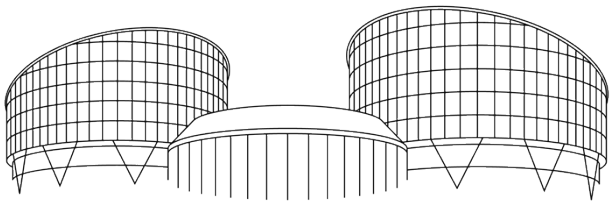

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PETUKHOVA v. RUSSIA

(Application no. 28796/07)

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 Petukhova 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. 28796/07) 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 Alla Yakovlevna Petukhova ("the applicant"), on 18 June 2007.

2. The applicant was initially represented before the Court by Mr A. Priyatelchuk, a human rights activist residing in Moscow, and subsequently 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 deprivation of liberty for the purposes of conducting an involuntary psychiatric examination was in violation of Article 5 § 1 of the Convention.

4. On 3 June 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Moscow.

6. On 13 December 2005 she complained to the police about her neighbours. She stated that a "gang" of neighbours had damaged her property and had used "psychotronic generators" in their apartments and cars to cause damage to her health and mind. The applicant also mentioned in the complaint that she had in the past made submissions to the Federal Security Service, the President of the Russian Federation and the State Duma, which had been unsuccessful.

7. On 20 January 2006 a police officer took statements from the applicant's neighbours, who stated that she had behaved unreasonably, walked naked on the streets, shouted at people and accused them of various illegal activities.

A. Proceedings for involuntary psychiatric examination

8. The Psychoneurological Outpatient Clinic no. 20 of Moscow ("the POC") was requested by the police on 20 January 2006 to carry out a psychiatric examination of the applicant.

9. On 14 July 2006 a resident psychiatrist at the POC (Ms K.) issued a report confirming the need for a psychiatric examination of the applicant relying on the evidence obtained seven months before. The report stated that the nature of the applicant's complaints to various authorities gave reason to believe that they were brought about by a pathology associated with a psychiatric disorder. The psychiatrist concluded that an examination of the applicant was necessary, because progressive development of the disorder might cause a deterioration in her health and aggressive behaviour towards others. The report was certified by the head physician of the POC. It is not clear whether the psychiatrist examined the applicant in person before issuing the report.

10. On the same day Ms K. filed an application with the Kuzminskiy District Court of Moscow ("the District Court") seeking authorisation for an involuntary psychiatric examination under section 23, subsection 4 (c) of the Law of the Russian Federation on Psychiatric Assistance and Guarantees of the Citizens' Rights Related to Its Administration 1992 ("the Psychiatric Assistance Act"). The application stated that there was evidence of "a psychiatric disorder resulting in significant damage to health due to the deterioration of a psychiatric condition in the absence of psychiatric assistance". It also indicated that on 20 January 2006, during a police interview, the applicant had refused to consent to undergo a voluntary psychiatric examination. The application was also certified by the head physician of the POC.

11. Evidence attached to the application included the above-mentioned psychiatrist's report of 14 July 2006, the applicant's complaint to the police of 13 December 2005, the police officer's request of 20 January 2006, and the applicant's neighbours' statements of 20 January 2006.

12. The application was received by the District Court on 27 July 2006 and a hearing was scheduled for 18 August 2006. On 14 August 2006 the court sent a summons to the applicant by registered letter, but that was later returned to the sender after several unsuccessful delivery attempts.

13. On 18 August 2006 the District Court considered the psychiatrist's application for involuntary psychiatric examination of the applicant. Neither the applicant nor the representative of the POC were present at the hearing. It was noted in the court transcript and decision that both parties had been duly notified of the hearing but that neither had chosen to appear in court. The District Court authorised a psychiatric examination of the applicant without her consent and ordered it to be carried out either at her home or at the POC. It reasoned as follows:

