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

FIRST SECTION

**CASE OF SHTUKATUROV v. RUSSIA**

*(Application no. 44009/05)*

JUDGMENT

STRASBOURG

27 March 2008

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*

**In the case of Shtukaturov v. Russia,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2008,

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

# PROCEDURE

1. The case originated in an application (no. 44009/05) 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, Mr Pavel Vladimirovich Shtukaturov ("the applicant"), on 10 December 2005.

2. The applicant, who was granted legal aid, was represented by Mr D. Bartenev, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by Mr P. Laptev, the former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that by depriving him of his legal capacity without his participation and knowledge the domestic courts had breached his rights under Articles 6 and 8 of the Convention. He further alleged that his detention in a psychiatric hospital infringed Articles 3 and 5 of the Convention.

4. On 9 March 2006 the Court decided that an interim measure should be indicated to the Russian Government under Rule 39 of the Rules of Court. The Government was requested to allow the applicant to meet his lawyer in hospital in order to discuss the present case before the Court.

5. On 23 May 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1982 and lives in St Petersburg.

7. Since 2002 the applicant has suffered from a mental disorder. On several occasions he was placed in Hospital no. 6 in St Petersburg for in-patient psychiatric treatment. In 2003 he obtained the status of a disabled person. The applicant lived with his mother; he did not work and received a disability pension.

8. In May 2003 the applicant's grand-mother died. The applicant inherited from her a flat in St Petersburg and a house with a plot of land in the Leningrad region.

9. On 27 July 2004 the applicant was placed in Hospital no. 6 for in-patient treatment.

### A. Incapacitation proceedings

10. On 3 August 2004 the applicant's mother lodged an application with the Vasileostrovskiy District Court of St Petersburg, seeking to deprive the applicant of legal capacity. She claimed that her son was inert and passive, that he rarely left the house, that he spent his days sitting on a couch, and that sometimes he behaved aggressively. She indicated that her son had recently inherited property from his grand-mother; however, he had not taken the necessary steps to register his property rights. This indicated that he was incapable of leading an independent social life and thus needed a guardian. It appears that the applicant was not formally notified about the proceedings that had been brought in his respect.

11. On 10 August 2004 the judge invited the applicant and his mother to the court to discuss the case. However, there is no evidence that the invitation ever reached the applicant. The court also requested the applicant's medical records from Hospital no. 6.

12. On 12 October 2004 the judge of the Vasileostrovskiy District Court of St Petersburg commissioned a psychiatric expert examination of the applicant's mental health. The examination was assigned to the doctors of Hospital no. 6, where the applicant had been undergoing treatment. The judge formulated two questions to the doctors: first, whether the applicant suffered from any mental illness, and, second, whether he was able to understand his actions and control them.

13. On 12 November 2004 an expert team from Hospital no. 6 examined the applicant and his medical records. The report prepared by the expert team may be summarised as follows. After graduating from the school the applicant worked for a short time as an interpreter. However, some time

later he became aggressive, unsympathetic and secluded, and prone to empty philosophizing. He abandoned his job, started attending religious meetings and visiting Buddhist shrines, lost most of his friends, neglected his personal hygiene and became very negative towards his relatives. He suffered from anorexia and was hospitalised in this respect.

14. In August 2002 he was placed in a psychiatric hospital for the first time with a diagnosis of "simple schizophrenia". In April 2003 he was discharged from hospital, however, in April 2003 he was admitted again because of his aggressive behaviour towards his mother. In the following months he was placed in hospital two more times. In April 2004 he was discharged. However, he "continued to live in an anti-social way". He did not work, loitered in the flat, prohibited his mother from preparing him food, leaving the flat or moving around, and threatened her. She was so afraid of the applicant that one day she spent a night at her friends' home and had to complain to the police about her son.

15. The final part of the report concerned the applicant's mental condition at the moment of his examination. The doctors noted that the applicant's social maladjustment and autism had worsened. They noted, *inter alia*, that "the applicant did not understand why he had been subjected to a [forensic] psychiatric examination". The doctors further stated that the applicant's "intellectual and mnemonic abilities were without any impairment". However, his behaviour was characterised by several typical features of schizophrenia, such as "formality of contacts, structural thought disorder [...], lack of judgment, emotional emasculation, coldness, reduction of energetic potential". The expert team concluded that the applicant was suffering from "simple schizophrenia with a manifest emotional and volitional defect" and that he could not understand his actions and control them.

16. On 28 December 2004 Judge A. of the Vasileostrovskiy District Court held a hearing on the merits of the case. The applicant was neither notified nor present at that hearing. The applicant's mother was notified but did not appear. She informed the court that she maintained her initial request and asked the court to examine the case in her absence. The case was examined in the presence of the district prosecutor. A representative of Hospital no. 6 was also present. The representative of the hospital, described in the judgment as "an interested party", asked the court to declare the applicant incapable. It appears that the prosecutor did not make any remarks on the substance of the case. The hearing lasted ten minutes. As a result, the judge declared the applicant legally incapable, referring to the experts' findings.

17. Since no appeal was lodged against the judgment of 28 December 2004 within the ten-day time-limit provided by the law, on 11 January 2005 the judgment became final.

18. On 14 January 2005 the applicant's mother received a copy of the full text of the judgment of 28 December 2004. Subsequently, on an unspecified date she was appointed the applicant's guardian, and authorised by law to act on his behalf in all matters.

19. According to the applicant, he was not sent a copy of the judgment and became aware of its existence by chance in November 2005, when he found a copy of the judgment among his mother's papers at home.

### B. The first contact with the lawyer

20. On 2 November 2005 the applicant contacted Mr Bartenev, a lawyer with the Mental Disability Advocacy Centre ("the lawyer"), and told him his story. The applicant and the lawyer met for two hours and discussed the case. According to the lawyer, who holds a degree in medicine from the Petrozavodsk State University, during the meeting the applicant was in an adequate state of mind and was fully able to understand complex legal issues and give relevant instructions. On the same day the lawyer helped the applicant to draft a request to restore the time-limits for lodging an appeal against the judgment of 28 December 2004.

### C. Confinement in the psychiatric hospital in 2005

21. On 4 November 2005 the applicant was placed in Hospital no. 6. The admission to the hospital was requested by the applicant's mother, as his guardian; in terms of domestic law it was therefore voluntary and did not require approval by a court (see paragraph 56 below). The applicant claimed, however, that he had been confined in hospital against his will.

22. On 9, 10, 12 and 15 November 2005 the lawyer attempted to meet his client in the hospital. The applicant, in his turn, requested the hospital administration to allow him to see his lawyer in private. However, Dr Sh., the director of the hospital, refused permission. He referred to the applicant's mental condition and the fact that the applicant was legally incapable and therefore could act only through his guardian.

23. On 18 November 2005 the lawyer had a telephone conversation with the applicant. Following that conversation the applicant signed an authority form, authorising the lawyer to lodge an application with the European Court of Human Rights in connection with the events described above. That authority form was then transmitted to the lawyer through a relative of another patient in Hospital no. 6.

24. The lawyer reiterated his request for a meeting. He specified that he was representing the applicant before the European Court and enclosed a copy of the power of attorney. However, the hospital administration refused permission on the ground that the applicant did not have legal capacity. The

applicant's guardian also refused to take any action on the applicant's behalf.

