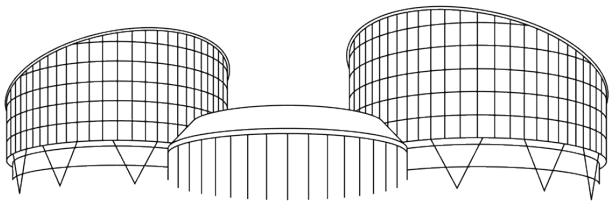

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZAGIDULINA v. RUSSIA

(Application no. 11737/06)

JUDGMENT

STRASBOURG

2 May 2013

FINAL

02/08/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Zagidulina v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 9 April 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 11737/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Ms Zelfruz Karibullovna Zagidulina ("the applicant"), on 8 February 2006.

2. The applicant was represented by Mr Yu. Yershov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that her involuntary placement to a psychiatric hospital had violated her rights under Article 5 of the Convention.

4. On 10 February 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1935 and lives in Moscow. Since 1987 she has been registered as an outpatient of Psychiatric Hospital No. 5 in Moscow. Prior to the events in question, she had never been hospitalised in a psychiatric facility.

6. In 2005 the applicant's daughter, who also suffers from a mental disorder, was undergoing inpatient psychiatric treatment in Psychiatric Hospital No. 1 of Moscow ("the PHM"). In April-May 2005 the applicant lodged several complaints with that hospital's administration alleging improper treatment of her daughter and that the attending psychiatrists had attempted to poison her.

7. On 13 May 2005 the applicant came to the PHM to visit her daughter and to demand her immediate release from the facility. Ms K., a psychiatrist on duty at the reception noted that the applicant was anxious and delusional and directed her to the head psychiatrist of the hospital, Ms Sh. The applicant was considered to be demonstrating the symptoms of a mental disorder and her hospitalisation was recommended. The applicant did not consent to be hospitalised, but nevertheless was admitted to the PHM at 2:45 p.m.

8. On 14 May 2005 a medical counselling panel composed of the resident psychiatrists of the PHM diagnosed the applicant with paranoid schizophrenia with a paroxysmal-progredient (shift-like) course, manifested as personality changes and paranoia. The panel also found that the applicant was a danger to herself and others and recommended compulsory inpatient psychiatric treatment. The full text of the panel's reasoning for its decision to apply for hospitalisation of the applicant reads as follows:

> "Admitted to PB 1 [Psychiatric Hospital No. 1] from the outpatient ward due to irregular behaviour (screaming, threatening doctors with reprisals, accusing them of "influencing" and persecution).
>
> The need for hospitalisation is determined by tense/angry affect, [and] delusional ideas of persecution and manipulation, which are controlling the behaviour of the patient. The unpredictability of [her] actions presents an immediate danger to herself and others. Compulsory treatment in a psychiatric hospital is recommended. The participation of relatives in court hearings does not appear possible due to their absence at [the meeting of the] MMC [the medical counselling panel]."

9. On the same date the PHM applied for judicial authorisation of the applicant's involuntary hospitalisation under section 29 (a) of the Law of the Russian Federation on Psychiatric Assistance and Guarantees of Citizens' Rights Related to Its Administration of 1992 ("the Psychiatric Assistance Act 1992").

10. On 16 May 2005 the Simonovskiy District Court of Moscow ("the District Court") received the application for the applicant's involuntary hospitalisation and scheduled a hearing for 4 p.m. on the same day. The hearing was attended by a prosecutor, the applicant's attending psychiatrist, and a representative of the PHM. The attending psychiatrist and the PHM's representative requested the District Court to hold the hearing in the absence of the applicant because she could not participate in it for medical reasons. The hearing was held without the applicant or her representative being present.

