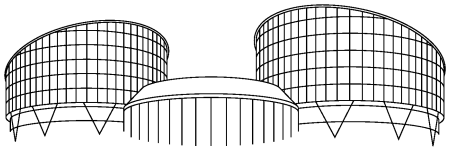

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BATALINY v. RUSSIA

(Application no. 10060/07)

JUDGMENT

STRASBOURG

23 July 2015

FINAL

14/12/2015

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Bataliny v. Russia,

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

Isabelle Berro, *President*,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Paulo Pinto de Albuquerque,
Ksenija Turković,
Dmitry Dedov, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 30 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 10060/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Russian nationals, Mr Vladislav Igorevich Batalin ("the first applicant"), Mr Igor Ivanovich Batalin ("the second applicant") and Mrs Lyudmila Ivanovna Batalina ("the third applicant"), on 7 February 2007.

2. The applicants, who had been granted legal aid, were represented by Ms I. Sergeyeva and Ms K. Moskalenko, lawyers practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicants alleged, in particular, that the psychiatric internment of the first applicant had been unlawful, that judicial review of the decision to intern him had not been available, that he had been ill-treated in the psychiatric hospital, and that there had been no effective investigation thereof.

4. On 12 October 2012 the above complaints were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1977, 1937 and 1938 respectively and live in Moscow. The second and third applicants are the parents of the first applicant.

A. The first applicant's placement and treatment in a psychiatric hospital

6. In 2004 the first applicant, who was suffering from tachycardia and severe headaches, was diagnosed with neurocirculatory dystonia. In 2004-05 he underwent treatment in various hospitals in Moscow, without any tangible result.

7. In April 2005 his illness worsened.

8. On 25 May 2005 he called an ambulance and was taken to the neurology unit of Moscow City Clinical Hospital no. 6 *(Московская городская клиническая больница № 6)*. The doctor in the admissions unit, however, refused to admit him, finding no pathology, and recommended outpatient treatment in a district polyclinic.

9. Desperate for relief, on the same day the first applicant cut the veins on his forearm. Another ambulance was called for him by the second and third applicants, and he was taken to N.V. Sklifosovsky Research Institute of Emergency Medicine *(НИИ скорой помощи им. Н.В. Склифосовского)*. After the first applicant was provided with emergency medical aid at the surgical unit, he was taken to somato-psychiatric unit no. 2 *(ПСО-2,* "the psychiatric hospital"*)* of the Institute with a diagnosis of "chronic somatoform pain disorder, personality disorder, continuous sluggish schizophrenia, cutting of left forearm, attempted suicide".

10. On 26 May 2005 the first applicant contacted his parents, asking them to take him home. When the parents arrived, they were not allowed to take him home and were asked to leave.

11. During the night of 26 to 27 May 2005 the first applicant alleged that he was beaten up. According to him, three nurses held his arms and two recovering patients hit him on the face and body. He was taken to his ward, and one of the nurses allegedly threw him on the bed with such force that his head hit the bedside table, following which he lost consciousness. When the first applicant recovered he found himself bleeding and strapped to the bed with a gag in his mouth. He was given no medical assistance.

12. The first applicant was subsequently allegedly warned by a doctor, L., that his parents would not be allowed to see him and that it would be put on record that he had himself initiated a brawl. Furthermore, he was

allegedly warned that any complaints to the authorities, including the police, would be futile as he would be given a diagnosis which would show that his allegations could not be taken seriously.

13. The first applicant remained hospitalised until 9 June 2005. He alleged that he was subjected to scientific research by being treated with Seroquel (a then new antipsychotic medication) and forbidden all contact with the outside world. He had blood tests every other day.

14. Some hours after the first applicant's discharge from the psychiatric hospital on 9 June 2005, an ambulance was called for him at home due to his state of health. The ambulance doctor saw a haematoma under the first applicant's right eye, and bruises and contusions around his chest and waist. The first applicant was further diagnosed with hypertensive crisis and severe tachycardia. He was immediately hospitalised in Moscow City Clinical Hospital no. 67 *(Московская городская клиническая больница № 67)*, where he remained until 5 August 2005 and was diagnosed with "depressive hypochondriasis against the background of traumatic encephalopathy". The diagnosis of personality disorder was not confirmed.