> "The court, having examined the evidence, namely the report of the POC on the need for a psychiatric examination, considers the application well-founded ... for the following reasons.
>
> In accordance with Section 23, subsection 4 of the Psychiatric Assistance Act 1992 ... a psychiatric examination of a person may be carried out without his or his legal representative's consent when the evidence available suggests that the examinee performs acts giving reason to presume the existence of a severe psychiatric disorder which causes feebleness, i.e. the inability to autonomously satisfy one's basic needs, or significant damage to health due to the deterioration of a psychiatric condition in the absence of psychiatric assistance.
>
> The said condition ... has been proven by the POC's medical report, a copy of the applicant's complaint to [the police] concerning the use of various types of secret weapons, a copy of a statement by Ms Sh. (Ms Petukhova's neighbour), who stated that Ms Petukhova behaved unreasonably, walked naked on the streets and shouted at people, as well as by other evidence confirming the need for a psychiatric examination of Ms Petukhova."

14. The Court has received no evidence to suggest that the applicant was either notified of the decision or provided with a copy.

15. More than three months later, on 1 December 2006, the POC sent a request to the police seeking their assistance in the applicant's apprehension in order to prevent her from potentially behaving aggressively towards others. The request stated that the clinic was unable to ensure that the applicant would attend an examination.

16. On the same day at around 10 a.m. three policemen visited the applicant's flat and took her by force to a police station. Having spent four hours there she was transferred by ambulance to Psychiatric Hospital no. 13 ("the PH-13"). At 2.30 p.m. on arrival at the hospital, the applicant was informed that she had been brought there under the authorisation of the District Court. It is not clear whether she was allowed to read the court order.

17. Later that day at 4.30 p.m. the applicant was examined by a medical counselling panel and diagnosed with paranoid schizophrenia aggravated by paranoid syndrome.

18. After her release from the hospital on 4 December 2006 the applicant requested the District Court to provide her with a copy of its decision of 18 August 2006 authorising her involuntary psychiatric examination.

19. On 18 December 2006 the applicant appealed against that decision. She argued, *inter alia*, that the District Court had examined the case in her absence and that she had not been duly notified of the hearing; that the decision did not contain reasons and that it was based on a single psychiatric report which was accepted by the court without scrutiny.

20. On 15 February 2007 the Moscow City Court after hearing the applicant and her representative dismissed the applicant's appeal and upheld the authorisation for an involuntary psychiatric examination. The court reasoned that the applicant's presence at the District Court hearing was not required under Article 306 of the Code of Civil Procedure. Furthermore, it stated that the psychiatric report was well-founded because it contained details of the applicant's actions giving grounds to presume the existence of a psychiatric disorder.

21. The applicant applied for supervisory review, but to no avail.

22. The applicant lodged a constitutional complaint about Article 306 of the Code of Civil Procedure. She alleged that this legal provision did not guarantee her a right to be present during the hearing of an application for involuntary psychiatric examination, since it specified that such applications shall be considered by "a single judge".

23. On 18 December 2007 the Constitutional Court of the Russian Federation dismissed the applicant's complaint. It argued that the term "single judge" for the purposes of Article 306 of the Code of Civil Procedure referred only to the composition of a court and did not preclude the parties' participation in a hearing.

B. Proceedings for involuntary hospitalisation to a psychiatric facility

24. On 1 December 2006 after the applicant was brought to the hospital and diagnosed with paranoid schizophrenia aggravated by paranoid syndrome (see paragraphs 16-17 above), the medical panel of the PH-13 concluded that involuntary hospitalisation of the applicant was required under section 29 of the Psychiatric Assistance Act 1992 in order to prevent potentially significant damage to her health due to the deterioration of a psychiatric condition in the absence of psychiatric assistance. The application for involuntary hospitalisation was filed with the Lyubinskiy District Court of Moscow on the same day.

25. On 4 December 2006 the applicant was discharged from PH-13 and advised to follow an outpatient treatment programme. Later that day the deputy head physician of PH-13 requested the Lyubinskiy District Court of Moscow to discontinue the proceedings concerning the applicant's involuntary hospitalisation in the light of her discharge from the facility. The request was granted and the proceedings discontinued on 6 December 2006.