11. The District Court delivered a succinct judgment authorising the applicant's involuntary hospitalisation. The full facts and reasoning set out in the judgment read as follows:

> "[Ms] Zagidulina was hospitalised in the [PHM] on 13 May 2005.
>
> A medical counselling panel convened on 14 May 2005 and established a diagnosis – paranoid schizophrenia.
>
> The Head Physician of the [PHM] lodged an application for involuntary hospitalisation of [Ms] Zagidulina with the court.
>
> The basis for [the applicant's] compulsory admission to the hospital under section 29 of the Federal Law On Psychiatric Assistance is that she is presently a danger to herself and others.
>
> The patient refused to give her consent to hospitalisation.
>
> Having examined the case materials, having heard the attending psychiatrist, [having regard] to the prosecutor's opinion supporting the claimant's application, the court grants the request because it is clear from the medical counselling panel's report of 14 May 2005, which in the court's view does not give rise to any doubt that [the applicant] suffers from a psychiatric disorder and needs treatment."

The applicant was not notified of the judgment.

12. On 17 June 2005 the applicant was discharged from the PHM.

13. After her release the applicant became aware that her hospitalisation had been authorised by a court and appealed against the judgment of 16 May 2005. She claimed that the District Court had examined the request for involuntary hospitalisation in her absence and had disregarded the fact that she had not presented any danger and thus had not required inpatient treatment.

14. On 18 August 2005 the Moscow City Court held an appeal hearing in the presence of the hospital's representative, the prosecutor, the applicant and her counsel and dismissed the applicant's appeal. In the relevant part the judgment read as follows:

> "... As it is clear from the records of the 16 May 2005 hearing Ms Zagidulina's attending doctor Ms M. informed the [trial] court that her patient is unable to personally participate in consideration of the application for involuntary hospitalisation due to her state of health.
>
> Under these circumstances the [trial] court had reasons to consider the case in absence of Ms Zagidulina.
>
> The appeal argument that Ms Zagidulina's state [of mental health] at the moment of hospitalisation did not present any danger to herself or the others is unfounded, because no evidence was presented in the appeal court by ... Ms Zagidulina and her representative to rebut the conclusion of the medical panel of 14 May 2005 and that conclusion had not been challenged through a procedure prescribed by law.

> The [trial] court examined the circumstances of the case to a sufficient extent. The relevant facts were properly established. No violation of procedural or substantive law were discovered by the [appeal] panel and therefore there are no reasons for annulment of the judgment ..."

In its judgment of 18 August 2005 the appellate court neither indicated any reasons for the applicant's detention beyond those presented by the first-instance court nor did it expound on the existing reasoning.

15. The applicant lodged a supervisory review complaint.

16. On 20 April 2006 the Presidium of the Moscow City Court annulled the judgments of 16 May and 18 August 2005. In the relevant part the judgment read as follows:

> " ... As it is argued in the supervisory complaint of Ms Zagidulina the application for involuntary hospitalisation was examined in her absence on the basis of an oral statement by the doctor Ms. M about the patient's inability to participate in [the proceedings] ... due to her state of health.
>
> However, the case file does not contain any evidence that at the moment of consideration of the case by the [trial] court her psychiatric condition was such as to prevent her from personal participation ...
>
> Moreover, the [trial] court's authorisation does not include any information on the presence of Ms Zagidulina's representative during consideration of the application for involuntary hospitalisation.
>
> Furthermore, it is not clear from the judicial authorisation on what grounds did the [trial] court conclude that Ms Zagidulina has to be hospitalised against her will ... the application [for hospitalisation] refers to Article 29 "a" of [the Psychiatric Assistance Act 1992] ... according to which a person suffering from a mental disorder may be hospitalised to a psychiatric facility against his will ... if treatment is possible only in an in-patient facility, and the mental disorder is severe and causes immediate danger to himself or the others.
>
> However, the application [for hospitalisation] ... does not specifically mention what was that danger.
>
> Therefore, the [trial] court unreasonably deprived Ms Zagidulina of her rights guaranteed by ... [the Psychiatric Assistance Act 1992]."

The case was remanded to the first-instance court.

17. On 30 May 2006 the District Court held a new hearing on the hospital's application for the applicant's involuntary hospitalisation. The hospital's representative moved to discontinue the proceedings because the applicant had been discharged from the hospital on 17 June 2005 and the issue was moot. The court granted the motion and discontinued the proceedings relying on the provisions of Articles 220 and 221 of the Code of Civil Procedure.