25. From December 2005 the applicant was prohibited any contact with the outside world; he was not allowed to keep any writing equipment or use a telephone. The applicant's lawyer produced a written statement by Mr S., another former patient in Hospital no. 6. Mr S. met the applicant in January 2006 while Mr S. was in the hospital in connection with attempted suicide. Mr S. and the applicant shared the same room. In the words of Mr S., the applicant was someone friendly and quiet. However, he was treated with strong medicines, such as Haloperidol and Chlorpromazine. The hospital staff prevented him from meeting his lawyer or his friends. He was not allowed to write letters; his diary was confiscated. According to the applicant, at a certain moment he attempted to escape from the hospital, but the staff members captured him and attached him to his bunk-bed.

### D. Applications for release

26. On 1 December 2005 the lawyer complained to the guardianship office of Municipal District no. 11 of St Petersburg about the actions of the applicant's official guardian – his mother. He claimed that the applicant had been placed in the hospital against his will and without medical necessity. The lawyer also complained that the hospital administration was preventing him from meeting the applicant.

27. On 2 December 2005 the applicant himself wrote a letter in similar terms to the district prosecutor. He indicated, in particular, that he was prevented from meeting his lawyer, that his hospitalisation had not been voluntary, and that his mother had placed him in the hospital in order to appropriate his flat.

28. On 7 December 2005 the applicant wrote a letter to the Chief Doctor of Hospital no. 6, asking for his immediate discharge. He claimed that he needed some specialist dental assistance which could not be provided within the psychiatric hospital. In the following weeks the applicant and his lawyer wrote several letters to the guardianship authority, district prosecutor, public health authority etc., calling for the applicant's immediate discharge from the psychiatric hospital.

29. On 14 December 2005 the district prosecutor advised the lawyer that the applicant had been placed in the hospital at the request of his official guardian, and that all questions related to his eventual release should be decided by her.

30. On 16 January 2006 the guardianship office informed the lawyer that the actions of the applicant's guardian had been lawful. According to the guardianship office, on 12 January 2006 the applicant was examined by a dentist. As follows from this letter, the representatives of the guardianship

office did not meet the applicant and relied solely on information obtained from the hospital and from the guardian – the applicant's mother.

### E. Request under Rule 39 of the Rules of Court

31. In a letter of 10 December 2005, the lawyer requested the Court to indicate to the Russian Government interim measures under Rule 39 of the Rules of Court. In particular, he requested the Court to oblige the Russian authorities to grant him access to the applicant with a view to assisting him in the proceedings and preparing his application to the European Court.

32. On 15 December 2005 the President of the Chamber decided not to take any decision under Rule 39 until more information was received. The parties were invited to produce additional information and comments regarding the subject matter of the case.

33. Based on the information received from the parties, on 6 March 2006 the President of the Chamber decided to indicate to the Government of Russia, under Rule 39 of the Rules of Court, interim measures desirable in the interests of the proper conduct of the proceedings before the Court. These measures were as follows: the respondent Government was directed to organise, by appropriate means, a meeting between the applicant and his lawyer. That meeting could take place in the presence of the personnel of the hospital where the applicant was detained, but outside their hearing. The lawyer was to be provided with the necessary time and facilities to consult with the applicant and help him in preparing the application before the European Court. The Russian Government was also requested not to prevent the lawyer from having such meeting with his client at regular intervals in future. The lawyer, in his turn, was obliged to be cooperative and comply with reasonable requirements of the hospital regulations.

34. However, the applicant's lawyer was not given access to the applicant. The Chief Doctor of Hospital no. 6 informed the lawyer that he did not regard the Court's decision on interim measures as binding. Furthermore, the applicant's mother objected to the meeting between the applicant and the lawyer.

35. The applicant's lawyer challenged that refusal before the St Petersburg Smolninskiy District Court, referring to the interim measure indicated by the European Court of Human Rights. On 28 March 2006 the court upheld his claim, declaring the ban on meetings between the applicant and his lawyer was unlawful.

36. On 30 March 2006 the former Representative of the Russian Federation at the European Court of Human Rights, Mr P. Laptev, wrote a letter to the President of the Vasileostrovskiy District Court of St Petersburg, informing him of the interim measures applied by the Court in the present case.

37. On 6 April 2006 the Vasileostrovskiy District Court examined, on the applicant's motion, the Court's request under Rule 39 of the Rules and held that the lawyer should be allowed to meet the applicant.

38. The hospital and the applicant's mother appealed against that decision. On 26 April 2006 the St Petersburg City Court examined their appeal and quashed the lower court's judgment of 6 April 2006. The City Court held, in particular, that the District Court had no competence to examine the request lodged by the Representative of the Russian Federation. The City Court further noted that the applicant's official guardian – his mother – had not applied to the court with any requests of this kind. The City Court finally held as follows:

> "... The applicant's complaint [to the European Court] was lodged against the Russian Federation... The request by the European Court was addressed to the authorities of the Russian Federation. The Russian Federation as a special subject of international relations enjoys immunity from foreign jurisdiction, it is not bound by coercive measures applied by foreign courts and cannot be subjected to such measures ... without its consent. The [domestic] courts have no right to undertake on behalf of the Russian Federation an obligation to comply with the preliminary measures... This can be decided by the executive ... by way of an administrative decision."

39. On 16 May 2006 the St Petersburg City Court examined the appeal against the judgment of 28 March 2006 lodged by the Chief Doctor of Hospital no. 6. The City Court held that "under Rule 34 of the Rules of Court the authority of an advocate [representing the applicant before the European Court] should be formalised in accordance with the legislation of the home country". The City Court further held that under Russian law the lawyer could not act on behalf of the client in the absence of an agreement between them. However, no such agreement had been concluded between Mr Bartenev (the lawyer) and the applicant's mother – the person who had the right to act on behalf of the applicant in all legal transactions. As a result, the City Court concluded that the lawyer had no authority to act on behalf of the applicant, and his complaint should be dismissed. The judgment of 28 March 2006 by the Smolninskiy District Court was thus reversed.

40. On the same day the applicant was discharged from hospital and met with his lawyer.

### F. Appeals against the judgment of 28 December 2004

41. On 20 November 2005 the applicant's lawyer brought an appeal against the decision of 28 December 2004. He also requested the court to extend the time-limit for lodging the appeal, claiming that the applicant had not been aware of the proceedings in which he had been declared incapable. The appeal was lodged through the registry of the Vasileostrovskiy District Court.

42. On 22 December 2005 Judge A. of the Vasileostrovskiy District Court returned the appeal to the applicant's lawyer without examination. She indicated that the applicant had no legal capacity to act and, therefore, could lodge an appeal or any other request only through his guardian.

43. On 23 May 2006, after the applicant's discharge from the psychiatric hospital, the applicant's lawyer appealed against the decision of 22 December 2005. By a ruling of 5 July 2006 the St Petersburg City Court upheld the decision of 22 December 2005. The City Court held that the Code of Civil Procedure did not allow for the lodging of applications for restoration of procedural terms by legally incapable persons.

44. In the following months the applicant's lawyer introduced two appeals for supervisory review, but to no avail.

45. According to the applicant's lawyer, in 2007 the applicant was admitted to Hospital no. 6 again, at the request of his mother.