B. The applicants' complaints

15. In October 2005 the applicants complained to the Russian Federation Ombudsman that the first applicant had been unlawfully committed and treated in the psychiatric hospital, and that he had been beaten by the hospital nurses with the assistance of two hospital patients. The applicants' complaint was referred to the Meshchanskiy District Prosecutor's Office, Moscow, from where it was referred on to the Meshchanskiy District Department of the Interior.

1. Criminal proceedings in connection with the alleged beatings of the first applicant (criminal case no. 82906)

16. After two refusals to institute criminal proceedings, on 2 November 2006 criminal proceedings were instituted (criminal case no. 82906) under Article 116 of the Russian Criminal Code (Beatings).

17. On 15 November 2006 the first applicant was granted victim status in the proceedings.

18. On 16 March and 25 June 2007 an investigator from the Meshchanskiy District Department of the Interior investigation department suspended the proceedings on the grounds of an impossibility of identifying the alleged perpetrators.

19. On 19 March and 1 July 2007 respectively the Meshchanskiy Inter-District Prosecutor's Office quashed the above decisions and remitted the case for additional investigation.

20. On 11 August 2007 the investigator discontinued the proceedings on the grounds of expiry of the procedural time-limit for prosecution.

21. On 30 August 2007, however, the above decision was set aside and the proceedings were reopened.

22. The proceedings were subsequently suspended on 14 January 2008 and 16 March 2009 and resumed again on unspecified dates.

23. In 2012 the applicants were informed that the proceedings had been discontinued on 25 November 2010 on the grounds of expiry of the procedural time-limit for prosecution.

24. On an unspecified date the decision of 25 November 2010 was set aside and the proceedings were reopened.

25. On 22 December 2012 the proceedings were again discontinued.

26. On 9 January 2013 the above decision was set aside and the case file material referred to the investigation department for additional investigation, which appears still to be pending.

2. Criminal proceedings in connection with the first applicant's placement in a psychiatric hospital and his stay there (criminal case no. 401966)

27. On 5 March 2007 the complaints concerning the first applicant's placement in the psychiatric hospital were removed from criminal case no. 82906 for separate examination.

28. On 24 March 2007 an investigator from the Meshchanskiy Inter-District Prosecutor's Office refused to institute criminal proceedings.

29. On 3 May 2007 the Moscow Preobrazhenskiy District Court found the above decision unlawful and groundless.

30. On 6 July 2007 the acting prosecutor of the Meshchanskiy Inter-District Prosecutor's Office quashed the decision of 24 March 2007 and ordered an additional inquiry.

31. On 12 October 2007 criminal proceedings were instituted (criminal case no. 401966) under Article 128 § 2 of the Russian Criminal Code (Unlawful Placement in a Psychiatric Hospital).

32. On 12 January, 5 March and 27 April 2008 the proceedings were suspended on the grounds of an impossibility of identifying those responsible.

33. However, on 5 February, 27 March and 27 April 2008 respectively the above decisions were quashed and additional investigations ordered.

34. In the meantime, on 18 April 2008 a forensic psychiatric examination was conducted which established that the first applicant's involuntary psychiatric hospitalisation on 25 May 2005 had been justified (psychiatric pathology of an acute character accompanied by expressed depression with attempted suicide). It was further established, however, that his subsequent stay in the psychiatric ward had been unlawful. In particular, contrary to the provisions of the relevant domestic law (the Psychiatric Treatment Law of 2 July 1992), no report had been drawn up by a panel of psychiatrists in the forty-eight hours following the first applicant's

involuntary hospitalisation on the need for a further stay in the psychiatric hospital, and no application had been made to the court by the head of the psychiatric hospital on the need for the first applicant's continued involuntary stay in the psychiatric hospital. It was further noted that the first applicant's mental health episodes between 27 May and 9 June 2005 did not fall under the definition of a "severe" mental disorder or any other acute mental condition, and did not require involuntary psychiatric treatment.