18. In 2007 the applicant lodged a lawsuit against the PHM, claiming damages of 100,000 Russian roubles (RUB) (around 2,500 euros (EUR)) for unlawful involuntary psychiatric examination and hospitalisation. She

alleged a lack of medical evidence and an absence of compelling reasons for her hospitalisation.

19. On 29 June 2007 the District Court ruled in favour of the hospital and rejected the applicant's claims. The District Court examined evidence concerning the applicant's mental disorder, questioned witnesses and doctors, and reasoned that there had been convincing proof of the need to hospitalise the applicant in May-June 2005. The issue of the applicant's absence during the initial proceedings authorising her hospitalisation was not examined. On 6 October 2007 the Moscow City Court upheld the lower court's judgment.

20. The applicant lodged a constitutional complaint against the statutory provisions on which the PHM and the domestic courts had relied during her hospitalisation. She alleged that these provisions permitted arbitrary placement of individuals in psychiatric facilities and did not provide for the independent review of medical evidence. On 3 November 2009 the Constitutional Court dismissed the complaint. In the relevant part the judgment read as follows:

> "... The Constitutional Court of the Russian Federation having examined the materials presented by the applicant finds no grounds to accept her complaint for consideration ...
>
> Determination of a mental disorder diagnosis and decision on involuntary psychiatric treatment are the exclusive right of a psychiatrist or a panel of psychiatrists ... which is one if the guarantees against arbitrariness of hospitalisation ... [I]n absence of the psychiatrists' conclusion on the need for hospitalisation ... it is impossible in principle ...
>
> Constitutionality of [the provisions of Psychiatric Assistance Act 1992] is [further] challenged by the applicant, since these provisions [allegedly] permit involuntary treatment of a citizen without authorisation of an independent body ...
>
> The term 'independent body' may be understood as 'a body having no interests in involuntary treatment of the patient and independent from the persons, who have such interest' ...
>
> Accordingly ... a court may be a competent independent body ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure of 2002

21. Article 303 section 1 of the Code of Civil Procedure of the Russian Federation, which entered into force on 1 February 2003, stipulates the time-limits for submission of an application for involuntary hospitalisation:

Article 303. Time-limit for submission of an application for involuntary placement of a citizen to a psychiatric facility

"1. An application for involuntary placement of a citizen to a psychiatric facility is submitted within forty-eight hours following the citizen's placement in a psychiatric facility.

2. The judge initiating the proceedings concurrently extends the period of the citizen's placement in a psychiatric facility for the period necessary for consideration of the application for involuntary hospitalization of a citizen to a psychiatric facility."

22. Article 304 of the Code establishes the procedural guarantees afforded to a person placed to a psychiatric facility. In the relevant part it reads as follows:

Article 304. Consideration of 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.

"1. 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 court shall hold a hearing 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 the extension of a 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 ..., the application ... shall be considered by the judge in the psychiatric facility.

2. The case shall be considered with the participation of a prosecutor, a representative of the psychiatric facility which applied to the court ..., and the citizen's representative ..."

23. Articles 220 and 221 of the Code of Civil Procedure establish the grounds for discontinuation of the proceedings and its consequences. In the relevant part they read as follows:

Article 220. Discontinuation of the proceedings on the case

"The court discontinues the proceedings on the case, if: ...

a plaintiff withdraws his lawsuit and the court accepts the withdrawal ..."

Article 221. The procedure and consequences of discontinuation of the proceedings on the case

"The proceedings on the case are discontinued by a decision of the court, which states that repeated submission of the lawsuit regarding the dispute between the same parties, on the same matter and the same grounds is not permitted."

B. Psychiatric Assistance Act 1992

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

25. Section 7 subsections 1 and 3 of the Act (as in force at the material time) specified that persons suffering from a psychiatric disorder had the right to a representative of their own choosing. The administration of the psychiatric facility had the obligation to ensure the opportunity for the individual to obtain legal representation by a lawyer (except for urgent cases).