## II. RELEVANT DOMESTIC LAW

### A. Legal capacity

46. Under Article 21 of the Civil Code of the Russian Federation of 1994, any individual aged 18 or more has, as a rule, full legal capacity (*дееспособность*), which is defined as "the ability to acquire and enjoy civil rights, create and fulfil civil obligations by his own acts". Under Article 22 of the Civil Code legal capacity can be limited, but only on the grounds defined by law and within a procedure prescribed by law.

47. Under Article 29 of the Civil Code, a person who cannot understand or control his or her actions as a result of a mental disease may be declared legally incapable by the court and placed in the care of a guardian (*опека*). All legal transactions on behalf of the incapacitated person are concluded by his guardian. The incapacitated person can be declared fully capable if the grounds on which he or she was declared incapable cease to exist.

48. Article 30 of the Civil Code provides for partial limitation of legal capacity. If a person's addiction to alcohol or drugs is creating serious financial difficulties for his family, he can be declared partially incapable. That means that he is unable to conclude large-scale transactions. He can, however, dispose of his salary or pension and make small transactions, under the control of his guardian.

49. Article 135 (1) of the Code of Civil Proceedings of 2002 establishes that a civil claim lodged by a legally incapable person should be returned to him without examination.

50. Article 281 of the Code of Civil Proceedings of 2002 establishes the procedure for declaring a person incapable. A request for incapacitation of a mentally ill person can be brought before a first-instance court by a family

member of the person concerned. On receipt of the request, the judge must commission a forensic psychiatric examination of the person concerned.

51. Article 284 of the Code of Civil Proceedings provides that the incapacitation request should be examined in the presence of the person concerned, the plaintiff, the prosecutor and a representative of the guardianship office (*орган опеки и попечительства*). The person whose legal capacity is being examined by the court is to be summoned to the court hearing, unless his state of health prohibits him from attending it.

52. Article 289 of the Code of Civil Proceedings provides that full legal capacity can be restored by the court at the request of the guardian, a close relative, the guardianship office or the psychiatric hospital, but not of the person declared incapable himself.

### B. Confinement to a psychiatric hospital

53. The Psychiatric Assistance Act of 2 July 1992, as amended ("the Act"), provides that any recourse to psychiatric aid should be voluntary. However, a person declared fully incapable may be subjected to psychiatric treatment at the request or with the consent of his official guardian (section 4 of the Act).

54. Section 5 (3) of the Act provides that the rights and freedoms of persons with mental illnesses cannot be limited solely on the ground of their diagnosis, or the fact that they have been subjected to treatment in a psychiatric hospital.

55. Under section 5 of the Act, a patient in a psychiatric hospital can have a legal representative. However, pursuant to point 2 of section 7, the interests of a person declared fully incapable are represented by his official guardian.

56. Section 28 (3) and (4) of the Act ("Grounds for hospitalisation") provides that a person declared incapable can be subjected to hospitalisation in a psychiatric hospital at the request of his guardian. This hospitalisation is regarded as voluntary and does not require approval by the court, as opposed to non-voluntary hospitalisation (sections 39 and 33 of the Law).

57. Section 37 (2) of the Law establishes the list of rights of a patient in a psychiatric hospital. In particular, the patient has the right to communicate with his lawyer without censorship. However, under section 37 (3) the doctor may limit the applicant's rights to correspond with other persons, have telephone conversations and meet visitors.

58. Section 47 of the Act provides that the doctors' actions can be appealed against before the court.

## III. RELEVANT INTERNATIONAL DOCUMENTS

59. On 23 February 1999 the Committee of Ministers of the Council of Europe adopted "Principles concerning the legal protection of incapable adults", Recommendation No. R (99) 4. The relevant provisions of these Principles read as follows:

**Principle 2 – Flexibility in legal response**

"1. The measures of protection and other legal arrangements available for the protection of the personal and economic interests of incapable adults should be sufficient, in scope or flexibility, to enable suitable legal response to be made to different degrees of incapacity and various situations. ...

4. The range of measures of protection should include, in appropriate cases, those which do not restrict the legal capacity of the person concerned."

**Principle 3 – Maximum reservation of capacity**

"1. The legislative framework should, so far as possible, recognise that different degrees of incapacity may exist and that incapacity may vary from time to time. Accordingly, a measure of protection should not result automatically in a complete removal of legal capacity. However, a restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned.

2. In particular, a measure of protection should not automatically deprive the person concerned of the right to vote, or to make a will, or to consent or refuse consent to any intervention in the health field, or to make other decisions of a personal character at any time when his or her capacity permits him or her to do so. ..."

**Principle 6 – Proportionality**

"1. Where a measure of protection is necessary it should be proportional to the degree of capacity of the person concerned and tailored to the individual circumstances and needs of the person concerned.

2. The measure of protection should interfere with the legal capacity, rights and freedoms of the person concerned to the minimum extent which is consistent with achieving the purpose of the intervention. ..."

**Principle 13 – Right to be heard in person**

"The person concerned should have the right to be heard in person in any proceedings which could affect his or her legal capacity."

**Principle 14 – Duration review and appeal**

"1. Measures of protection should, whenever possible and appropriate, be of limited duration. Consideration should be given to the institution of periodical reviews. ...

3. There should be adequate rights of appeal."

# THE LAW

60. The Court notes that the applicant submitted several complaints under different Convention provisions. Those complaints relate to his incapacitation, placement in a psychiatric hospital, inability to obtain a review of his status, inability to meet with his lawyer, interference with his correspondence, involuntary medical treatment, etc. The Court will examine these complaints in chronological sequence. Thus, the Court will start with the complaints related to the incapacitation proceedings – the episode which gave rise to all the subsequent events, and then examine the applicant's hospitalisation and the complaints stemming from it.

## I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION AS REGARDS THE INCAPACITATION PROCEEDINGS

61. The applicant complained that he had been deprived of his legal capacity as a result of proceedings which had not been "fair" within the meaning of Article 6 of the Convention. Article 6 § 1, in so far as relevant, provides:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

### A. Submissions by the parties

62. The Government contended that the proceedings before the Vasileostrovskiy District Court had been fair. Under Russian law, a request to declare a person legally incapable may be lodged by a close relative of the person suffering from a mental disorder. In the present case it was Ms Shtukaturova, the applicant's mother, who filed such a request. The court ordered a psychiatric examination of the applicant. Having examined the applicant, the doctors concluded that he was unable to understand and control his actions. Given the applicant's medical condition, the court decided not to summon him to the hearing. However, in compliance with Article 284 of the Code of Civil Procedure, a prosecutor and a representative of the psychiatric hospital were present at the hearing. Therefore, the applicant's procedural rights were not breached.

63. The applicant maintained that the proceedings before the first-instance court had been unfair. The judge had not explained why he changed his mind and considered that the applicant's personal presence had

not been necessary (see paragraphs 11 et seq. above). The court had decided on the applicant's incapacity without hearing or seeing him, or obtaining any submissions from the applicant. The court based its decision on the written medical report, which the applicant had not seen and had had no opportunity to challenge. The prosecutor who participated in the hearing on 28 December 2004 also supported the application, without having seen the applicant prior to the hearing. The Vasileostrovskiy District Court also failed to question the applicant's mother, who had lodged the application for incapacity. In sum, the court failed to take even minimal measures in order to ensure an objective assessment of the applicant's mental condition. Further, the applicant maintained that he was unable to challenge the judgment of 28 December 2004 because under Russian law he lacked standing to lodge an appeal.