35. In the absence of any meaningful investigation since the institution of the criminal proceedings, the applicants challenged the investigator before the court for failure to take action.

36. On 7 May 2008 Preobrazhenskiy District Court found the investigator's failure to take action unlawful (failure to identify and question witnesses and carry out other relevant investigative actions).

37. On 28 October 2008 the head of the psychiatric hospital, D., was involved in the proceedings as a defendant.

38. On the same day D. was questioned, and made the following statement:

> "... [Somato-psychiatric] unit no. 2 was staffed [at the material time] by only two attending doctors: a scientific associate, L., and an attending doctor whose last name I cannot remember. The question of assigning patients to a specific attending doctor was decided by E. E., who assigned [the first applicant] to L. as a scientific thematic patient *(научный тематический больной)* for research on the effects of the Seroquel medication ...
>
> Scientific associates monitor only scientific research patients to study scientific subjects which involve research into new methods of treatment and the use of new drugs approved by the Ministry of Health, with a view to later disseminating these throughout the territory of the Russian Federation. Following the results of their research, a scientific associate writes an article about the work done and defends a dissertation based on their research material."

39. On 31 October 2008 the preliminary investigation was completed, and on 28 November 2008 a bill of indictment was submitted for approval to the Meshchanskiy Inter-District Prosecutor's Office.

40. On 9 December 2008, however, the case was returned for an additional investigation, as the prosecutor considered the charges brought against D. unsubstantiated.

41. On 5 February 2009 the qualification of the crime with which D. was charged was changed to Article 127 § 1 of the Criminal Code (Unlawful Deprivation of Liberty). The case-file material was sent to the Meshchanskiy District Department of the Interior for further investigation.

42. On 19 July 2009 an investigator from the Meshchanskiy District Department of the Interior discontinued the proceedings on the grounds of expiry of the procedural time-limit for prosecution.

43. It appears that subsequently the proceedings were reopened.

44. In 2012 the applicants were informed that on 26 November 2010 the proceedings had again been discontinued as time-barred.

II. RELEVANT DOMESTIC LAW

A. Law on Psychiatric Treatment and Associated Civil Rights Guarantees

45. Psychiatric medical care in Russia is governed by the Law on Psychiatric Treatment and Associated Civil Rights Guarantees, enacted on 2 July in 1992 ("the Psychiatric Treatment Act", "the Act").

46. Section 29 of the Act sets out the grounds for an involuntary placement in a psychiatric hospital:

Section 29

"A mentally disturbed individual may be hospitalised in a psychiatric hospital against his will or the will of his legal representative and without a court decision, if the individual's examination or treatment can only be carried out by in-patient care, and the mental disorder is severe enough to give rise to:

a) a direct danger to the person or to others, or

b) the individual becoming unable to take care of himself, or

c) a significant impairment in health as a result of a deteriorating mental condition if the affected person were to be left without psychiatric care."

47. Section 32 of the Act specifies the procedure for the examination of patients compulsorily confined in a hospital:

Section 32

"1. A person placed in a psychiatric hospital on the grounds defined by section 29 of the present Act shall be subject to compulsory examination within forty-eight hours by a panel of psychiatrists of the hospital, which shall take a decision as to the need for hospitalisation. If no reasons for hospitalisation are established and the hospitalised person does not express the wish to remain in the hospital, the person shall be released immediately.

2. If hospitalisation is considered necessary, the conclusion to that effect of the panel of psychiatrists shall be forwarded to the court with territorial jurisdiction over the hospital, within twenty-four hours, for a decision on whether the person should remain confined in the hospital."

48. Sections 33-35 set out in detail the procedure for judicial review of involuntary psychiatric treatment:

Section 33

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

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

The application containing the grounds for involuntary psychiatric hospitalisation shall be accompanied by a reasoned conclusion of a panel of psychiatrists as to the further necessity for the person's in-patient treatment in a psychiatric hospital.

3. A judge who grants leave for judicial review shall simultaneously order the person's detention in a psychiatric hospital for the term necessary for that review."

