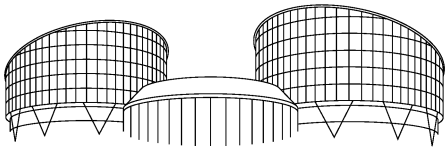

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RUSLAN MAKAROV v. RUSSIA

(Application no. 19129/13)

JUDGMENT

STRASBOURG

11 October 2016

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 Ruslan Makarov v. Russia,

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

Luis López Guerra, *President,*
Helena Jäderblom,
Helen Keller,
Dmitry Dedov,
Branko Lubarda,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 20 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 19129/13) 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 Ruslan Vladislavovich Makarov ("the applicant"), on 11 March 2013.

2. The applicant was represented by Ms I. Khrunova, a lawyer practising in Kazan. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant alleged, in particular, that his involuntary placement in a psychiatric facility had been unlawful owing to the failure of the national authorities to meet the substantive requirements for hospitalisation; that the application for judicial authorisation of his hospitalisation had been submitted in violation of the procedural time-limit of forty-eight hours; that the hearing on his hospitalisation had been closed to the public without any valid grounds; and that the period for the appeal review had been excessively long.

4. On 11 March 2015 the above complaints under Article 5 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Psychiatric assistance to the applicant in 2004-12

5. During the autumn of 2004 the applicant assembled several explosive devices with the purpose of extorting money from commercial banks in order to donate the proceeds to orphans. On 25 December 2004 he planted and exploded one of the devices in front of the bank M.; there were no casualties. He then planted another explosive device equipped with a timer and accompanied by a threatening note. It was disarmed.

6. Criminal proceedings were initiated against the applicant; however he was diagnosed with schizotypal personality disorder. On the basis of this diagnosis the Moscow City Court (*Московский городской суд*) on 7 February 2007 relieved the applicant of criminal liability and ordered his involuntary treatment.

7. In 2010 the applicant was discharged. He moved to the Republic of Altay, where he registered for psychiatric supervision with the local psychiatric hospital. In April 2012 his schizotypal personality disorder condition was noted several times as being in stable remission.

B. Psychiatric assistance to the applicant in 2012-13

8. On Friday, 14 September 2012 at 11.45 p.m., following a request by the local medical services and information received from the municipal authorities, the applicant was apprehended by the police and taken to Gorno-Altayskaya Psychiatric Hospital (*Горно-алтайская психиатрическая больница*, hereinafter "GAPB"). The grounds for the request were the refusal of the applicant to undergo planned outpatient treatment, stated ideas concerning revenge against and murder of certain regional officials, and the applicant's own complaints about the "worsening" of his condition.

9. On 15 September 2012 a medical counselling panel composed of the resident psychiatrists of the hospital examined the applicant and diagnosed him with schizotypal personality disorder in decompensation. The panel also found that the applicant was a danger to himself or others and there was a risk of significant damage to his health owing to the deterioration or aggravation of his psychiatric condition in the absence of psychiatric assistance. The relevant parts of the panel's report read as follows:

> "[The report begins with a detailed account of the applicant's personal and medical history with a special accent on the events related to the assembly and use of explosive devices and his subsequent involuntary treatment in psychiatric facilities.]

[Mr Makarov] refused medication stating that 'he [had] a sufficient supply'. Refused planned inpatient treatments. In recent months the attending psychiatrist has observed changes in his mental state – mood swings from depression to hypomania, statements about 'social pressure', and conflicts with local and regional public bodies. During the appointments he mentioned 'bad ideas about killing Mr B. [the governor of the region]' ...

Mental state: Conscious. Since his admission refused to discuss his condition, actions, behaviour, reasoning that 'this whole situation is a political conspiracy of Mr B. and his team'; considers medical personnel and doctors to be 'accomplices', 'you are in with B.'s gang'. Does not engage in discussion, leaves the doctor's office, slams doors. Refuses to consume food and to give samples for analysis. Suspicious of all statements and actions directed at him.

Conclusion: Considering the clinical history of severe mental disorder, avoidance of in- and outpatient treatment, criminal behaviour in acute mental state in the past, his own complaints about 'worsening' of the condition, coupled with refusal of voluntary treatment, the panel [considers involuntary hospitalisation in a psychiatric facility to be necessary] ..."

10. On Monday, 17 September 2012 the hospital applied for judicial authorisation of the applicant's involuntary hospitalisation under section 29 (a) and (c) of the Psychiatric Assistance Act 1992, since the applicant was a danger to himself or others and there was a risk of significant damage to his health owing to the deterioration or aggravation of his psychiatric condition in the absence of psychiatric assistance. On the same day the Gorno-Altayskiy Town Court (*Горно-алтайский городской суд*, hereinafter "the Town Court") received the application and extended the applicant's detention until 20 September 2012.