26. Section 29 of the Act sets out the following grounds for involuntary placement of a person in a psychiatric facility:

Section 29

"A person suffering from a mental disorder may be hospitalised at an inpatient psychiatric facility without his or his representative's consent prior to judicial authorisation only if his medical examination or treatment is not possible outside of an inpatient facility, the mental disorder is severe and causes:

a) a immediate danger to himself or others, or

b) feebleness, i.e. the inability to autonomously satisfy basic needs

c) significant damage to health due to the deterioration or aggravation of the psychiatric condition in the absence of psychiatric assistance."

27. Section 32 of the Act specifies the procedure for the examination of patients involuntarily placed in a psychiatric facility:

Section 32

"1. A person placed in a psychiatric hospital on the grounds defined by section 29 of the present Act shall be subject to compulsory examination within 48 hours by a panel of psychiatrists of the hospital, who shall take a decision as to the need for hospitalisation. ...

2. If hospitalisation is considered necessary, the conclusion of the panel of psychiatrists shall be forwarded to the court having territorial jurisdiction over the hospital, within 24 hours, for a decision as to the person's further confinement in the hospital."

28. Sections 33-35 set out the procedure for judicial review of applications for the involuntary in-patient treatment persons suffering from a psychiatric disorder:

Section 33

"1. Involuntary hospitalisation for in-patient psychiatric treatment on the grounds laid down in section 29 of the present Act shall be subject to review by the court having territorial jurisdiction over the hospital.

2. An application for the involuntary placement of a person in a psychiatric hospital shall be filed by a representative of the hospital where the person is confined ...

3. A judge who accepts an application for review shall simultaneously order the person's detention in a psychiatric hospital for the term necessary for that review."

Section 34

"1. An application for the involuntary placement of a person in a psychiatric hospital shall be reviewed by a judge, on the premises of the court or hospital, within five days of receipt of the application.

2. The person has the right to personally participate in the hearing concerning his involuntary placement to a psychiatric facility or the extension of a 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 ..., the application ... shall be considered by the judge in the psychiatric facility ..."

Section 35

"1. After examining the application on the merits, the judge shall either grant or refuse it. ..."

C. Constitutional Court of the Russian Federation

29. In its judgment of 27 February 2009 (no. 4-P) concerning the legal incapacitation of persons suffering from a psychiatric disorder, the Constitutional Court pronounced its opinion on the deprivation of liberty of such persons. 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 only be deprived of [his] liberty for the purpose of involuntary treatment 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 defence counsel of his own choosing (Article 48 of the Constitution of the Russian Federation) ..."

30. In its judgment of 5 March 2009 (544-O-P) the Constitutional Court interpreted certain provisions of the Psychiatric Assistance Act and the Code of Civil Procedure concerning involuntary hospitalisation of persons suffering from mental disorders. The judgment established that a person may be involuntarily admitted to a psychiatric facility in case of medical emergency, but judicial authorisation of the hospitalisation should follow within forty-eight hours. The Constitutional Court also stressed that the courts are under an obligation to verify all the evidence presented to them, rather than formally sanction applications lodged by psychiatric hospitals.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

31. On 22 February 1983 the Committee of Ministers adopted Recommendation No. R (83) 2 concerning the legal protection of persons suffering from mental disorder placed as involuntary patients. 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 ..."

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 ..."

32. On 22 September 2004 the Committee of Ministers adopted Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder. In the relevant part the Recommendation provides:

Article 12 – General principles of treatment for mental disorder

"3. When because of an emergency situation the appropriate consent or authorisation cannot be obtained, any treatment for mental disorder that is medically necessary to avoid serious harm to the health of the individual concerned or to protect the safety of others may be carried out immediately."

Article 17 – Criteria for involuntary placement

"1. A person may be subject to involuntary placement only if all the following conditions are met:

i. the person has a mental disorder;

ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;

iii. the placement includes a therapeutic purpose;

iv. no less restrictive means of providing appropriate care are available;

v. the opinion of the person concerned has been taken into consideration ..."