Section 34

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

2. The person shall be allowed to participate personally in the hearing in order to determine whether he should be hospitalised. If, on the information provided by a representative of the psychiatric hospital, the person's mental state does not allow him to participate personally in the hearing, the application shall be reviewed by the judge on the hospital's premises.

3. The presence at the hearing of a public prosecutor, a representative of the psychiatric institution requesting hospitalisation, and a representative of the person whom it is intended to detain, shall be mandatory."

Section 35

"1. Upon examination of the application on the merits, the judge shall either grant or refuse it.

2. The judge's grant of the application shall justify the person's hospitalisation and further confinement in the hospital.

3. The judge's decision shall be subject to appeal within ten days by the person placed in the psychiatric hospital, his representative, the head of the psychiatric hospital, an organisation entitled by virtue of law or by its charter to protect citizens' rights, or by a public prosecutor. The appeal shall be made in accordance with the rules established in the Code of Civil Procedure."

B. Code of Civil Procedure

49. Article 254 of the Code of Civil Procedure of the Russian Federation provides that a citizen may lodge a complaint about an act or decision by any State authority which he believes has breached his rights or freedoms, either with a court of general jurisdiction or by sending it to the next higher official or authority.

50. For a detailed outline of the procedure for such complaints see *Reshetnyak v. Russia*, no. 56027/10, §§ 38-43, 8 January 2013.

III. RELEVANT INTERNATIONAL AND COUNCIL OF EUROPE DOCUMENTS

51. The Nuremberg Code, formulated in August 1947 in Nuremberg, Germany, by American judges sitting in judgment of Nazi doctors accused

of conducting human experiments in the concentration camps (the so-called Doctors' Trial) reads as follows:

"1. The voluntary consent of the human subject is absolutely essential.

This means that the person involved should have legal capacity to give consent; should be so situated as to be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision. This latter element requires that before the acceptance of an affirmative decision by the experimental subject there should be made known to him the nature, duration, and purpose of the experiment; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon his health or person which may possibly come from his participation in the experiment.

The duty and responsibility for ascertaining the quality of the consent rests upon each individual who initiates, directs or engages in the experiment. It is a personal duty and responsibility which may not be delegated to another with impunity.

2. The experiment should be such as to yield fruitful results for the good of society, unprocurable by other methods or means of study, and not random and unnecessary in nature.

3. The experiment should be so designed and based on the results of animal experimentation and a knowledge of the natural history of the disease or other problem under study that the anticipated results will justify the performance of the experiment.

4. The experiment should be so conducted as to avoid all unnecessary physical and mental suffering and injury.

5. No experiment should be conducted where there is an a priori reason to believe that death or disabling injury will occur; except, perhaps, in those experiments where the experimental physicians also serve as subjects.

6. The degree of risk to be taken should never exceed that determined by the humanitarian importance of the problem to be solved by the experiment.

7. Proper preparations should be made and adequate facilities provided to protect the experimental subject against even remote possibilities of injury, disability, or death.

8. The experiment should be conducted only by scientifically qualified persons. The highest degree of skill and care should be required through all stages of the experiment of those who conduct or engage in the experiment.

9. During the course of the experiment the human subject should be at liberty to bring the experiment to an end if he has reached the physical or mental state where continuation of the experiment seems to him to be impossible.

10. During the course of the experiment the scientist in charge must be prepared to terminate the experiment at any stage, if he has probable cause to believe, in the exercise of the good faith, superior skill, and careful judgment required of him, that a continuation of the experiment is likely to result in injury, disability, or death to the experimental subject."

52. The Helsinki Declaration, adopted by the 18th World Medical Association's General Assembly in Finland in June 1964, with later amendments, states, *inter alia*:

> "20. The subjects must be volunteers and informed participants in the research project.
>
> 21. The right of research subjects to safeguard their integrity must always be respected. Every precaution should be taken to respect the privacy of the subject, the confidentiality of the patient's information and to minimize the impact of the study on the subject's physical and mental integrity and on the personality of the subject.
>
> 22. In any research on human beings, each potential subject must be adequately informed of the aims, methods, sources of funding, any possible conflicts of interest, institutional affiliations of the researcher, the anticipated benefits and potential risks of the study and the discomfort it may entail. The subject should be informed of the right to abstain from participation in the study or to withdraw consent to participate at any time without reprisal. After ensuring that the subject has understood the information, the physician should then obtain the subject's freely-given informed consent, preferably in writing. If the consent cannot be obtained in writing, the non-written consent must be formally documented and witnessed.
>
> 23. When obtaining informed consent for the research project the physician should be particularly cautious if the subject is in a dependent relationship with the physician or may consent under duress. In that case the informed consent should be obtained by a well-informed physician who is not engaged in the investigation and who is completely independent of this relationship.
>
> 24. For a research subject who is legally incompetent, physically or mentally incapable of giving consent or is a legally incompetent minor, the investigator must obtain informed consent from the legally authorized representative in accordance with applicable law. These groups should not be included in research unless the research is necessary to promote the health of the population represented and this research cannot instead be performed on legally competent persons.
>
> 25. When a subject deemed legally incompetent, such as a minor child, is able to give assent to decisions about participation in research, the investigator must obtain that assent in addition to the consent of the legally authorized representative.
>
> 26. Research on individuals from whom it is not possible to obtain consent, including proxy or advance consent, should be done only if the physical/mental condition that prevents obtaining informed consent is a necessary characteristic of the research population. The specific reasons for involving research subjects with a condition that renders them unable to give informed consent should be stated in the experimental protocol for consideration and approval of the review committee. The protocol should state that consent to remain in the research should be obtained as soon as possible from the individual or a legally authorized surrogate."

53. The United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (A/RES/46/119, 17 December 1991) read:

Principle 9
Treatment

"1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

...

3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment, adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused."

Principle 10
Medication

"1. Medication shall meet the best health needs of the patient, shall be given to a patient only for therapeutic or diagnostic purposes and shall never be administered as a punishment or for the convenience of others. Subject to the provisions of paragraph 15 of principle 11 below, mental health practitioners shall only administer medication of known or demonstrated efficacy ..."

Principle 11
Consent to treatment

"...

15. Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to give informed consent may be admitted to a clinical trial or given experimental treatment, but only with the approval of a competent, independent review body specifically constituted for this purpose ..."

54. The Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly on 13 December 2006 (Resolution A/RES/61/106) and ratified by Russia on 25 September 2012, provides:

Article 15
Freedom from torture or cruel, inhuman or degrading treatment or punishment

"1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment."

55. The Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine) (opened to signature at Oviedo on 4 April 1997), not yet ratified or signed

by Russia, contains the following principles regarding consent and scientific research:

Chapter II – Consent

Article 5 – General rule

"An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it.

This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks.

The person concerned may freely withdraw consent at any time."

Article 6 – Protection of persons not able to consent

"1. Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.

2. Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

3. Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law.

The individual concerned shall as far as possible take part in the authorisation procedure.

4. The representative, the authority, the person or the body mentioned in paragraphs 2 and 3 above shall be given, under the same conditions, the information referred to in Article 5.

5. The authorisation referred to in paragraphs 2 and 3 above may be withdrawn at any time in the best interests of the person concerned."

Article 7 – Protection of persons who have a mental disorder

"Subject to protective conditions prescribed by law, including supervisory, control and appeal procedures, a person who has a mental disorder of a serious nature may be subjected, without his or her consent, to an intervention aimed at treating his or her mental disorder only where, without such treatment, serious harm is likely to result to his or her health.

..."

Chapter V – Scientific Research

Article 15 – General rule

"Scientific research in the field of biology and medicine shall be carried out freely, subject to the provisions of this Convention and the other legal provisions ensuring the protection of the human being."

Article 16 – Protection of persons undergoing research

"Research on a person may only be undertaken if all the following conditions are met:

i. there is no alternative of comparable effectiveness to research on humans;

ii. the risks which may be incurred by that person are not disproportionate to the potential benefits of the research;

iii. the research project has been approved by the competent body after independent examination of its scientific merit, including assessment of the importance of the aim of the research, and multidisciplinary review of its ethical acceptability;

iv. the persons undergoing research have been informed of their rights and the safeguards prescribed by law for their protection;

v. the necessary consent as provided for under Article 5 has been given expressly, specifically and is documented. Such consent may be freely withdrawn at any time."

