basis of an opinion by a commission of psychiatrists.

2. Person subject to a compulsory measure of a medical nature shall be examined by a commission of psychiatrists not less than once every 6 months in order to decide whether there are grounds for applying to a court for termination or modification of the application of such measure. A medical examination of such person shall be performed on the initiative of the doctor responsible for the treatment if he/she has come to a conclusion that the compulsory medical treatment is to be modified or terminated and also upon a request of the person concerned, of his/her legal guardian and/or of a close relative. The request shall be filed through the administration of the institution providing the treatment, irrespective of the time of the last examination. If there are no grounds for termination or modification of the application of a compulsory measure of medical nature, the administration of the institution rendering the treatment shall send to the court an opinion for extension of the treatment. The first extension of the compulsory medical treatment may be made upon the expiry of six months after the beginning of the treatment. Thereafter, the compulsory medical treatment shall be extended every year ..."

(b) Code of Criminal Procedure

Article 443. A court decision

"1. Where the court finds it proven that a crime has been committed by the person in a state of insanity, or where, after having committed a crime, the person became mentally ill, making it impossible to sentence him and execute the sentence, the court shall take a decision ... relieving that person from criminal liability or from serving the sentence and order the application of compulsory measures of medical nature to him/her ..."

Article 444. Procedure for lodging appeals against a court decision

"A court decision [authorising the application of compulsory measures of medical nature] may be appealed against by a representative, a victim and his representative, a legal guardian or a close relative of a person in respect of whom the criminal case was examined, and by a prosecutor ..."

Article 445. Termination, modification and extension of the application of a compulsory measure of medical nature

"1. Upon an application by the administration of the mental institution, based on a medical opinion, and upon an application by the legal guardian of the person recognised as insane as well as by his/her legal counsel, the court terminates, modifies or extends the application towards this person of the compulsory measure of medical nature for the next six months.

2. The questions involved in the termination, modification or extension of the application of a compulsory measure of medical nature shall be considered by the court, which has ordered its application, or by the court at the place of application of this measure.

3. The court shall notify the legal guardian of the person, towards whom a compulsory measure of medical nature is applied, his/her legal counsel, the administration of the mental institution and the public prosecutor about the hearing.

4. Participation in the court hearing of the legal counsel and of the public prosecutor is obligatory. The non-appearance of other persons shall not be seen as an obstacle to the examination of the criminal case.

5. The application and the medical opinion [on his/her state of health] shall be examined in the court hearing. Persons taking part in the hearing shall be heard. If the medical opinion raises doubts, the court, upon a motion from the persons participating in the court hearing or on its own initiative, may order a medical examination or request additional documents. It may also examine the person, with respect to whom the question about the termination, modification or extension of the application of a compulsory measure of medical nature is being decided, if this is possible in view of his/her mental state.

6. The court shall terminate or modify the application of a compulsory measure of medical nature, if the mental state of the person makes the application of the previously appointed measure unnecessary, or if a need arises to appoint a different compulsory measure of medical nature. The court shall prolong the compulsory medical treatment, if there is a ground for an extension of the application of the compulsory measure of medical nature.

7. The court shall render a decision on the termination, modification or extension, as well as on the refusal in the termination, modification or extension of the compulsory measure of medical nature in the retiring room and shall pronounce it at the hearing.

8. The decision may be appealed against ..."

2. Changes of Russian law on compulsory measures of medical nature following the Constitutional Court's judgment no. 13-P of 20 November 2007

By judgment no. 13-P issued on 20 November 2007 the Constitutional Court of the Russian Federation declared unconstitutional a number of provisions of the Russian Code of Criminal Procedure, including Article 445 of the Code, as long as authorities interpreted them as grounds to strip mentally ill defendants in criminal cases of their procedural rights, including a right to study case file materials, to attend court hearings, to lodge requests and motions, to initiate proceedings concerning the amendment or annulment of the measures and to appeal against any decision impairing their rights.

