



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

FIRST SECTION

CASE OF MIFOBOVA v. RUSSIA

(Application no. 5525/11)

JUDGMENT

STRASBOURG

5 February 2015

FINAL

05/05/2015

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

In the case of Mifobova v. Russia,

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

Isabelle Berro, *President*,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 5525/11) 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 Lyudmila Vasilyevna Mifobova (“the applicant”), on 6 January 2011.

2. 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 in a psychiatric hospital had violated her rights under Article 5 of the Convention.

4. On 29 May 2012 the application was communicated to the Government.

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1958 and lives in Magadan.

A. Psychiatric assistance to the applicant in 2008

6. In April 2008 the administration of Magadan Region forwarded for review to the Magadan Regional Psychoneurological Clinic (MRPC) letters

sent by the applicant to the President of the Russian Federation, the governor of the region, and 11 other administrative bodies. In these letters the applicant alleged in particular that she had a “special relationship” with the mayor of Magadan, that she was destined to protect people in high office, and that she was being persecuted by employees of the mayor’s office.

7. On 17 April 2008 the Chief Psychiatrist of the MRPC asked the Magadan Town Court to order an involuntary psychiatric examination of the applicant. The relevant part of the request read:

“[T]he resident psychiatrists concluded that [the applicant’s letters] are morbid (delusional) and that she suffers from a mental disorder. The content of the letters reveals high levels of emotional stress, crystallised delusions, and the probability of unlawful actions against the persons involved in the delusions. The MRPC attempted to persuade the applicant to undergo a psychiatric examination voluntarily, but she refused. Her son suffers from a chronic mental disorder manifested as paranoid schizophrenia. [Accordingly] a judicial authorisation of the applicant’s psychiatric examination under sections 24-25 of the Psychiatric Assistance Act 1992 [is requested] ...”

8. On 28 April 2008 the Magadan Town Court returned the application for involuntary psychiatric examination.

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

10. On 13 October 2008 a clinical psychiatric evaluation report was issued by the panel of three psychiatrists in the MRPC. The applicant was diagnosed with paranoid schizophrenia and paranoid syndrome. The panel noted in particular her belief that she had an affectionate relationship with the mayor of Magadan (attempting to contact him directly by phone and in person), her sense of being persecuted by the mayor’s assistants, and the intense arguments during her visits to the town hall.

11. Involuntary hospitalisation of the applicant was recommended in the light of her persistent refusal to commit herself to hospital voluntarily, her failure to acknowledge her medical condition, and the risk of significant damage to her health through aggravation of her psychiatric condition in the absence of psychiatric assistance.

12. The MRPC submitted the application for involuntary treatment to the Magadan Town Court under Article 29 c of the Law of the Russian Federation on Psychiatric Assistance and Guarantees of Citizens’ Rights related to its Administration of 1992 (Psychiatric Assistance Act 1992).

13. On 17 October 2008 the Magadan Town Court terminated proceedings on the MRPC’s application because the applicant had agreed to undergo the necessary treatment voluntarily and had signed the consent form in the courtroom. The MRPC representative thus withdrew the application for involuntary treatment.

14. Between 17 October 2008 and 26 December 2008 the applicant was an in-patient in the MRPC, following a course of anti-schizophrenia treatment.

B. Psychiatric assistance administered to the applicant in 2010

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

16. On 19 May 2010 a psychiatrist examined the applicant and established that she had not been following her medication treatment, with the result that her schizophrenia was at an acute stage. The psychiatrist recommended involuntary hospitalisation and issued the corresponding medical referral.

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

18. On 21 May 2010 a clinical psychiatric evaluation report was issued by the panel of three psychiatrists at the MRPC. The applicant was diagnosed with progressive paranoid schizophrenia. The panel took special note of her general medical and clinical history, with the greatest emphasis focussed on the events of 2008 and the treatment she received. In respect of developments since 2008 the report read:

"On 20.05.2010 at 15:50 the patient Mrs Mifobova was transported to the MRPC under a referral by the psychiatrist Mr Ya. due to changes in her mental state, her expression of delusional ideas of relations, grandeur and persecution. Hospitalised involuntarily ...

[Further follows the detailed personal, family and social profile of the applicant and her medical history in 2008]

... Currently admitted to the MRPC due to progression of her psychiatric symptoms to an acute stage. During examination the following were identified: delusional ideas of relations, persecution, grandeur, exceptional importance. A lack of any objective attitude regarding her condition and statements was observed.