### B. Admissibility

64. The parties did not dispute the applicability of Article 6, under its "civil" head, to the proceedings at issue, and the Court does not see any reason to hold otherwise (see *Winterwerp v. the Netherlands*, judgment of 24 October 1979, Series A no. 33, § 73).

65. The Court notes that the applicant's complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### C. Merits

#### *1. General principles*

66. In most of the previous cases before the Court involving "persons of unsound mind", the domestic proceedings concerned their detention and were thus examined under Article 5 of the Convention. However, the Court has consistently held that the "procedural" guarantees under Article 5 §§ 1 and 4 are broadly similar to those under Article 6 § 1 of the Convention (see, for instance, *Winterwerp*, cited above, § 60; *Sanchez-Reisse v. Switzerland*, judgment of 21 October 1986, Series A no. 107; *Kampanis v. Greece*, 13 July 1995, Series A no. 318-B; and *Ilijkov v. Bulgaria*, no. 33977/96, § 103, 26 July 2001). Therefore, in deciding whether the incapacitation proceedings in the present case were "fair", the Court will have regard, *mutatis mutandis*, to its case-law under Article 5 § 1 (e) and Article 5 § 4 of the Convention.

67. The Court recalls that in deciding whether an individual should be detained as a "person of unsound mind", the national authorities are to be

recognised as having a certain margin of appreciation. It is in the first place for the national authorities to evaluate the evidence adduced before them in a particular case; the Court's task is to review under the Convention the decisions of those authorities (see *Luberti v. Italy*, judgment of 23 February 1984, Series A no. 75, § 27).

68. In the context of Article 6 § 1 of the Convention, the Court assumes that in cases involving a mentally ill person the domestic courts should also enjoy a certain margin of appreciation. Thus, for example, they can make the relevant procedural arrangements in order to secure the good administration of justice, protection of the health of the person concerned, etc. However, such measures should not affect the very essence of the applicant's right to a fair trial as guaranteed by Article 6 of the Convention. In assessing whether or not a particular measure, such as exclusion of the applicant from a hearing, was necessary, the Court will take into account all relevant factors (such as the nature and complexity of the issue before the domestic courts, what was at stake for the applicant, whether his appearance in person represented any threat to others or to himself, etc.).

*2. Application to the present case*

69. It is not disputed that the applicant was unaware of the request for incapacitation made by his mother. Nothing suggests that the court notified the applicant *proprio motu* about the proceedings (see paragraph 10 above). Further, as follows from the doctor's report of 12 November 2004 (see paragraph 13 above), the applicant did not realise that he was being subjected to a forensic psychiatric examination. The Court concludes that the applicant was unable to participate in the proceedings before the Vasileostrovskiy District Court in any form. It remains to be ascertained whether, in the circumstances, this was compatible with Article 6 of the Convention.

70. The Government argued that the decisions taken by the national judge had been lawful in domestic terms. However, the crux of the complaint is not the domestic legality but the "fairness" of the proceedings from the standpoint of the Convention and the Court's case-law.

71. In a number of previous cases (concerning compulsory confinement in a hospital) the Court confirmed that a person of unsound mind must be allowed to be heard either in person or, where necessary, through some form of representation – see, for example, *Winterwerp*, cited above, § 79. In *Winterwerp* the applicant's freedom was at stake. However, in the present case the outcome of the proceedings was at least equally important for the applicant: his personal autonomy in almost all areas of life was at issue, including the eventual limitation of his liberty.

72. Further, the Court notes that the applicant played a double role in the proceedings: he was an interested party, and, at the same time, the main object of the court's examination. His participation was therefore necessary

not only to enable him to present his own case, but also to allow the judge to form his personal opinion about the applicant's mental capacity (see, *mutatis mutandis*, *Kovalev v. Russia*, no. 78145/01, §§ 35-37, 10 May 2007).

73. The applicant was indeed an individual with a history of psychiatric troubles. From the materials of the case, however, it appears that despite his mental illness he had been a relatively autonomous person. In such circumstances it was indispensable for the judge to have at least a brief visual contact with the applicant, and preferably to question him. The Court concludes that the decision of the judge to decide the case on the basis of documentary evidence, without seeing or hearing the applicant, was unreasonable and in breach of the principle of adversarial proceedings enshrined in Article 6 § 1 (see *Mantovanelli v. France*, judgment of 18 March 1997, *Reports of Judgments and Decisions* 1997-II, § 35).

74. The Court has examined the Government's argument that a representative of the hospital and the district prosecutor attended the hearing on the merits. However, in the Court's opinion, their presence did not make the proceedings truly adversarial. The representative of the hospital acted on behalf of an institution which had prepared the report and was referred to in the judgment as an "interested party". The Government did not explain the role of the prosecutor in the proceedings. In any event, from the record of the hearing it appears that both the prosecutor and the hospital representative remained passive during the hearing, which, moreover, lasted only ten minutes.

75. Finally, the Court recalls that it must always assess the proceedings as a whole, including the decision of the appellate court (see *C.G. v. the United Kingdom*, no. 43373/98, § 35, 19 December 2001). The Court notes that in the present case the applicant's appeal was disallowed without examination, on the ground that the applicant had no legal capacity to act before the courts (see paragraph 41 above). Regardless of whether or not the rejection of his appeal without examination was acceptable under the Convention, the Court merely notes that the proceedings ended with the first-instance court judgment of 28 December 2004.

76. The Court concludes that in the circumstances of the present case the proceedings before the Vasileostrovskiy District Court were not fair. There has accordingly been a violation of Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AS REGARDS THE INCAPACITATION OF THE APPLICANT

77. The applicant complained that by depriving him of his legal capacity the authorities had breached Article 8 of the Convention. Article 8 provides:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

## A. Submissions by the parties

### *1. The Government*

78. The Government admitted that the judgment depriving the applicant of his legal capacity entailed a number of limitations in the area of private life. However, they claimed that the applicant's rights under Article 8 had not been breached. Their submissions can be summarised as follows. First, the measure adopted by the court was aimed at the protection of the interests and health of other persons. Further, the decision was taken in conformity with the substantive law, namely on the basis of Article 29 of the Civil Code of the Russian Federation.

### *2. The applicant*

79. The applicant insisted on his initial complaint that Article 8 had been breached in his case. He maintained that Article 29 of the Civil Code, which had served as a basis for depriving him of legal capacity, was not formulated with sufficient precision. The law permitted the deprivation of an individual's legal capacity if that person "could not understand the meaning of his actions or control them". However, the law did not explain what kind of "actions" the applicant should understand or control, or how complex these actions should be. In other words, there was no legal test to establish the severity of the reduction in cognitive capacity which called for full deprivation of legal capacity. The law was clearly deficient in this respect; it failed to protect mentally ill people from arbitrary interference with their right to private life. Therefore, the interference with his private life had not been lawful.

80. The applicant further argued that the interference did not pursue a legitimate aim. The authorities did not seek to protect national security, public safety or the economic well-being of the country, or to prevent disorder or crime. As to the protection of health and morals of others, there was no indication that the applicant represented a threat to the rights of third parties. Finally, with regard to the applicant himself, the government did not suggest that the incapacitation had had a therapeutic effect on the applicant. Nor was there any evidence that the authorities had sought to deprive the applicant of his capacity because he would otherwise have carried out actions which would result in a deterioration of his health. With regard to his own pecuniary interests, the protection of a person's own rights is not a

ground listed in Article 8 § 2, and it cannot therefore serve as a justification for interfering with a person's rights as protected under Article 8 § 1 of the Convention. In sum, the interference with his private life did not pursue any of the legitimate aims listed in Article 8 § 2 of the Convention.