Article 20 – Procedures for taking decisions on involuntary placement and/or involuntary treatment

"1. The decision to subject a person to involuntary placement should be taken by a court or another competent body. The court or other competent body should:

i. take into account the opinion of the person concerned;

ii. act in accordance with procedures provided by law based on the principle that the person concerned should be seen and consulted ...

4. Involuntary placement, involuntary treatment, or their extension should only take place on the basis of examination by a doctor having the requisite competence and experience, and in accordance with valid and reliable professional standards."

Article 21 – Procedures for taking decisions on involuntary placement and/or involuntary treatment in emergency situations

"2. Under emergency procedures:

i. involuntary placement or involuntary treatment should only take place for a short period of time on the basis of a medical assessment appropriate to the measure concerned ..."

Article 22 – Right to information

"1. Persons subject to involuntary placement or involuntary treatment should be promptly informed, verbally and in writing, of their rights and of the remedies open to them ... "

2. They should be informed regularly and appropriately of the reasons for the decision and the criteria for its potential extension or termination."

Article 25 – Reviews and appeals concerning the lawfulness of involuntary placement and/or involuntary treatment

"1. Member states should ensure that persons subject to involuntary placement or involuntary treatment can effectively exercise the right:

i. to appeal against a decision;

ii. to have the lawfulness of the measure, or its continuing application, reviewed by a court at reasonable intervals;

iii. to be heard in person or through a personal advocate or representative at such reviews or appeals ...

3. Member states should consider providing the person with a lawyer for all such proceedings before a court. Where the person cannot act for him or herself, the person should have the right to a lawyer and, according to national law, to free legal aid. The lawyer should have access to all the materials, and have the right to challenge the evidence, before the court ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

33. The applicant complained that her involuntary placement to a psychiatric hospital had violated Article 5 § 1 (e) of the Convention, which reads as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants ..."

A. Admissibility

1. Exhaustion of domestic remedies

34. The Government argued that contrary to the applicant's claims she was hospitalised on the basis of valid and objective medical data. In their observations of 5 July 2010 they also argued that the applicant failed to exhaust the available domestic remedies by lodging a lawsuit aimed at recovery of non-pecuniary damages or compensation for the length of proceedings.

35. The applicant dismissed the Government's argument. In respect of non-exhaustion of domestic remedies argument she argued that the length of proceedings complaint could not have served as a remedy for the alleged violation of Article 5 § 1 rights and that no other remedy could have been considered effective.

36. The Court reiterates that Article 35 § 1 of the Convention requires that complaints intended to be made subsequently at Strasbourg should have been made to the appropriate domestic body, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports of Judgments and Decisions* 1996-IV).

37. In respect of the remedy aimed at recovery of compensation for the length of proceedings the Court concurs with the applicant that their objective is fundamentally different to the claim of unlawful deprivation of liberty. In respect of the lawsuit aimed at recovery of non-pecuniary damages the Court notes that the proceedings on the application for hospitalisation were discontinued in 2006 and the applicant's claim for damages was dismissed by the domestic courts in 2007 (see paragraphs 17-19 above). Therefore, it appears that the applicant had recourse to potentially effective domestic remedies and that there were no reasons for her to initiate a new set of proceedings based on the arguments previously dismissed by the domestic courts (see *mutatis mutandis Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009).

38. In conclusion, the Court dismisses the Government's argument that the applicant failed to exhaust domestic remedies.

2. Victim status

39. The Government further maintained in their observations of 7 October 2010 that, while the applicant was indeed absent from the hearing authorising her involuntary hospitalisation, her rights were effectively restored on the domestic level by release from the hospital, annulment of the authorisation of hospitalisation on 20 April 2006 by the Presidium of the Moscow City Court, and discontinuation of the proceedings for involuntary

hospitalisation at the request of the hospital's representative on 30 May 2006 by the Simonovskiy District Court of Moscow.

40. The applicant dismissed the Government's argument. She stated that notwithstanding the fact that the judicial authorisation for her hospitalisation was annulled and the proceedings on it discontinued she still retained her victim status, because there has been neither acknowledgement of violation of her rights, nor any form of redress.