Having regard to the above, the panel concluded that Mrs Mifobova suffers from a chronic mental disorder in the form of paranoid continuous schizophrenia and needs involuntary treatment in the MRPCV under subsections (a) and (c), Section 29 of the Psychiatric Assistance Act 1992."

19. The application for involuntary treatment was submitted by the MRPC to the Magadan Town Court under Section 29 a and c of the Psychiatric Assistance Act of 1992, on the grounds of significant damage to her health due to the aggravation of her psychiatric condition in the absence of psychiatric assistance, posing an immediate danger to herself and others.

20. On 24 May 2010 the Magadan Town Court made phone calls to the applicant's son, Mr L., and Mrs B., a representative of the municipal Department of Healthcare of Magadan, summoning them to attend the hearing and to act as the applicant's representatives.

21. Mrs B's rights and duties under the letter of authority of 21 January 2010 issued by the Department of Healthcare were described as follows:

"... Mrs B is entrusted with representing the interests of the Department of Healthcare of the Magadan Mayor's Office in relation to all institutions, organisations, and commercial enterprises, and also to litigate in all judicial institutions with all the rights of a plaintiff, defendant or a third party ..."

22. On 26 May 2010, after considering the testimony of the applicant and the MRPC's representative, medical evidence, written statements from the witnesses and documentary evidence, the Magadan Town Court ordered the involuntary hospitalisation of the applicant.

23. Present at the hearing were a representative of the hospital, a prosecutor, a representative of the municipal social services, and the applicant. The applicant's legal representative Mr L. (her son, who also suffered from schizophrenia) was notified about the hearing, but did not appear. The trial record indicated that none of the parties objected to the hearing being held in his absence, including the applicant, who stated that she had "told him not to open the door to anyone".

24. The hearing record indicates that Mrs B (designated as a representative of a party having an interest in the proceedings) took part in the examination of the applicant (addressing one question to the representative of the MRPC), stated that there were grounds for involuntary hospitalisation, but did not take part in the closing arguments.

25. In reaching the decision to order involuntary treatment of the applicant, the Town Court noted the applicant's long history of suffering from a chronic psychiatric disorder and her acute state of schizophrenia at the material time; her inability to control her behaviour; her lengthy exposure to harsh weather conditions while seeking encounters with the mayor on the street; the absence of anyone able to provide her with the necessary care; the appearance and behaviour of the applicant in the courtroom; the answers given to the questions addressed to her; her previous history of in-patient psychiatric treatment and the lack of any prospect of improvement outside of a specialised facility.

26. Only the operative part of the judgment was delivered during the hearing and the applicant was never served with the full text of the judgment.

27. On 10 June 2010, during her stay in the MRPC, the applicant lodged an appeal against the judgment. Since she had not been served with a copy of it, the appeal claims had to be confined to general statements concerning the absence of reasons for her internment. The appeal contained a request to be provided with a lawyer for the appeal proceedings, because the applicant

was allegedly not allowed to use the phone in the MRPC or otherwise contact a representative of her choice.

28. The applicant was notified of the scheduled appeal hearing by the medical personnel, but was not transferred from the hospital to the courthouse in order to participate in it.

29. On 6 July 2010 the Magadan Regional Court held a hearing in the presence of the MRPC's representative and a prosecutor. No other party participated in the hearing, the record indicating in respect of the applicant that she "was duly informed about the date and time of the hearing, but did not appear". The applicant's request to be represented by a lawyer was neither specifically mentioned nor addressed in any way. After hearing the testimony of the hospital's representative and the opinion of the prosecutor, and reviewing the written evidence, the Regional Court upheld the lower court's authorisation in full, explicitly stating that "the arguments in the statement of appeal are essentially analogous to those examined [by the lower court]".

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

C. Excerpts from the applicant's treatment record at the MRPC

31. During the applicant's stay in the MRPC the medical personnel of the facility kept a treatment record, logging all the events considered significant. In the relevant parts it read :

"...

28.05 Still certain about her convictions, mental process is blurred. Resists dissuasion. Considers appealing against the Town Court's authorisation.

...

05.07.2010 Informed [her] about her appeal hearing on 06.07.2010. [She] enquired whether she would be participating in the hearing ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Code of Civil Procedure of the Russian Federation

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

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

“1. An application for involuntary placement of a citizen in a psychiatric facility shall be submitted within forty-eight hours of the citizen’s placement in such a psychiatric facility.

2. The judge initiating the proceedings concurrently shall extend the period of the citizen’s placement in a psychiatric facility by the period needed to allow consideration of the application for involuntary hospitalisation of a citizen in a psychiatric facility.”