The judgment was implemented by the Russian legislature through the relevant amendments of the Code of Criminal Procedure which entered into force on 14 December 2010 (Federal Law no. 323-FZ of 29 November 2010).

COMPLAINTS

1. The applicant complains under Article 3 that living on the street amounted to inhuman and degrading treatment. He claimed that it was the

result of the Russian authorities' failure to conduct civil and enforcement proceedings in a timely manner.

2. Under Article 5 § 1 (e) the applicant makes the following complaints:

(a) his compulsory confinement was unlawful since doctors had diagnosed him with a mental illness ("paranoid development of personality") which was not included in the list of mental illnesses approved by the Russian Ministry of Health (Decree no. 311 of 6 August 1999);

(b) the expert examination report of 7 February 2007 has not resolved contradictions of the two previous expert examinations reports;

(c) his disorder was not of a kind or degree warranting compulsory confinement;

(d) he was not convicted of any criminal offence and, therefore, application of compulsory measures of medical nature to him was unlawful.

3. The applicant complains under Articles 5 § 4 and 6 that he did not participate in the criminal proceedings in which his compulsory confinement in the mental hospital was ordered. The applicant also complains that the defence provided by his legal aid counsel was ineffective and perfunctory. He did not agree to the appointment of the legal aid counsel and was not given an opportunity to defend himself through legal assistance of his own choosing.

4. The applicant complains under Article 5 § 4 that he was not able to initiate proceedings for the review of the lawfulness of his confinement in the mental hospital.

5. Under Article 6 § 2 the applicant complains that he was not proved guilty according to law because the jury was dismissed by the presiding judge.

6. The applicant complains about unreasonable length of the civil proceedings and about non-enforcement of the judgment of 17 February 2009 in the applicant's favour ordering eviction of the private person. The applicant invokes Articles 1, 6, 8, 13 and Article 1 of Protocol no. 1 in this regard.

7. Under Article 13 the applicant complains about lack of any effective remedy for his complaints described above.

QUESTIONS TO THE PARTIES

1. Was the applicant's compulsory confinement in the mental hospital compatible with Article 5 § 1 (e) of the Convention? In particular, was the applicant's mental disorder of "a kind and degree warranting compulsory confinement" (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Rakevich v. Russia*, no. 58973/00, § 27, 28 October 2003)?

2. The parties are asked to provide detailed answers to the following questions and to support their submissions with evidence:

(a) Did the applicant have a legal guardian (*законный представитель*) or a legal counsel while in the mental hospital? Could the applicant communicate with them freely? While in the hospital, did the applicant have a right to write and receive letters and other correspondence and use telephone? If that right was limited, what was the procedure for maintaining communications with the outside world?

(b) Did the legislation allow for the periodic review of the lawfulness of his compulsory medical treatment? Was the applicant able (*de jure* and *de facto*, i.e. in the specific conditions in which he was detained) to initiate the review of the lawfulness of his continued confinement in the mental hospital by himself? Was it possible to initiate such review only through third persons?

(c) Was the applicant capable to present his case fully before the domestic courts (cf. *Gorshkov v. Ukraine*, no. 67531/01, § 44, 8 November 2005, with further references; see also "Relevant domestic law and practice", judgment no. *13-P* by the Russian Constitutional Court of 20 November 2007)?

3. Were the criminal proceedings which resulted in the applicant's compulsory confinement in the mental hospital compatible with requirements of Articles 6 and 5 § 4 of the Convention? In particular, the parties are invited to comment on the applicant's claims that:

(a) he was unable to attend the hearings in the criminal case against him (see *Valeriy Lopata v. Russia*, no. 19936/04, §§ 116-129, 30 October 2012 see also "Relevant domestic law and practice", judgment no. *13-P* by the Russian Constitutional Court of 20 November 2007);

(b) the defence of the applicant's legal aid counsel was perfunctory and ineffective;

(c) the applicant did not agree to the appointment of the legal aid counsel and was not given an opportunity to defend himself through legal assistance of his own choosing.