Article 17 – Protection of persons not able to consent to research

"1. Research on a person without the capacity to consent as stipulated in Article 5 may be undertaken only if all the following conditions are met:

i. the conditions laid down in Article 16, sub-paragraphs i to iv, are fulfilled;

ii. the results of the research have the potential to produce real and direct benefit to his or her health;

iii. research of comparable effectiveness cannot be carried out on individuals capable of giving consent;

iv. the necessary authorisation provided for under Article 6 has been given specifically and in writing; and

v. the person concerned does not object.

2. Exceptionally and under the protective conditions prescribed by law, where the research has not the potential to produce results of direct benefit to the health of the person concerned, such research may be authorised subject to the conditions laid down in paragraph 1, sub-paragraphs i, iii, iv and v above, and to the following additional conditions:

i. the research has the aim of contributing, through significant improvement in the scientific understanding of the individual's condition, disease or disorder, to the ultimate attainment of results capable of conferring benefit to the person concerned or to other persons in the same age category or afflicted with the same disease or disorder or having the same condition;

ii. the research entails only minimal risk and minimal burden for the individual concerned."

56. For other relevant international and Council of Europe documents see *Mifobova v. Russia*, no. 5525/11, §§ 41-44, 5 February 2015.

THE LAW

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

57. The first applicant complained that his involuntary confinement in a psychiatric hospital between 25 May and 9 June 2005 constituted a violation of Article 5 § 1 (e) of the Convention, which reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ...
>
> (e) the lawful detention of persons ... of unsound mind ..."

A. Admissibility

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

B. Merits

1. The parties' submissions

59. Relying on the principles established in the Court's case-law in connection with deprivation of liberty on the basis of unsoundness of mind, and on the relevant provisions of domestic law, the Government submitted that although the first applicant's involuntary hospitalisation in the psychiatric hospital on 25 May 2005 had been justified as, according to the opinion of a forensic psychiatric expert, the first applicant's psychiatric pathology was such as to render him dangerous to himself, his involuntary stay in the psychiatric hospital between 25 May and 9 June 2005 had been in breach of the requirements of the domestic law (see paragraph 34 above) and therefore in violation of Article 5 § 1 (e) of the Convention.

60. The first applicant maintained his complaint, and argued that the necessary conditions for his involuntary deprivation of liberty had not been met.

2. The Court's assessment

61. Having regard to the first applicant's factual submissions and the Government's acknowledgement of the unlawfulness of the first applicant's confinement in the psychiatric hospital between 25 May and 9 June 2005, the Court finds no reason to hold otherwise. It therefore concludes that there

has been a violation of Article 5 § 1 (e) of the Convention on account of the first applicant's involuntary confinement in the psychiatric hospital.

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

62. The first applicant complained that he had not had at his disposal an effective procedure by which he could challenge the lawfulness of his detention in the psychiatric hospital. He relied on Article 5 § 4 of the Convention, which 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. Admissibility

63. The Government considered that the first applicant was afforded an opportunity to challenge before the court the lawfulness of his involuntary psychiatric confinement through his representatives, the second and third applicants, of which he had not availed himself, thereby failing to exhaust domestic remedies. In this connection they made a reference to Article 254 of the Russian Code of Civil Procedure (see paragraph 49 above).

64. The first applicant argued that the remedy suggested by the Government had not been accessible to him in practice, as he had been held in the psychiatric hospital without any contact with the outside world, and had not been capable of restoring his rights.

65. The Court considers that the non-exhaustion grounds raised by the Government are closely related to the substance of the complaint under Article 5 § 4 of the Convention, and should be joined to the merits.

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

B. Merits

1. The parties' submissions

67. The Government made no submissions on the merits of the above complaint.

68. The first applicant maintained his complaint.

2. The Court's assessment

(a) General principles

69. Article 5 § 4 of the Convention deals only with those remedies which must be made available during a person's detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention leading, where appropriate, to his or her release. The provision does not deal with other remedies which may serve to review the lawfulness of a period of detention which has already ended (see *Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X).