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

Article 304. Consideration of an application for involuntary placement in a psychiatric facility, or for extension of a period of involuntary placement, of a citizen who is suffering from a psychiatric disorder.

“1. An application for involuntary placement in 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 of the date on which the proceedings were initiated. The court shall hold a hearing in a courtroom or in the psychiatric facility. The citizen shall have the right to participate personally in the hearing concerning his involuntary placement in a psychiatric facility or the extension of a period of his involuntary placement. In cases where according to the information provided by a representative of the psychiatric facility the citizen’s mental state prevents his personal participation in a court hearing ..., the application ... shall be considered by the judge in the psychiatric facility.

2. The case shall be considered in the presence of a prosecutor, a representative of the psychiatric facility which applied to the court ..., and the citizen’s representative ...”

B. Psychiatric Assistance Act 1992

34. Section 5 subsection 2 of the Psychiatric Assistance Act 1992 provides a list of the rights of persons suffering from psychiatric disorders, including the right to be informed of their rights, the nature of their disorder and the 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.

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 that the individual had the opportunity 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 in an in-patient 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 in-patient facility, and if the mental disorder is severe and results in:

- a) immediate danger to himself or others, or
- b) feebleness, i.e. the inability to satisfy basic needs autonomously, or
- c) significant damage to the person’s health due to the deterioration or aggravation of his or her psychiatric condition in the absence of psychiatric assistance.”

37. Section 32 of the Act prescribes 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 undergo a compulsory examination within 48 hours by a panel of psychiatrists from 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 of 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 period 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 shall have the right to participate personally in the hearing concerning his involuntary placement in a psychiatric facility or the extension of a period of his involuntary placement. In cases where according to the information provided by a 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 it or refuse it. ...”

C. Constitutional Court of the Russian Federation

39. 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 the liberty of such persons. In the relevant part it reads:

“2.1 ... [A]s follows from Article 22 of the Constitution of the Russian Federation protecting everyone’s right to liberty and security of their person, an individual suffering from a psychiatric disorder may only be deprived of [his] liberty for the purposes of involuntary treatment by means of a court decision made within a procedure prescribed by law. ... It is implied that judicial protection for this person should be fair, full and effective, including his right to professional 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) ...”

40. 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 merely formally sanctioning applications lodged by psychiatric hospitals.

III. RELEVANT INTERNATIONAL AND COUNCIL OF EUROPE DOCUMENTS

41. On 17 December 1991 the United Nations’ General Assembly adopted the Resolution 46/119 establishing Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. The relevant parts of the text read as follows:

Principle 15

Admission principles

“1. Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission ...”

Principle 16

Involuntary admission

“1. A person (a) may be admitted involuntarily to a mental health facility as a patient; or (b) having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility if, and only if, a qualified mental health practitioner authorized by law for that purpose determines, in accordance with Principle 4, that that person has a mental illness and considers:

(a) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(b) That, in the case of a person whose mental illness is severe and whose judgement is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative ...

2. Involuntary admission or retention shall initially be for a short period as specified by domestic law for observation and preliminary treatment pending review of the admission or retention by the review body. The grounds of the admission shall be communicated to the patient without delay and the fact of the admission and the grounds for it shall also be communicated promptly and in detail to the review body, to the patient’s personal representative, if any, and, unless the patient objects, to the patient’s family ...”

Principle 17

Review body

“1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions, have the assistance of one or more qualified and independent mental health practitioners and take their advice into account.

2. The review body’s initial review, as required by paragraph 2 of Principle 16, of a decision to admit or retain a person as an involuntary patient shall take place as soon as possible after that decision and shall be conducted in accordance with simple and expeditious procedures as specified by domestic law ...

7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility.”

Principle 18

Procedural safeguards

“1. The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay ...

5. The patient and the patient’s personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing ...

8. The decision arising out of the hearing and the reasons for it shall be expressed in writing. Copies shall be given to the patient and his or her personal representative and counsel ...”

Principle 19

Access to information

“1. A patient (which term in this Principle includes a former patient) shall be entitled to have access to the information concerning the patient in his or her health and personal records maintained by a mental health facility ...”

42. 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 in establishments 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 ...”

43. On 12 April 1994 the Parliamentary Assembly of the Council of Europe adopted Recommendation 1235 (1994) 1 on psychiatry and human rights. In the relevant part it reads as follows:

“...

i. Admission procedure and conditions:

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

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

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

b. in the event of compulsory admission, the decision regarding placement in a psychiatric institution must be taken by a judge and the placement period must be specified...