26. The applicant did not initiate any proceedings for review of her hospitalisation.

II. RELEVANT DOMESTIC LAW

A. Relevant domestic law in respect of involuntary psychiatric examination

1. Code of Civil Procedure 2002

27. Article 306 of the Code of Civil Procedure of the Russian Federation of 2002, which entered into force on 1 February 2003, regulates the procedure for the judicial authorisation of involuntary psychiatric examinations. It reads as follows:

Article 306. Involuntary psychiatric examination

> "An application for involuntary psychiatric examination of a citizen shall be lodged by a psychiatrist with the court at the place of the citizen's place of residence. A reasoned report by a psychiatrist on the need to conduct such an examination and other evidence shall be attached to the application. Within three days of the application being filed, a single judge shall consider the application for involuntary psychiatric examination and shall decide to either authorise the involuntary psychiatric examination of a citizen or refuse [it]."

2. Psychiatric Assistance Act 1992

28. 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.

29. Sections 23 and 25 of the Act regulate the procedure for conducting involuntary psychiatric examinations. The relevant parts read as follows:

Section 23: Psychiatric examination

"(1) A psychiatric examination shall be conducted in order to determine whether the examinee suffers from a psychiatric disorder and needs psychiatric assistance, and to determine the type of such assistance.

(2) A psychiatric examination, as well as a prophylactic examination, shall be conducted at the examinee's request and with his consent ...

...

(4) A psychiatric examination of a person may be carried out without his or his legal representative's consent in cases when the available evidence suggests that the examinee performs acts giving reason to presume the existence of a severe psychiatric disorder which causes:

...

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

Section 25: Procedure for submission and consideration of an application for the psychiatric examination of a person without his or his legal representative's consent

"...

(4) In cases when a person does not present an immediate danger to himself or others, the application for a psychiatric examination shall be submitted in writing and shall contain detailed information giving reasons for the need for examination and an indication of the refusal by the person or his or her legal representative to consult a psychiatrist. The psychiatrist may request additional information necessary for making the decision.

(5) Having established that the application ... is well-founded the psychiatrist submits to a court at the place of the person's residence his written reasoned conclusion as to the need of the examination as well as the application for examination and other available materials. The judge gives sanction within three days from receiving all of the materials ..."

3. Police Act 1991

30. The Police Act 1991 in section 10 establishes the duties of police in law enforcement. In the relevant part it reads as follows:

Section 10. Duties of the police

"The police in line with assigned tasks shall:

...

(22) deliver to healthcare institutions ... for medical treatment persons refusing to appear, suffering from diseases and presenting danger to themselves and others, and also ... to ensure together with healthcare institutions in cases and under a procedure prescribed by law supervision over persons suffering from mental disorders ... and presenting danger to others ...”

4. Constitutional Court of the Russian Federation

31. In its decision of 10 March 2005 (no. 62-O) interpreting the Psychiatric Assistance Act 1992, the Constitutional Court stated that judicial proceedings in cases concerning psychiatric assistance must be adversarial and respect the principle of equality of parties. Consequently, a psychiatric facility lodging an application with a court was under an obligation to provide evidence confirming the information stated in such an application.

32. In the decision of 21 April 2011 (no. 592-O-O) concerning procedural guarantees afforded to individuals subjected to involuntary psychiatric examination, the Constitutional Court concluded that such guarantees were essentially the same as those afforded in the course of involuntary hospitalisation and that they included the duty of the courts to verify all the evidence presented to them.

B. Relevant domestic law in respect of involuntary hospitalisation to a psychiatric facility

1. Code of Civil Procedure of 2002

33. Article 304 of the Code of Civil Procedure of 2002 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 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 ... ."

34. 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 in the case

"The proceedings in 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 in not permitted."

2. Psychiatric Assistance Act 1992

35. 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).

36. 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."

37. 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."