81. Finally, the applicant submitted that the interference had not been "necessary in a democratic society", as there had been no need to restrict his legal capacity. The Vasileostrovskiy District Court did not adduce any reason for its decision: there was no indication that the applicant had had problems with managing his property in the past, was unable to work, abused his employment, etc. The medical report was not corroborated by any evidence, and the court did not assess the applicant's past behaviour in any of the areas where it restricted his legal capacity.

82. Even if the Vasileostrovskiy District Court was satisfied that the applicant could not act in a certain area of life, it could have restricted his capacity in that specific area, without going further. However, Russian law, unlike the legislation in many other European countries, did not allow a partial limitation of one's legal capacity, but provided only for full incapacitation. The restricted capacity option could be used solely for those who abused drugs or alcohol. In such circumstances the court should have refused to apply a measure as drastic as full incapacitation. Instead, the court preferred to strip bluntly the applicant of all of his decision-making powers for an unlimited period of time.

### B. Admissibility

83. The parties agreed that the judgment of 28 December 2004 amounted to an interference in the applicant's private life. The Court recalls that Article 8 "secures to the individual a sphere within which he or she can freely pursue the development and fulfilment of his personality" (see *Brüggeman and Scheuten v. Germany*, no. 6959/75, Commission's report of 12 July 1977, Decisions and Reports 10, p. 115, § 55). The judgment of 28 December 2004 deprived the applicant of his capacity to act independently in almost all areas of life: he was no longer able to sell or buy any property on his own, to work, to travel, to choose his place of residence, to join associations, to marry, etc. Even his liberty could henceforth have been limited without his consent and without any judicial supervision. In sum, the Court concludes that the deprivation of legal capacity amounted to an interference with the private life of the applicant (see *Matter v. Slovakia*, no. 31534/96, § 68, 5 July 1999).

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

## C. Merits

85. The Court reiterates that any interference with an individual's right to respect for his private life will constitute a breach of Article 8 unless it was "in accordance with the law", pursued a legitimate aim or aims under paragraph 2, and was "necessary in a democratic society" in the sense that it was proportionate to the aims sought.

86. The Court took note of the applicant's contention that the measure applied to him had not been lawful and had not pursued any legitimate aim. However, in the Court's opinion it is not necessary to examine these aspects of the case, since the decision to incapacitate the applicant was in any event disproportionate to the legitimate aim invoked by the Government for the reasons set out below.

### *1. General principles*

87. The applicant claimed that full incapacitation had been an inadequate response to the problems he experienced. Indeed, under Article 8 the authorities must strike a fair balance between the interests of a person of unsound mind and the other legitimate interests concerned. However, as a rule, in such a complex matter as determining somebody's mental capacity, the authorities should enjoy a wide margin of appreciation. This is mostly explained by the fact that the national authorities have the benefit of direct contact with the persons concerned and are therefore particularly well placed to determine such issues. The task of the Court is rather to review under the Convention the decisions taken by the national authorities in the exercise of their powers in this respect (see, *mutatis mutandis, Bronda v. Italy*, judgment of 9 June 1998, *Reports* 1998-IV, p. 1491, § 59).

88. At the same time, the margin of appreciation to be accorded to the competent national authorities will vary in accordance with the nature of the issues and the importance of the interests at stake (see *Elsholz v. Germany* [GC], no. 25735/94, § 49, ECHR 2000-VIII). A stricter scrutiny is called for in respect of very serious limitations in the sphere of private life.

89. Further, the Court reiterates that, whilst Article 8 of the Convention contains no explicit procedural requirements, "the decision-making process involved in measures of interference must be fair and such as to ensure due respect of the interests safeguarded by Article 8" (see *Görgülü v. Germany*, no. 74969/01, § 52, 26 February 2004). The extent of the State's margin of appreciation thus depends on the quality of the decision-making process. If the procedure was seriously deficient in some respect, the conclusions of the domestic authorities are more open to criticism (see, *mutatis mutandis*, *Sahin v. Germany*, no. 30943/96, §§ 46 et seq., 11 October 2001).

*2. Application to the present case*

90. First, the Court notes that the interference with the applicant's private life was very serious. As a result of his incapacitation the applicant became fully dependant on his official guardian in almost all areas of life. Furthermore, "full incapacitation" was applied for an indefinite period and could not, as the applicant's case shows, be challenged otherwise than through the guardian, who opposed any attempts to discontinue the measure (see also "Relevant Domestic Law" above, paragraph 52).

91. Second, the Court has already found that the proceedings before the Vasileostrovskiy District Court were procedurally flawed. Thus, the applicant did not take part in the court proceedings and was not even examined by the judge in person. Further, the applicant was unable to challenge the judgment of 28 December 2004, since the City Court refused to examine his appeal. In sum, his participation in the decision-making process was reduced to zero. The Court is particularly struck by the fact that the only hearing on the merits in the applicant's case lasted ten minutes. In such circumstances it cannot be said that the judge had "had the benefit of direct contact with the persons concerned", which normally would call for judicial restraint on the part of this Court.

92. Third, the Court must examine the reasoning of the judgment of 28 December 2004. In doing so, the Court will have in mind the seriousness of the interference complained of, and the fact that the court proceedings in the applicant's case were perfunctory at best (see above).

93. The Court notes that the District Court relied solely on the findings of the medical report of 12 November 2004. That report referred to the applicant's aggressive behaviour, negative attitudes and "anti-social" lifestyle; it concluded that the applicant suffered from schizophrenia and was thus unable to understand his actions. At the same time, the report did not explain what kind of actions the applicant was unable of understanding and controlling. The incidence of the applicant's illness is unclear, as are the possible consequences of the applicant's illness for his social life, health, pecuniary interests, etc. The report of 12 November 2004 was not sufficiently clear on these points.

94. The Court does not cast doubt on the competence of the doctors who examined the applicant and accepts that the applicant was seriously ill. However, in the Court's opinion the existence of a mental disorder, even a serious one, cannot be the sole reason to justify full incapacitation. By analogy with the cases concerning deprivation of liberty, in order to justify full incapacitation the mental disorder must be "of a kind or degree" warranting such a measure – see, *mutatis mutandis*, *Winterwerp*, cited above, § 40. However, the questions to the doctors, as formulated by the judge, did not concern "the kind and degree" of the applicant's mental illness. As a result, the report of 12 November 2004 did not analyse the degree of the applicant's incapacity in sufficient detail.

95. It appears that the existing legislative framework did not leave the judge another choice. The Russian Civil Code distinguishes between full capacity and full incapacity, but it does not provide for any "borderline" situation other than for drug or alcohol addicts. The Court refers in this respect to the principles formulated by Recommendation No. R (99) 4 of the Committee of Ministers of the Council of Europe, cited above in paragraph 59. Although these principles have no force of law for this Court, they may define a common European standard in this area. Contrary to these principles, Russian legislation did not provide for a "tailor-made response". As a result, in the circumstances the applicant's rights under Article 8 were limited more than strictly necessary.