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

44. 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 a 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**

45. The applicant complained that her involuntary placement in a psychiatric hospital constituted a violation of Article 5 § 1 (e) of the Convention, which reads:

“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 ...”

A. Admissibility

46. 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. The parties' submissions

47. Alleging a violation of Article 5 § 1 of the Convention, the applicant raised the following two issues. Firstly, she argued that the competent national authorities had had no reason to hospitalise her in a psychiatric facility, given that no evidence had been presented at any stage proving that she posed a threat to herself or others.

48. Secondly, turning to the judicial proceedings authorising her involuntary hospitalisation, the applicant submitted that they had been inherently defective because they had not been truly adversarial. Not only had she not been provided with a full copy of the judicial authorisation of 26 May 2010, but she had also been prevented from effectively participating in the first-instance and the appeal proceedings.

49. The Government contended in their submissions that the applicant had been lawfully deprived of her liberty, both from the standpoint of Article 5 § 1 (e) of the Convention and that of national law. They stressed that the first-instance court's authorisation of the applicant's involuntary hospitalisation had been based on a professional medical opinion and her medical history.

50. In respect of the applicant's complaints regarding the proceedings before the national courts, they found no evidence of arbitrariness. In their opinion the applicant had been represented during the first-instance hearing by a representative of municipal Department of Healthcare, Mrs B. Further, the Government stated that on 3 June 2010 a full copy of the first-instance court's decision had been sent to the Head of the MRPC to be passed on to the applicant, and receipt of the decision by the hospital is confirmed by the postal receipts and internal records. The applicant had been aware of the date of the appeal proceedings but had not exercised her right to participate voluntarily in the hearing or to appoint a representative. The Government contended that nothing in the case file indicated that the applicant had asked the hospital administration to provide her with a lawyer and that the appeal court had found no grounds to appoint a representative for her.

2. The Court's assessment

(a) General principles

51. 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 in order for the "detention of a person of unsound mind" to be lawful within the meaning of Article 5 § 1 (e) of the Convention. Firstly, with the exception of 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; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; and thirdly, the validity of continued confinement is contingent on the persistence of such a disorder.

52. 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 put 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). Moreover, 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).

53. The Court reiterates that essentially Article 5 § 1 refers to domestic law, but at the same time it 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 emphasises that the notion of “lawfulness” in the context of Article 5 § 1 (e) of the Convention might have a broader meaning than it does in national legislation. For detention to be lawful, it is a prerequisite that there has been 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).

54. 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*, cited above, § 42, with further references).

55. 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 resulting in the involuntary placement of an individual in 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; *Zagidulina v. Russia*, no. 11737/06, § 53, 2 May 2013; and *Anatoliy Rudenko v. Ukraine*, no. 50264/08, § 104, 17 April 2014).

(b) Application of these principles to the present case

56. 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.

57. 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, in the light of the applicant's clear and undisputed refusal to undergo any treatment – and the domestic courts' awareness of this fact – her effective participation was indispensable for a "fair and proper procedure" (see, *mutatis mutandis*, *Winterwerp*, cited above, § 45).

58. Accordingly, the Court will first examine whether the applicant's hospitalisation was secured by the "fair and proper procedure" required by Article 5 § 1 (e) of the Convention.

59. The Court has previously stressed that in cases of involuntary treatment in psychiatric facilities, adequate and effective representation is an essential safeguard against arbitrariness for applicants who belong to a particularly vulnerable group (see, *mutatis mutandis*, *Zagidulina v. Russia*, no. 11737/06, §§ 61-62, 2 May 2013).

60. The Court notes that the Government contended that the applicant had been represented during the first-instance hearing by Mrs B., the representative of the municipal Department of Healthcare. The Court does not find itself able to reach the same conclusion. The letter of authority given to Mrs B. by her employer explicitly stated that she was "entrusted with representation of the interests of the Department of Healthcare of the Mayor's Office of Magadan" (see paragraph 21 above). Furthermore, Mrs B. was merely summoned by the Town Court to represent the applicant at the hearing, with no specific instructions being given to her by the judge (see paragraph 20 above). Lastly, Mrs B.'s participation in the proceedings was rather reserved, consisting of only one question – addressed to the hospital representative – and a statement on the need for involuntary hospitalisation contrary to the applicant's opinion. She abstained from the closing arguments (see paragraph 24 above). Having regard to the above

considerations, the Court does not consider that the representative of the municipal Department of Healthcare acted as the applicant's representative and advanced her interests in the proceedings.