11. On 19 September 2012 the Town Court granted the application for the applicant's involuntary hospitalisation. The hearing was attended by the applicant, his counsel Mr M., the representative of the hospital, and the prosecutor. Upon an application by the prosecutor, the court ordered that the hearing be held in camera in order to protect the applicant's privacy in respect of his medical condition; the applicant himself and his representative objected to that decision. The relevant parts of the judicial order read as follows:

"[The reasoning of the order begins with a detailed account of the applicant's personal and medical history with a special accent on the events related to the assembly and use of explosive devices and his subsequent involuntary treatment in psychiatric facilities.]

[According to his medical records] on 7 November 2011 Mr Makarov complained of aggravation of his mental state: tension, restless sleep, gloominess, references to the need for psychiatric treatment, however he refused it owing to lack of trust in the doctors ...

Between December 2011 and March 2012 Mr Makarov did not visit his attending psychiatrists despite repeated reminders ...

On 11 July 2012 during a visit to his attending psychiatrist Mr Makarov complained of 'bad ideas of killing Mr B.' and other persons said by him to be involved in making

his diagnosis public. Complained of persecution by local media, officials, insisted on obtaining a certificate concerning aggravation of his mental condition. Schizotypal personality disorder in acute state. Refused planned inpatient treatment.

[The order goes on to provide an account of the applicant's most recent hospitalisation and reproduces the relevant parts of the medical counselling panel report.]

The court considers that the report of the medical counselling panel was prepared by competent professionals in the relevant field of studies, and due consideration was given to the clinical history of Mr Makarov ... The report contains the symptoms [showing the severity of Mr Makarov's condition], it states the diagnosis. Having regard to the information obtained through psychiatric observation, the history of criminal behaviour, anxiety, tension and ideas in respect of public officials, the experts concluded that in his current mental state Mr Makarov is a danger to himself or others and there was a risk of significant damage to [his] health owing to the deterioration or aggravation of his psychiatric condition in the absence of psychiatric assistance. There are no reasons to doubt the objectivity and impartiality of the experts.

During the hearing Mr Makarov did not contest his diagnosis ... however he argued that his disorder was not severe and he was in a remission state ... Refused inpatient treatment ... Stated that he needed specialised assistance, but not from GAPB; in his statements and replies demonstrated denial and aversion towards [any assistance from them] ... Stated that he supressed the need for psychiatric care with willpower ...

It has been established during the hearing that Mr Makarov needs psychiatric assistance, since otherwise he may suffer from severe deterioration of his health, because he suffers from a severe mental disorder, avoids treatment, refuses assistance of attending psychiatrist, his mental condition aggravated, he has aggressive thoughts and ideas, refuses food, refuses voluntary inpatient treatment ..."

12. In a separate ruling the Town Court observed that the application for involuntary hospitalisation had been submitted outside the statutory forty-eight-hour time-limit and urged the hospital administration to avoid similar occurrences in future.

13. On 19 October 2012 the applicant's counsel appealed against the order arguing, *inter alia*, (a) that the Town Court had failed to demonstrate the need for hospitalisation, and (b) that the application for involuntary hospitalisation had been lodged outside of the statutory time-limit and thus the applicant had been detained without a court order for more than forty-eight hours. On 29 October 2012 his counsel lodged an additional statement of appeal.

14. On 14 November 2012 the Supreme Court of the Republic of Altay (*Верховный суд Республики Алтай*) dismissed the appeal and upheld the lower court's order as well-reasoned and lawful. Concerning the applicant's detention beyond the time-limit without a court order, the Supreme Court stated that the delay had been caused by the hospital administration, while the courts had complied with the procedural time-limits.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of Russian legislation are outlined in the judgment *Zagidulina v. Russia* (no. 11737/06, §§ 21-30, 2 May 2013).

THE LAW

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

16. The applicant complained that contrary to Article 5 of the Convention his involuntary placement in a psychiatric facility had been unlawful owing to the failure of the national authorities to meet the substantive requirements for hospitalisation and that the application for judicial authorisation of his hospitalisation had been submitted in violation of the procedural time-limit of forty-eight hours. The relevant parts of the Article read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants ..."

17. The Government contested that argument.

A. Admissibility

18. 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

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

20. The Court further reiterates 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).

21. In its *Winterwerp* judgment (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33), the Court set out three minimum conditions which have to be satisfied for the "detention of a person of unsound mind" to be lawful within the meaning of Article 5 § 1 (e) of the Convention: except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say, a true mental disorder must be established before a competent authority on the basis of objective medical evidence; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder.