38. 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. ... "

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

39. 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 17 – Criteria for involuntary placement

"2. The law may provide that exceptionally a person may be subject to involuntary placement, in accordance with the provisions of this chapter, for the minimum period necessary in order to determine whether he or she has a mental disorder that represents a significant risk of serious harm to his or her health or to others if:

i. his or her behaviour is strongly suggestive of such a disorder;

ii. his or her condition appears to represent such a risk;

iii. there is no appropriate, less restrictive means of making this determination; and

iv. 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 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 32 – Involvement of the police

"1. In the fulfilment of their legal duties, the police should coordinate their interventions with those of medical and social services, if possible with the consent of the person concerned, if the behaviour of that person is strongly suggestive of mental disorder and represents a significant risk of harm to him or herself or to others.

2. Where other appropriate possibilities are not available the police may be required, in carrying out their duties, to assist in conveying or returning persons subject to involuntary placement to the relevant facility.

3. Members of the police should respect the dignity and human rights of persons with mental disorder. The importance of this duty should be emphasised during training."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 (b) OF THE CONVENTION

40. The applicant complained that on 1 December 2006 she had been unlawfully deprived of her liberty for the purposes of conducting an involuntary psychiatric examination. Her complaint raises issues under Article 5 of the Convention, which, in so far as is relevant, 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:

...

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court ..."

A. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties

42. The applicant contended that the order of the Kuzminskiy District Court of Moscow of 18 August 2006 had been unlawful within the meaning of Article 5 § 1 of the Convention and domestic law, since the District Court had issued it in the parties' absence without properly reviewing the evidence or giving sufficient reasons for its decision. She argued that on no occasion

had she been requested by the police or psychiatrists to undergo a voluntary psychiatric examination. Equally, she had never been notified of the court order and had had no opportunity to comply with or appeal against it before being apprehended by the police on 1 December 2006.

43. The applicant further argued that the involvement of the police in enforcing the court order had lacked sufficient legal basis and at any rate had been devoid of reasons, since she had never refused to attend a psychiatric facility in order to undergo a psychiatric examination.

44. The Government argued that the competent national authorities had not relied on the exception set out in Article 5 § 1 (e) of the Convention allowing detention of persons of unsound mind to justify the applicant's apprehension, confinement in the police station and subsequent transfer to PH-13 for psychiatric examination. No decision was made by the domestic courts as to whether the applicant suffered from a psychiatric disorder necessitating her involuntary hospitalisation.

45. The Government contended that restrictions on the applicant's right under Article 5 § 1 of the Convention had been necessary to ensure compliance with the lawful and valid order of a national court. They further argued that while Article 306 of the Code of Civil Procedure did not require parties to be present at a hearing, in the present case the District Court had duly notified the parties of the hearing but both parties chose not to attend. Lastly, they argued that involving the police in the enforcement of the court order had been lawful and foreseen by domestic law.

2. The Court's assessment

46. The Court reiterates that the physical liberty of a person is a fundamental right protecting the physical security of an individual (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X). While Article 5 § 1 of the Convention provides for a list of exceptions which might be used to restrict this right (Article 5 § 1 (a) to (f)), these exceptions must be interpreted narrowly and in no circumstances may they allow arbitrary deprivation of liberty (see *Vasileva v. Denmark*, no. 52792/99, § 33, 25 September 2003).

47. In the present case the parties did not dispute that the enforcement of the court order to conduct an involuntary psychiatric examination of the applicant had involved a deprivation of liberty.

48. The Court notes that the Government's observations in the present case rely in substance on the exception provided in Article 5 § 1 (b) of the Convention permitting deprivation of liberty with a view to ensuring compliance with "the lawful order of a court". There are no reasons to disagree with the Government's position that the applicant's complaint must be considered in the light of Article 5 § 1 (b) of the Convention.

49. Despite a significant degree of resemblance between this case and cases concerning involuntary hospitalisation which have been examined by

the Court under Article 5 § 1 (e) of the Convention, the distinction between them is clear. The purpose of the order issued by the District Court on 18 August 2006 was not to authorise detention of the applicant as a person of "unsound mind", but to ensure that she submitted herself to a psychiatric examination, which was necessary in the opinion of the competent national authorities.