61. The Court further notes the approach chosen by the Magadan Town Court to the issue of the applicant's legal representation by the applicant's son Mr L. As indicated by the hearing record, the national court was aware of the fact that Mr L., who was designated as her legal representative, had been diagnosed with schizophrenia. Furthermore, after Mr L. had failed to appear for the hearing, the national court – faced with an explicit and clear requirement of representation provided in section 2, Article 304 of the Civil Procedure Code – apparently satisfied itself with the applicant's oral waiver of representation qualified by the comment that she had told her son not to open the door to anyone (see paragraph 23 above). Accordingly, during the involuntary hospitalisation proceedings the applicant – who in the opinion of the psychiatrists was delusional and lacking critical awareness of her own state of mind – was representing in part herself.

62. Moreover, the Court observes that the appeal proceedings appear to be tainted by an even greater disregard for the applicant's right to be heard. Firstly, the statement of appeal lodged by the applicant before the Regional Court expressly stated that she would like to benefit from the assistance of legal counsel, but this request was ignored by the appeal court (see paragraph 27 above). Secondly, contrary to the Government's submissions, the applicant had clearly informed the national authorities of her desire to participate in the appeal hearing. The entry of 5 July 2007 in the applicant's treatment record (see paragraph 31 above) shows that as soon as she had learned about the hearing she had brought her interest to the attention of her primary care-provider at that moment, that is to say the psychiatric facility. Indeed – as the Regional Court noted in its decision – the applicant “was duly informed about the date and time of the hearing, but did not appear” (see paragraph 29 above), although it seems unlikely that she could have appeared without the permission and assistance of the MRPC's administration. It was the national court's duty to inquire whether the appellant had expressed a wish to attend the hearing and to review the reasonableness of the psychiatric facility's conduct and decisions in this regard.

63. In the Court's opinion the national authorities in the present case failed to secure the legal assistance that was necessary, despite their obligations under Article 304 of the Civil Procedure Code, Section 7, subsections 1 and 3 of the Psychiatric Assistance Act 1992 and the judgment of the Constitutional Court of 27 February 2009 (no. 4-P). The reference is also made to the guidelines provided by Article 4 of the Recommendation No. R(83)2 of 22 February 1983; Article 25 of the Recommendation Rec(2004)10 of 22 September 2004 adopted by the Committee of Ministers of the Council of Europe; paragraph 7 of

Principle 17, and paragraphs 1, 5, 8 of Principle 18 of the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by Resolution 46/119 of the United Nations' General Assembly on 17 December 1991.

64. The Court considers that in this regard the Russian courts acted contrary to both the standard established by Article 5 § 1 of the Convention and the clear provisions of national law.

65. Lastly, the Court observes that the applicant's attempt to seek a remedy in the national courts was further obstructed by the failure of the domestic authorities to provide her with a full copy of the authorisation for her involuntary treatment. Unaware of the reasoning given by the Town Court, the applicant was forced to confine her statement of appeal to expressing discontent with the outcome of the first-instance hearing and a restatement of her previous arguments. This mode of reasoning was a significant factor in the dismissal of her appeal by the Regional Court (see paragraphs 27 and 29 above). The Government in their submissions contended that a full copy of the first-instance court's decision had been sent to the Head of the MRPC to be passed on to the applicant, and delivery of the decision to the hospital is confirmed by the postal receipts and internal records. While the Court does not doubt that the decision was indeed delivered to the hospital, no evidence in the present case supports the assertion that the applicant was provided with it or even made aware of its availability.

66. In the light of the above findings, the Court concludes that the competent national authorities failed to meet the procedural requirement necessary for the applicant's involuntary hospitalisation since they failed to ensure that the proceedings were devoid of arbitrariness. Accordingly, her involuntary hospitalisation amounted to unlawful detention within the meaning of Article 5 § 1 (e) of the Convention.

67. 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.

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

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

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

70. The Government contested that argument.

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

72. Having regard to the establishment of the above fundamental defects in the judicial proceedings authorising the applicant's involuntary hospitalisation, and the unlawfulness of the detention resulting from 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

73. Lastly, the applicant in her submissions complained under Article 6 about various procedural defects in the proceedings authorising her hospitalisation. 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

74. 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.”

75. The applicant did not submit a claim for just satisfaction or a claim for costs and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

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 in 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* that there is no call to award the applicant any just satisfaction or costs and expenses.

Done in English, and notified in writing on 5 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President