22. The Court has also consistently held that Article 5 § 1 essentially refers to domestic law, but at the same time obliges national authorities to comply with the Convention requirements (see, among other authorities, *Karamanof v. Greece*, no. 46372/09, §§ 40-41, 26 July 2011, and *Hutchison Reid v. the United Kingdom*, no. 50272/99, § 47, ECHR 2003-IV). Moreover, the Court highlights that the notion of "lawfulness" in the context of Article 5 § 1 (e) of the Convention might have a broader meaning than in national legislation. Lawfulness of detention necessarily presumes a "fair and proper procedure", including the requirement "that any measure depriving a person of his [or her] liberty should issue from and be executed by an appropriate authority and should not be arbitrary" (see *Winterwerp*, cited above, § 45). In this context the domestic proceedings must themselves offer the applicant sufficient protection against a potentially arbitrary deprivation of his or her liberty (see *Shtukaturov v. Russia*, no. 44009/05, § 113, 27 March 2008).

23. In the present case, the parties did not dispute that the applicant's involuntary placement in a psychiatric facility had entailed deprivation of liberty.

24. Firstly, the applicant argued that his mental health status did not justify involuntary hospitalisation. The Government disagreed referring to the medical data and the reasons provided by health-care authorities and the domestic courts.

25. The Court, having regard to the arguments of the parties, the applicant's medical history and conduct, the psychiatrists' report and the reasoning of the Town Court's order for hospitalisation and treatment (see paragraphs 5, 9 and 11 above), concludes that the national authorities complied with the substantive *Winterwerp* conditions for lawful detention of a person of unsound mind under Article 5 § 1 (e) of the Convention.

26. Secondly, the applicant alleged that the application for judicial authorisation of his hospitalisation had been submitted outside of the procedural time-limit of forty-eight hours. The Government implicitly conceded that the time-limit had not been respected. However, they argued that there had been a valid reason, namely, that 15 and 16 September 2012 had been non-working days and, accordingly, an application could not have been lodged right away. Furthermore, they stated that the Town Court had considered the application within the shortened period of two days, whereas domestic law provided for a period of up to five days, thus remedying the delay caused by the hospital.

27. The Court reiterates that Article 5 § 1 of the Convention requires compliance with both the Convention and domestic law. Respect for the time-limits prescribed by the national procedural legislation forms an essential part of compliance with Article 5 § 1 of the Convention.

28. In the present case the Court does not find it necessary to independently scrutinise whether the domestic authorities complied with the procedural time-limits during the applicant's involuntary hospitalisation. The domestic courts themselves consistently acknowledged that these time-limits had not been respected (see paragraphs 12 and 14 above). Having regard to the circumstances of the present case the Court notes that the expediency demonstrated by the domestic courts in considering the application did not remedy the delay caused by the hospital administration.

29. Furthermore, the Court cannot accept the Government's argument concerning the inability of the hospital to apply for authorisation during the non-working days of 15 and 16 September 2012. The Court held in its *Bik* judgment (see *Bik v. Russia*, no. 26321/03, 22 April 2010) that where the issue of a person's liberty is at stake, the Contracting States must ensure that their courts remain accessible, even during a holiday period or a weekend, to ensure that urgent matters are dealt with speedily and in full compliance with a procedure prescribed by law (see *Bik*, cited above, § 37). The Court sees no reason to depart from that conclusion. Furthermore, the Court notes that in 2011 the Russian Government submitted to the Committee of Ministers a report on the execution of the *Bik* judgment (cited above) where it expressly mentioned that a duty schedule for weekends and holidays had been introduced in the Russian courts in order to prevent further similar violations (see Committee of Ministers of the Council of Europe. Communication from the Russian Federation concerning the case of Bik against the Russian Federation (Application no. 26321/03). 13 October 2011. DH - DD(2011)841E).

30. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's involuntary hospitalisation was in violation of the procedural time-limits prescribed by the domestic law. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

31. The applicant complained that the hearing on his involuntary hospitalisation had been closed to the public without any valid grounds and that the period for the appeal review had been excessively long. He relied on Article 5 § 4 of the Convention.

32. The Government contested that argument.

33. The Court notes that these complaints are linked to those examined above and must therefore likewise be declared admissible.

34. Having regard to the finding relating to Article 5 § 1 (see paragraph 30 above), 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. Article 41 of the Convention provides:

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

A. Damage

36. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government argued that should the Court find a violation of the applicant's rights, that finding in itself would constitute sufficient just satisfaction.

38. The Court having regard to the findings above and acting on an equitable basis awards the applicant EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Court.

40. The Government did not find this claim to be unreasonable.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,000 covering the costs and expenses incurred before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 §§ 1 and 4 of the Convention admissible;

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 complaints under Article 5 § 4 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 500 (five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 11 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Luis López Guerra
President