96. In sum, having examined the decision-making process and the reasoning behind the domestic decisions, the Court concludes that the interference with the applicant's private life was disproportionate to the legitimate aim pursued. There was, therefore, a breach of Article 8 of the Convention on account of the applicant's full incapacitation.

## III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

97. Under Article 5 § 1 of the Convention the applicant complained that his placement in the psychiatric hospital had been unlawful. Article 5, in so far as relevant, provides:

> "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. Submissions by the parties

#### *1. The Government*

98. The Government claimed that the applicant's placement in the hospital had been lawful. Under sections 28 and 29 of the Psychiatric Assistance Act, a person can be placed in a psychiatric hospital pursuant to a court order or at the request of the doctor, provided that the person suffers from a mental disorder. The law distinguishes between non-voluntary and voluntary confinement in hospital. The latter does not require a court order and may be authorised by the official guardian, if the person is legally incapable. The applicant was placed in the hospital at the request of his official guardian in relation to a worsening of his mental condition. In such

circumstances, there was no need for a court order authorising the confinement.

99. The Government further indicated that section 47 of the Psychiatric Assistance Act provided for administrative and judicial remedies against the acts or negligence of medical personnel. However, under paragraph 2 of Article 31 of the Civil Code of the Russian Federation, if a person is legally incapable, it is his official guardian who should act in his stead before the administrative bodies or the courts. The applicant's official guardian was his mother, who did not lodge any complaint. The prosecutor's office, after an inquiry, concluded that the applicant's rights had not been breached. Therefore, the domestic law provided effective remedies to protect the applicant's rights.

100. As to compensation for damages caused by the confinement in a psychiatric hospital, it is recoverable only if there was a fault on the part of the domestic authorities. The Government asserted that the medical personnel had acted lawfully.

*2. The applicant*

101. The applicant maintained his claims. First, he alleged that his placement in hospital had amounted to a deprivation of his liberty. Thus, he was placed in a locked facility. After he attempted to flee the hospital in January 2006, he was tied to his bed and given an increased dose of sedative medication. He was not allowed to communicate with the outside world until his discharge. Finally, the applicant subjectively perceived his confinement in the hospital as a deprivation of liberty. Contrary to what the Government suggested, he had never regarded his detention as consensual and had unequivocally objected to it throughout the entire duration of his stay in the hospital.

102. Further, the applicant claimed that his detention in the hospital was not "in accordance with the procedure prescribed by law". Thus, under Russian law, his hospitalization was regarded as voluntary confinement, regardless of his opinion, and, consequently, none of the procedural safeguards usually required in cases of non-voluntary hospitalisation applied to him. There should, however, be some procedural safeguards in place, especially where the person concerned clearly expressed his disagreement with his guardian's decision. In the present case the authorities did not assess the applicant's capacity to take an independent decision of a specific kind at the moment of his hospitalisation. They relied on the applicant's status as a legally incapable person, no matter how far removed in time the court decision about his global capacity might be. In the present case it was made more than ten months prior to the hospitalisation.

103. Furthermore, Russian law did not sufficiently reflect the fact that a person's capacity could change over time. There was no mandatory periodic

review of the capacity status, nor was there a possibility for the person under guardianship to request such a review. Even assuming that, at the moment of the initial court decision declaring him incapable, the applicant's capacity was so badly impaired that he could not decide for himself the question of hospitalisation, his condition might have changed in the meantime.

### B. Admissibility

104. The Government may be understood as claiming that the applicant's hospitalisation was, in domestic terms, voluntary, and, as such, did not fall under the scenario of "deprivation of liberty" within the meaning of Article 5 of the Convention. However, the Court cannot subscribe to this thesis.

105. It reiterates that in order to determine whether there has been a deprivation of liberty, the starting point must be the concrete situation of the individual concerned. Account must be taken of a whole range of factors arising in a particular case such as the type, duration, effects and manner of implementation of the measure in question (see *Guzzardi v. Italy*, judgment of 6 November 1980, Series A no. 39, § 92, and *Ashingdane v. the United Kingdom*, judgment of 28 May 1985, Series A no. 93, § 41).

106. The Court further recalls that the notion of deprivation of liberty within the meaning of Article 5 § 1 does not only comprise the objective element of a person's confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question (see, *mutatis mutandis*, *H.M. v. Switzerland*, no. 39187/98, § 46, ECHR 2002-II).

107. The Court observes in this respect that the applicant's factual situation at the hospital was largely undisputed. The applicant was confined in the hospital for several months, he was not free to leave and his contacts with the outside world were seriously restricted. As to the "subjective" element, it was disputed between the parties whether the applicant had consented to his stay in the clinic. The Government mostly relied on the legal construction of "voluntary confinement", whereas the applicant referred to his own perception of the situation.

108. The Court notes in this respect that, indeed, the applicant lacked *de jure* legal capacity to decide for himself. However, this does not necessarily mean that the applicant was *de facto* unable to understand his situation. First, the applicant's own behaviour at the moment of his confinement proves the contrary. Thus, on several occasions the applicant requested his discharge from hospital, he contacted the hospital administration and a lawyer with a view to obtaining his release, and once he attempted to escape from the hospital (see, *a fortiori*, *Storck v. Germany*, no. 61603/00, ECHR

2005-V, of 16 June 2005, where the applicant consented to her stay in the clinic but then attempted to escape). Second, it follows from the Court's above conclusions that the findings of the domestic courts on the applicant's mental condition were questionable and quite remote in time (see paragraph 96 above).

109. In sum, even though the applicant was legally incapable of expressing his opinion, the Court in the circumstances is unable to accept the Government's view that the applicant agreed to his continued stay in the hospital. The Court therefore concludes that the applicant was deprived of his liberty by the authorities within the meaning of Article 5 § 1 of the Convention.

110. The Court further notes that although the applicant's detention was requested by the applicant's guardian, a private person, it was implemented by a State-run institution – a psychiatric hospital. Therefore, the responsibility of the authorities for the situation complained of was engaged.

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

### C. Merits

112. The Court accepts that the applicant's detention was "lawful", if this term is construed narrowly, in the sense of formal compatibility of the detention with the procedural and material requirements of the domestic law. It appears that the only condition for the applicant's detention was the consent of his official guardian, his mother, who was also the person who solicited the applicant's placement in the hospital.

113. However, the Court recalls that the notion of "lawfulness" in the context of Article 5 § 1 (e) has also a broader meaning. "The notion underlying the term ['procedure prescribed by law'] is one of fair and proper procedure, namely 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). In other words, the detention cannot be considered as "lawful" within the meaning of Article 5 § 1 if the domestic procedure does not provide sufficient guarantees against arbitrariness.

114. In its *Winterwerp* judgment of 24 October 1979, the Court set out three minimum conditions which have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 § 1 (e): 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 expertise; 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.

115. Turning to the present case, the Court notes that it was submitted on behalf of the applicant that his deprivation of liberty had been arbitrary, because he had not been reliably shown to be of unsound mind at the time of his confinement. The Government submitted nothing to refute this argument. Thus, the Government did not explain what made the applicant's mother request his hospitalisation on 4 November 2005. Further, the Government did not provide the Court with any medical evidence concerning the applicant's mental condition at the moment of his admission to the hospital. It appears that the decision to hospitalise relied merely on the applicant's legal status, as it was defined ten months earlier by the court, and, probably, on his medical history. Indeed, it is inconceivable that the applicant remained in hospital without any examination by the specialist doctors. However, in the absence of any supporting documents or submissions by the Government concerning the applicant's mental condition during his placement, the Court has to conclude that it has not been "reliably shown" by the Government that the applicant's mental condition necessitated his confinement.