41. The Court reiterates that an applicant's status as a victim may depend on compensation being awarded at domestic level on the basis of the facts about which he or she complains before the Court and on whether the domestic authorities have acknowledged, either expressly or in substance, the breach of the Convention. Only when those two conditions are satisfied does the subsidiary nature of the Convention preclude examination of an application (see, for instance, *Scordino v. Italy* (dec.), no. 36813/97, ECHR 2003-IV).

42. In the present case, the Court does not have to examine whether the domestic authorities acknowledged a violation of the applicant's rights under Article 5 § 1, as the other condition has not been met. Nothing in the materials in the Court's possession or the submissions of the parties indicate that the applicant was provided with any form of redress.

43. Consequently, the Court dismisses the Government's argument that the applicant can no longer claim to be a victim of the alleged violation of Article 5 § 1 of the Convention.

3. Conclusion

44. The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established.

B. Merits

1. The parties' submissions

45. Alleging a violation of Article 5 § 1 of the Convention, the applicant raised the following two issues. First, the applicant in her submissions argued that the competent national authorities had had no reason to hospitalise her in a psychiatric facility, given that she had independently and consciously gone to the PHM to demand the release of her daughter. Specifically, she claimed that there had been no prior indication that she needed any psychiatric assistance and no evidence had been presented at

any stage which would have proven that her mental health had been such as to require involuntary treatment. Further, the applicant stressed that the domestic authorities had failed to demonstrate that she had been suffering from a "serious mental disorder", as required by section 29 of the Psychiatric Assistance Act 1992.

46. Second, turning to the judicial proceedings authorising her involuntary hospitalisation, the applicant submitted that they had been inherently defective, because they had not been truly adversary. Not only had she been prevented from participating in the proceedings (in person or through representation), but she had also been left unaware of them. Further, she alleged that she had been unlawfully deprived of her liberty without a judicial decision between 13 and 16 May 2005.

47. The Government in their submissions contended that the applicant had been lawfully deprived of her liberty, both from the standpoint of Article 5 § 1 (e) of the Convention and national law. They stressed that the first-instance court's authorisation of her involuntary hospitalisation had been based on a professional medical opinion and the medical history of the applicant, who had been suffering from schizophrenia. They further argued that until 20 April 2006, when the Presidium of the Moscow City Court annulled the judgments of 16 May and 18 August 2005 authorising her hospitalisation, the applicant had been deprived of her liberty on the basis of a legally valid decision.

48. Further, the Government argued that the applicant could not have participated in the judicial proceedings due to her poor state of mental health at the material time. In respect of the period between 13 and 16 May 2005 they contended with reference to Article 303, section 2 of the Code of Civil Procedure and section 33, sub-section 3 of the Psychiatric Assistance Act 1992 that the applicant's initial detention had been retroactively sanctioned by the judge accepting the application for involuntary hospitalisation.

2. The Court's assessment

(a) General principles

49. In its *Winterwerp v. the Netherlands* judgment (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) of the Convention: except in emergency cases, 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.

50. In deciding whether an individual should be detained as a "person of unsound mind", the Court has held on numerous occasions that it gives a certain amount of deference to the national authorities. It is the task of the national authorities to evaluate the evidence adduced before them in a particular case and the Court's task is to review the decisions of these authorities under the Convention (see *Luberti v. Italy*, 23 February 1984, § 27, Series A no. 75). Further, it is not the Court's task to reassess various medical opinions, but rather to ascertain for itself whether the domestic courts, when taking the contested decision, had at their disposal sufficient evidence to justify the detention (see *Herz v. Germany*, no. 44672/98, § 51, 12 June 2003).