50. Accordingly, the Court must examine whether, in the light of Article 5 § 1 of the Convention and the exception provided in sub-paragraph (b), the applicant was lawfully deprived of her liberty, specifically, whether the court order was lawful and whether it was enforced in a manner compliant with the above-mentioned provisions of the Convention. It is for the Court to review the lawfulness of the order issued by the District Court on 18 August 2006 and the applicant's detention on 1 December 2006 between her apprehension by police and admittance to PH-13 for involuntary hospitalisation and treatment.

51. The Court reiterates that the notion of "lawfulness" in the context of Article 5 § 1 of the Convention may have a broader meaning than in the national legislation and that it 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 v. the Netherlands*, 24 October 1979, § 45, Series A no. 33).

52. Section 23, subsection 1 of the Psychiatric Assistance Act of 1992 provides that a psychiatric examination is conducted in order to determine whether the examinee suffers from a psychiatric disorder and needs psychiatric assistance, and to determine the type of such assistance. Subsections 2 and 4 states that such examinations shall normally be voluntary and rely on the consent of the person to be examined, and that only in exceptional circumstances (*inter alia*, substantial aggravation of a mental disorder in absence of psychiatric assistance) they may be conducted without consent. The refusal to undergo an examination must be recorded by a psychiatrist submitting an application for involuntary examination (section 25, subsection 4 of the Act). In the light of the rulings of the Constitutional Court (see paragraph 31 above) the lack of consent must be supported by evidence, which must subsequently be reviewed by the court.

53. In the present case the applicant argued that she had never refused to undergo a psychiatric examination and therefore the District Court had had no grounds to order an involuntary examination. The Government maintained that the court order of 18 August 2006 had been in compliance with the requirements of the domestic law.

54. The Court notes that the refusal of the applicant to undergo a psychiatric examination was only mentioned in the application for an involuntary examination submitted by the psychiatrist Ms K. and was substantiated by reference to a conversation with a police officer on

20 January 2006 (see paragraph 10 above). No supporting report or witness statement was attached to the application.

55. Nevertheless, on 18 August 2006 the District Court issued the order authorising the involuntary psychiatric examination of the applicant. Neither the reasoning of the District Court (see paragraph 13 above) nor the court transcripts referred to whether or not the applicant had consented to the procedure or gave any indication that the domestic court had considered that issue.

56. The Court notes that the application for examination was received by the court on 27 July 2006 and the hearing took place twenty-two days later, while section 25 sub-section 5 of the Psychiatric Assistance Act 1992 the decision had to be taken within three days (see paragraph 9 above).

57. The Court observes that a judge considering an application for an involuntary psychiatric examination did not deem it necessary to verify whether the applicant had indeed objected to the examination seven months before the hearing was held or whether she had changed her mind within the seven months between her alleged conversation with a police officer and the court hearing. Even if the District Court may be presumed to have taken notice of the lack of consent on the part of the applicant in January 2006 despite avoiding its acknowledgment in writing, did not act in compliance with the domestic law as interpreted by the Constitutional Court, since no corroborating evidence was produced by the psychiatrist, who herself relied on the evidence obtained seven months before her report was drafted. In the light of such negligence on the part of the District Court, its order of 18 August 2006 was unlawful.

58. Turning to the manner in which the above-mentioned order was enforced by the police and healthcare authorities, the Court is mindful that Article 5 § 1 (b) of the Convention semantically presumes that before a person may be deprived of liberty for "non-compliance" with a "lawful order of a court" that person must have had an opportunity to comply with such an order and have failed to do so (see *Beiere v. Latvia*, no. 30954/05, § 49, 29 November 2011). At the very least an individual may be considered to have had an opportunity to comply with an order when he was duly informed of it and either implicitly or explicitly refused to follow it (see *Beiere v. Latvia*, cited above, §§ 49-50 with further references).