116. In view of the above the Court concludes that the applicant's hospitalisation between 4 November 2005 and 16 May 2006 was not "lawful" within the meaning of Article 5 § 1 (e) of the Convention.

## IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

117. The applicant complains that he was unable to obtain his release from the hospital. Article 5 § 4, relied on by the applicant, provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

### A. Submissions by the parties

118. The Government maintained that the applicant had had an effective remedy to challenge his admission to the psychiatric hospital. Thus, he could have applied for release or complained about the actions of the medical staff through his guardian, who represented him before third parties, including the court. Further, the General Prosecutor's Office had carried out a check of the applicant's situation and did not establish any violation of his rights.

119. The applicant claimed that Russian law allowed him to bring court proceedings only through his guardian, who was opposed to his release.

### B. Admissibility

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

### C. Merits

121. The Court recalls that by virtue of Article 5 § 4, a person of unsound mind compulsorily confined in a psychiatric institution for an indefinite or lengthy period is in principle entitled, at any rate where there is no automatic periodic review of a judicial character, to take proceedings at reasonable intervals before a court to put in issue the "lawfulness" – within the meaning of the Convention – of his detention (see *Winterwerp*, cited above, § 55, and *Luberti v. Italy*, judgment of 23 February 1984, Series A no. 75, § 31; see also *Rakevich v. Russia*, no. 58973/00, §§ 43 et seq., 28 October 2003).

122. This is so in cases where the initial detention was initially authorised by a judicial authority (see *X v. the United Kingdom*, judgment of 5 November 1981, Series A no. 46, § 52), and it is *a fortiori* true in the circumstances of the present case, where the applicant's confinement was authorised not by a court but by a private person, namely the applicant's guardian.

123. The Court accepts that the forms of the judicial review may vary from one domain to another, and depend on the type of the deprivation of liberty at issue. It is not within the province of the Court to inquire into what would be the best or most appropriate system of judicial review in this sphere. However, in the present case the courts were not involved in deciding on the applicant's detention at any moment and in any form. It appears that Russian law does not provide for automatic judicial review of confinement in a psychiatric hospital in situations such as the applicant's. Further, the review cannot be initiated by the person concerned if that person has been deprived of his legal capacity. Such a reading of Russian law follows from the Government's submissions on the matter. In sum, the applicant was prevented from pursuing independently any legal remedy of judicial character to challenge his continued detention.

124. The Government claimed that the applicant could have initiated legal proceedings through his mother. However, that remedy was not directly accessible to him: the applicant fully depended on his mother who had requested his placement in hospital and opposed his release. As to the

inquiry carried out by the prosecution authorities, it is unclear whether it concerned the "lawfulness" of the applicant's detention. In any event, a prosecution inquiry as such cannot be regarded as a judicial review satisfying the requirements of Article 5 § 4 of the Convention.

125. The Court recalls its findings that the applicant's hospitalisation was not voluntary. Further, the last time on which the courts had assessed the applicant's mental capacity was ten months before his admission to the hospital. The "incapacitation" court proceedings were seriously flawed, and, in any event, the court never examined the necessity of the applicant's placement in a closed institution. Nor was this necessity assessed by a court at the moment of his placement in the hospital. In such circumstances the applicant's inability to obtain judicial review of his detention amounted to a violation of Article 5 § 4 of the Convention.

## V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

126. The applicant submitted that the compulsory medical treatment he received in hospital amounted to inhuman and degrading treatment. Furthermore, on one occasion physical restraint was used against him, when he was tied to his bed for more than 15 hours. Article 3 of the Convention, referred to by the applicant in this respect, provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

127. The Court notes that the complaint under Article 3 relates to two distinct facts: (a) involuntary medical treatment and (b) the securing of the applicant to his bed after his attempted escape. As regards the second allegation, the Court notes that it was not part of the applicant's initial submissions to the Court and was not sufficiently substantiated. Reference to it appeared only in the applicant's observations in reply to those of the Government. Therefore, this incident falls outside of the scope of the present application, and, as such, will not be examined by the Court.

128. It remains to be ascertained, however, whether the medical treatment of the applicant in the hospital amounted to "inhuman and degrading treatment" within the meaning of Article 3. According to the applicant, he was treated with Haloperidol and Chlorpromazine. He described these substances as obsolete medicine with strong and unpleasant side effects. The Court notes that the applicant did not provide any evidence showing that he had actually been treated with this medication. Furthermore, there is no evidence that the medication in question had the unpleasant effects he was complaining of. The applicant does not claim that his health has deteriorated as a result of such treatment. In such circumstances the Court finds that the applicant's allegations in this respect are unsubstantiated.

129. The Court concludes that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## VI. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

130. The applicant complained under Article 13, taken together with Articles 6 and 8 of the Convention, that he had been unable to obtain a review of his status as a legally incapable person. Article 13, insofar as relevant, provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

131. The Court finds that this complaint is linked to the complaints submitted under Article 6 and 8 of the Convention, and it should therefore be declared admissible.

132. The Court further notes that in analysing the proportionality of the measure complained of under Article 8 it took account of the fact that the measure was imposed for an indefinite period of time and could not be challenged by the applicant independently from his mother or other persons empowered by law to seek its withdrawal (see paragraph 90 above). Furthermore, this aspect of the proceedings was considered by the Court in its examination of the overall fairness of the incapacitation proceedings.

133. In these circumstances the Court does not consider it necessary to re-examine this aspect of the case separately through the prism of the "effective remedies" requirement of Article 13.

## VII. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

134. The Court notes that under Article 14 of the Convention the applicant complained about his alleged discrimination. The Court finds that this complaint is linked to the complaints submitted under Article 6 and 8 of the Convention, and it should therefore be declared admissible. However, in the circumstances and given its findings under Articles 5, 6 and 8 of the Convention, the Court considers that there is no need to examine the complaint under Article 14 of the Convention separately.

## VIII. COMPLIANCE WITH ARTICLE 34 OF THE CONVENTION

135. The applicant maintained that, by preventing him from meeting his lawyer in private for a long period of time, despite the measure indicated by the Court under Rule 39 of the Rules of Court, Russia had failed to comply

with its obligations under Article 34 of the Convention. Article 34 of the Convention provides:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Rule 39 of the Rules of Court provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Notice of these measures shall be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

### A. Submissions by the parties

136. The Government maintained that the applicant had not been prevented from exercising his right of individual petition under Article 34 of the Convention. However, he was able to do so only through his mother – his official guardian. Since his mother had never asked Mr Bartenev (the lawyer) to represent her son, he was not his legal representative in the eyes of the domestic authorities. Consequently, the authorities acted lawfully when not allowing him to meet the applicant in the hospital.