51. The Court reiterates that essentially Article 5 § 1 refers to the domestic law, but at the same time obliges the national authorities to comply with the Convention requirements (see among other authorities *Karamanof v. Greece*, no. 46372/09, §§ 40-41, 26 July 2011, and *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 47, ECHR 2003-IV). Moreover, the Court highlights that the notion of "lawfulness" in the context of Article 5 § 1 (e) of the Convention might have a broader meaning than in national legislation. Lawfulness of detention necessarily 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" (see *Winterwerp*, cited above, § 45, *Johnson v. the United Kingdom*, 24 October 1997, § 60, *Reports of Judgments and Decisions* 1997-VII, and more recently *Venios v. Greece*, no. 33055/08, § 48, 5 July 2011 with further references).

52. The Court is mindful that individuals suffering from a mental illness constitute a particularly vulnerable group and therefore any interference with their rights must be subject to strict scrutiny, and only "very weighty reasons" can justify a restriction of their rights (see *Alajos Kiss v. Hungary*, no. 38832/06, § 42, 20 May 2010). In this regard the Court reiterates that the detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Karamanof v. Greece*, cited above, § 42 with further references).

53. In the light of the vulnerability of individuals suffering from mental disorders and the need to adduce very weighty reasons to justify any restriction of their rights, the proceedings leading to the involuntary placement of an individual to a psychiatric facility must necessarily provide clearly effective guarantees against arbitrariness. This position is supported by the fact that hospitalisation in a specialised medical institution frequently results in an interference with an individual's private life and physical integrity through medical interventions against the individual's will (*X v. Finland*, no. 34806/04, § 212, 3 July 2012).

(b) Application of these principles to the present case

54. The Court reiterates that Article 5 § 1 (e) of the Convention permits detention of persons of "unsound mind" only when the substantive and procedural requirements for such detention are met. Substantively, in sanctioning the involuntary hospitalisation of a person suffering from a mental disorder the national authorities should reliably establish that the kind and degree of disorder warrant that person's detention (see *Winterwerp*, cited above, § 33). Procedurally, they are under an obligation to ensure that the procedure leading to the detention is "fair and proper" and devoid of arbitrariness.

55. The Court will first examine whether it was secured by the "fair and proper procedure" required by Article 5 § 1 (e) of the Convention.

56. The Court takes note of the fact that the national authorities' initial actions and the detention of the applicant on 13 May 2005 were triggered by her anxious and delusional state during a visit to the PHM with the intention to seek the release of her daughter. The applicant was considered to be demonstrating the symptoms of a mental disorder (screaming, threatening doctors with reprisals, accusing them of "influencing" and persecution) and her hospitalisation was recommended by resident psychiatrists.

57. The day after the applicant's admission to the psychiatric hospital, on 14 May 2005, she was examined by a panel of psychiatrists and diagnosed with paranoid schizophrenia with a paroxysmal-progredient (shift-like) course, manifested as personality changes and paranoia. The panel also found that the applicant was a danger to herself and others and recommended compulsory inpatient psychiatric treatment. An application for involuntary hospitalisation under section 29 of the Psychiatric Assistance Act 1992 was lodged on the same day with a competent domestic court. Accordingly, the relevant authorities fully complied with the substantive and temporal requirements of the domestic law as laid out in section 32 of the Psychiatric Assistance Act 1992.

58. On 16 May 2005 the Simonovskiy District Court of Moscow received the application for the applicant's involuntary hospitalisation, accepted it for consideration, and authorised the applicant's hospitalisation.

59. The applicant argued that her detention before that date was not secured by a judicial decision, while the Government contended that it was sanctioned by the District Court. Having regard to the provisions of section 33 sub-sections 1 and 2 and section 34 sub-section 1 of the Psychiatric Assistance Act 1992 and Article 303 of the Civil Procedure Code, the Court notes that it was an obligation of the domestic courts to ensure review of the whole period of detention. However, in the view of the findings below the Court does not find it necessary to examine whether the applicant's hospitalisation was duly authorised.

60. The Court notes that the hearing on 16 May 2005 was attended by a prosecutor, the applicant's attending psychiatrist, and a representative of the

PHM. The attending psychiatrist and the PHM's representative requested the District Court to hold the hearing in the absence of the applicant because she could not participate in it for medical reasons. The hearing was held without the applicant or her representative being present.