59. The Court finds it necessary to highlight that a refusal of a person to undergo certain measures or to follow a certain procedure prior to being ordered to do so by a competent court has no presumptive value in decisions concerning compliance with such a court order. While the person might have refused to undergo certain measures suggested by the authorities (a healthcare institution and the police in the present case) prior to such measures being ordered by a court, this does not necessarily imply refusal of the person to comply with authoritative judicial decisions.

60. In the circumstances of the present case the Court observes that there is no evidence that the applicant was either informed of the order of the District Court of 18 August 2006 to undergo a psychiatric examination, or given an opportunity to comply with it.

61. Three months after the order was issued the applicant was unexpectedly taken by the police from her apartment to the police station (see paragraph 16 above). While the applicant did not resist her apprehension by the police she was detained in the station for four hours without any clear reason. The Court does not doubt that the police under section 10 subsection 22 of the Police Act 1991 had the right and duty to be involved in enforcement of the court order. However, nothing in the case materials clarifies why the applicant was taken to police station and detained there instead of being taken directly to a psychiatric facility for examination.

62. Neither of the parties gave reasons in their submissions to suggest that the applicant had been aware of the court order, had refused (implicitly or explicitly) to comply with it, and that the four-hour detention in the police station was necessary for the enforcement of the order.

63. The foregoing findings are sufficient to enable the Court to conclude that the applicant's detention on 1 December 2006 between her apprehension by police and admittance to the PH-13 for involuntary hospitalisation and treatment was unlawful and did not comply with the requirements of Article 5 § 1 (b) of the Convention.

64. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 (e) OF THE CONVENTION

65. The applicant also complained that between 1 and 4 December 2006 she had been unlawfully hospitalised to a psychiatric hospital against her will. Her complaint raises issues under Article 5 of the Convention, which, in so far as is relevant, 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 of unsound mind ..."

66. The applicant contended that her placement to a psychiatric facility between 1 and 4 December 2006 was unreasonable, since there was no convincing evidence of a severe mental disorder, and unlawful, since it was not authorised according to the procedure prescribed by law.

67. The Government argued that the applicant's complaint is manifestly ill-founded, since the national authorities applying for involuntary hospitalisation of the applicant relied on the medical evidence and followed the procedure prescribed by law.

68. The Court notes that the applicant was involuntary hospitalised to the PH-13 between 1 and 4 December 2006. On the day of the applicant's discharge from the hospital the deputy head physician of PH-13 requested the Lyubinskiy District Court of Moscow to discontinue the proceedings concerning the applicant's involuntary hospitalisation. The request was granted and the proceedings discontinued on 6 December 2006. The Court further notes that the applicant did not pursue any other proceedings in this regard and that the Government did not claim that the applicant failed to exhaust the domestic remedies.

69. Consequently, in line with the well-established practice of the Court the applicant should have complained of a violation of her rights under Article 5 of the Convention by involuntary placement to a psychiatric hospital within six months from 6 December 2006 when the Lyubinskiy District Court of Moscow discontinued the proceedings on the matter. The applicant submitted her complaint to the Court on 18 June 2007. The Court finds that the complaint under Article 5 of the Convention regarding the deprivation of the applicant's liberty between 1 and 4 December 2006 was lodged outside of six-month time-limit and must be rejected in accordance with Article 35 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. The applicant also lodged complaints under Articles 6 and 8 of the Convention regarding her involuntary psychiatric examination. 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 these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 § 3 (a) of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

73. The Government considered the claim excessive and unreasonable.

74. Having regard to the circumstances of the present case and acting on an equitable basis, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage plus any tax that may be chargeable.

B. Costs and expenses

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

76. The Government argued that the applicant failed to properly substantiate that the expenses were actually and necessarily incurred.

77. Having regard to the Court's case-law on the matter and all the documents in its possession, the Court considers it reasonable to award to the applicant the sum of EUR 850 for the proceedings before the Court, plus any tax that may be chargeable to her on that amount.

C. Default interest

78. 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 complaint under Article 5 § 1 of the Convention concerning unlawful deprivation of liberty for the purposes of conducting an involuntary psychiatric examination admissible and the remainder of the application inadmissible;

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

3. *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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 850 (eight hundred and fifty 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *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