137. The applicant submitted that his right of individual petition has been breached. Thus, the hospital authorities prevented him from meeting his lawyer, confiscated writing materials from him and prohibited him to make or receive phone calls. The applicant was also threatened with the extension of his confinement if he continued his "litigious behaviour". When the Court indicated an interim measure, the hospital authorities refused to consider the decision of the Court under Rule 39 as legally binding. This position was later confirmed by the Russian courts. As a result, it was virtually impossible for the applicant to work on his case before the European Court during his whole stay in the hospital. Moreover, the applicant's lawyer was unable to assess the applicant's condition and collect information about the treatment the applicant was subjected to while in the psychiatric hospital.

## B. The Court's assessment

### *1. Compliance with Article 34 before the indication of an interim measure*

138. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 that applicants or potential applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports* 1996-IV; see also *Ergi v. Turkey* judgment of 28 July 1998, *Reports* 1998-IV, § 105).

139. The Court notes that an interference with the right of individual petition may take different forms. Thus, in *Boicenco v. Moldova* (no. 41088/05, §§ 157 et seq., 11 July 2006) the Court found that the refusal by the authorities to let the applicant be examined by a doctor in order to substantiate his claims under Article 41 of the Convention constituted an interference with the applicant's right of individual petition, and, thus, was incompatible with Article 34 of the Convention.

140. In the present case the ban on the contacts with the lawyer lasted from the applicant's hospitalisation on 4 November 2005 until his discharge on 16 May 2006. Further, telephone calls and correspondence were also banned for almost all of that period. Those restrictions made it almost impossible for the applicant to pursue his case before the Court, and thus the application form was completed by the applicant only after his discharge from the hospital. The authorities could not have ignored the fact that the applicant had introduced an application with the Court concerning, *inter alia*, his confinement in the hospital. In such circumstances the authorities, by restricting the applicant's contacts with the outside world to such an extent, interfered with his rights under Article 34 of the Convention.

### *2. Compliance with Article 34 after the indication of an interim measure*

141. The Court further notes that in March 2006 it indicated to the Government an interim measure under Rule 39. The Court requested the Government to allow the applicant to meet his lawyer on the premises of the hospital and under the supervision of the hospital staff. That measure was supposed to ensure that the applicant was able to pursue his case before this Court.

142. The Court is struck by the authorities' refusal to comply with that measure. The domestic courts which examined the situation found that the interim measure was addressed to the Russian State as a whole, but not to any of its bodies in particular. The courts concluded that Russian law did

not recognise the binding force of an interim measures indicated by the Court. Further, they considered that the applicant could not act without the consent of his mother. Therefore, Mr Bartenev (the lawyer) was not regarded as his lawful representative either in domestic terms, or for the purposes of the proceedings before this Court.

143. Such an interpretation of the Convention is contrary to the Convention. As regards the status of Mr Bartenev, it was not for the domestic courts to determine whether or not he was the applicant's representative for the purposes of the proceedings before the Court – it sufficed that the Court regarded him as such.

144. As to the legal force of an interim measure, the Court wishes to reiterate the following (*Aoulmi v. France*, no. 50278/99, § 107, ECHR 2006-... (extracts)):

> "Under the Convention system, interim measures, as they have consistently been applied in practice, play a vital role in avoiding irreversible situations that would prevent the Court from properly examining the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted. Accordingly, in these conditions a failure by a respondent State to comply with interim measures will undermine the effectiveness of the right of individual application guaranteed by Article 34 and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention... Indications of interim measures given by the Court ... permit it not only to carry out an effective examination of the application but also to ensure that the protection afforded to the applicant by the Convention is effective; such indications also subsequently allow the Committee of Ministers to supervise execution of the final judgment. Such measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention".

In sum, an interim measure is binding to the extent that non-compliance with it may lead to a finding of a violation under Article 34 of the Convention. For the Court, it makes no difference whether it was the State as a whole or any of its bodies which refused to implement an interim measure.

145. The Court recalls in this respect the case of *Mamatkulov and Askarov v. Turkey* ([GC], nos. 46827/99 and 46951/99, §§ 92 et seq., ECHR 2005-I) in which the Court analysed the State's non-compliance with an interim measure indicated under Rule 39. The Court concluded that "the obligation set out in Article 34, *in fine*, requires the Contracting States to refrain ... also from any act or omission which, by destroying or removing the subject matter of an application, would make it pointless or otherwise prevent the Court from considering it under its normal procedure" (§ 102).

146. By not allowing the applicant to communicate with his lawyer the authorities *de facto* prevented him from complaining to the Court, and this obstacle existed so long as the authorities kept the applicant in the hospital. Therefore, the aim of the interim measure indicated by the Court was "to avoid ... [a] situation that would prevent the Court from properly examining

the application and, where appropriate, securing to the applicant the practical and effective benefit of the Convention rights asserted" (see *Aoulmi, loc. cit*).

147. The Court notes that the applicant was eventually released and met with his lawyer, and was thus able to continue the proceedings before this Court. The Court therefore finally had all the elements to examine the applicant's complaint, despite previous non-compliance with the interim measure. However, the fact that the individual actually managed to pursue his application does not prevent an issue arising under Article 34: should the Government's action make it more difficult for the individual to exercise his right of petition, this amounts to "hindering" his rights under Article 34 (see *Akdivar and Others*, cited above, §§ 105 and 254). In any event, the applicant's release was not in any way connected with the implementation of an interim measure.

148. The Court takes note that the Russian legal system may have lacked a legal mechanism for implementing interim measures under Rule 39. However, it does not absolve the defendant State from its obligations under Article 34 of the Convention. In sum, in the circumstances the failure of the authorities to comply with an interim measure under Rule 39 amounted to a breach of Article 34 of the Convention.

*3. Conclusion*

149. Having regard to the material before it, the Court concludes that, by preventing the applicant for a long period of time from meeting his lawyer and communicating with him, as well as by failing to comply with the interim measure indicated under Rule 39 of the Rules of Court, the Russian Federation was in breach of its obligations under Article 34 of the Convention.

## IX. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. 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."

151. The applicant claimed 85,000 euros in respect of non-pecuniary damage.

152. The Government considered these claims "fully unsubstantiated and anyway excessive". Further, the Government claimed that it was the applicant's mother who was entitled to claim any amounts on behalf of the applicant.

153. The Court recalls that the applicant has legal standing in his own right within the Strasbourg proceedings and, consequently, can claim compensation under Article 41 of the Convention.

154. The Court considers that the question of the application of Article 41 is not ready for decision. Accordingly, it shall be reserved and the subsequent procedure fixed having regard to any agreement which might be reached between the Government and the applicant (Rule 75 § 1 of the Rules of Court).

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 5 (concerning confinement to the psychiatric hospital), Article 6 (concerning incapacitation proceedings), Article 8 (concerning the applicant's incapacitation), Article 13 (concerning the absence of effective remedies), and Article 14 of the Convention (concerning the alleged discrimination) admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 of the Convention as regards the incapacitation proceedings;

3. *Holds* that there has been a violation of Article 8 of the Convention on account of the applicant's full incapacitation;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the lawfulness of the applicant's confinement in hospital;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the applicant's inability to obtain his release from the hospital;

6. *Holds* that there is no need to examine the applicant's complaint under Article 13 of the Convention;

7. *Holds* that there is no need to examine the applicant's complaint under Article 14 of the Convention;

8. *Holds* that the State failed to comply with its obligations under Article 34 of the Convention by hindering the applicant's access to the Court and not complying with an interim measure indicated by the Court in order to remove this hindrance;

9. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
(a) *reserves* the said question in whole;
(b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President