61. The Court considers it crucial to stress that, contrary to the standard established by Article 5 § 1 of the Convention and the clear provisions of national law obliging the State to provide some form of representation to the applicant given her absence from the hearing (see paragraphs 22, 24-25, 28 above), the first-instance court authorised her hospitalisation without hearing the applicant or any other person expressing her position.

62. The applicant played a dual role in the proceedings: she was an interested party, and, at the same time, the main object of the court's examination. Therefore, hearing the applicant either in person or through some form of representation was indispensable for a "fair and proper procedure" (see *Winterwerp*, cited above, § 45). Taking into consideration the applicant's clear and undisputed refusal to undergo any treatment and the domestic courts' awareness of this fact, which was reflected in their decisions, the need to ensure the applicant's right to be heard was ever more pressing. This view is also reflected in the judgment of the Moscow City Court of 20 April 2006, which overturned all of the previous judgments in the case on this basis and ordered re-consideration of the application.

63. Further, the Court considers that the discontinuation of the proceedings on 30 May 2006 by the Simonovskiy District Court of Moscow upon the motion of the hospital's representative (paragraph 17 above) effectively deprived the applicant of a possibility to have the lawfulness of her detention reviewed.

64. In the light of the findings above, the Court concludes that the competent national authorities failed to meet the procedural requirement necessary for the applicant's involuntary hospitalisation, as they did not ensure that the proceedings were devoid of arbitrariness. Accordingly, her detention in the PHM between 13 May and 17 June 2005 was unlawful within the meaning of Article 5 § 1 (e) of the Convention.

65. This conclusion obviates the need for the Court to examine whether the national authorities met the substantive requirement for the applicant's involuntary hospitalisation by proving that her mental condition had necessitated the deprivation of her liberty.

66. Giving due regard to the conclusions above, the Court finds that there has been a violation of Article 5 § 1 (e) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

67. The applicant complained of a violation of Article 5 § 4 of the Convention in the proceedings authorising her involuntary hospitalisation.

68. The Government contested that argument.

69. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

70. Having regard to the established above fundamental defects in the judicial decision authorising the applicant's involuntary hospitalisation, the unlawfulness of the detention caused by these defects, the Court considers that it is not necessary to examine whether, in this case, there has been a violation of Article 5 § 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicant in her submissions complained that her placement in a psychiatric facility and treatment there amounted to inhuman and degrading treatment; that she was not informed about the reasons for her detention and could not seek compensation for it; that the domestic courts were not impartial; and that she had no effective remedy at her disposal. She invoked Articles 3, 5 §§ 2 and 5, 6, and 13 of the Convention. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that this complaint does not disclose any violation of the provision invoked. Therefore they must be rejected in accordance with Article 35 § 3 (a) of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

73. The applicant claimed 75,000 euros (EUR) in respect of non-pecuniary damage caused by her unlawful deprivation of liberty through involuntary placement to a psychiatric hospital.

74. The Government contended that the claim for non-pecuniary damage was excessive and unreasonable, and was in any event devoid of basis.

75. The Court accepts that the applicant suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Acting on equitable basis and considering the circumstances of the case, it awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

76. The applicant also claimed EUR 5,000 for costs and expenses incurred before the Court.

77. The Government objected to the claim as unsubstantiated, highlighting that the applicant had only produced a legal services agreement and an invoice issued by her representative, but no proof of payment.

78. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court is satisfied that the applicant is under a contractual obligation to pay her lawyer's fees which is enforceable under domestic law (see, *mutatis mutandis Salmanov v. Russia*, no. 3522/04, § 98, 31 July 2008, and *Flux v. Moldova* (no. 3), no. 32558/03, § 38, 12 June 2007). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the applicant the sum of EUR 2,500 for the proceedings before the Court, plus any tax that may be chargeable to her on that amount.

C. Default interest

79. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Articles 5 § 1 and 5 § 4 of the Convention concerning the applicant's involuntary placement to a psychiatric hospital admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Russian roubles at the rate applicable at the date of settlement:

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 2 May 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President