70. According to the principles which emerge from the Court's case-law, a person of unsound mind who is compulsorily confined in a psychiatric institution for an indefinite or lengthy period is entitled under Article 5 § 4 of the Convention to take proceedings at reasonable intervals before a court to put in issue the "lawfulness", within the meaning of the Convention, of his or her detention, given that the reasons initially warranting confinement may cease to exist. In guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their detention, Article 5 § 4 also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of the detention and ordering its termination if it proves unlawful (see *Musiał v. Poland* [GC], no. 24557/94, § 43, ECHR 1999-II).

71. A key guarantee under Article 5 § 4 is that a patient compulsorily detained for psychiatric treatment must have the right to seek judicial review of that detention of his or her own motion. Article 5 § 4 therefore requires, in the first place, an independent legal device by which the detainee may appear before a judge who will determine the lawfulness of the continued detention. The detainee's access to the judge should not depend on the good will of the detaining authority or be activated at the discretion of the medical corps or the hospital authorities (see *Gorshkov v. Ukraine*, no. 67531/01, § 44, 8 November 2005, with further references).

(b) Application of those principles in the present case

72. The Court observes at the outset that sections 33-35 of the Psychiatric Treatment Act set out the procedure for judicial review of the lawfulness of involuntary psychiatric confinement. It provided, in particular, that judicial review was to be carried out following an application by the hospital authorities within five days of receipt of the application. The judge's decision either to grant or to refuse the application could be appealed against within ten days (see paragraph 48 above).

73. The Court notes that it has previously examined the system of review of lawfulness of involuntary psychiatric confinement under sections 33-35 of the Psychiatric Treatment Act in *Rakevich v. Russia* (no. 58973/00, §§ 44-46, 28 October 2003). In that case the Court arrived at

the conclusion that whilst the legal mechanism contained in the above-mentioned sections of the Act, ensuring that a mental patient is brought before a judge automatically once a relevant application has been lodged by the hospital authorities, constituted an important safeguard against arbitrary detention, it was nevertheless deficient in so far as it did not provide for an independent legal device which would enable a person compulsorily detained in a psychiatric hospital to seek judicial review of such detention of his or her own motion in order to secure release. The lack of this basic guarantee under Article 5 § 4 of the Convention in the Psychiatric Treatment Act led the Court to the conclusion that there had been a violation of the above Convention Article in the case of *Rakevich.*

74. The Court observes that in the circumstances of the present case its previous finding as to the need for a person compulsorily detained in psychiatric hospital to have a direct right of appeal in order to secure his or her release is all the more eloquent, given that the hospital authorities omitted to apply to the court for judicial review of the first applicant's detention (see paragraphs 34, 59 and 61 above), as a result of which the latter remained in the hospital for two weeks without being able himself to initiate a review of the lawfulness of his confinement in the hospital and thus eventually to be released.

75. The Court notes the Government's argument to the effect that it was open to the first applicant to complain about unlawfulness of his involuntary psychiatric confinement, in accordance with Article 254 of the Code of Civil Procedure. However, since the Government failed to illustrate the practical effectiveness of the remedy in question with examples from the case-law of the domestic courts, and in the absence of any examples of the successful use of this remedy in any of the cases relating to lawfulness of involuntary psychiatric confinement that have previously come before the Court, the Court remains unconvinced that the avenue advanced by the Government satisfies the requirements of effectiveness.

76. In the light of the above considerations, the Court rejects the Government's objection as to the non-exhaustion of the domestic remedies and concludes that the first applicant was not entitled to take proceedings to test the lawfulness of his continued detention for compulsory psychiatric treatment by a court, as required by Article 5 § 4 of the Convention. There has, accordingly, been a violation of this provision.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S INVOLUNTARY PSYCHIATRIC TREATMENT

77. The first applicant complained that his subjection to forced psychiatric treatment in the absence of an established medical need and in

the framework of a piece of scientific research amounted to treatment prohibited by Article 3 of the Convention, which reads as follows:

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

A. Admissibility

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

B. Merits

1. The parties' submissions

79. The Government considered that the first applicant's forced psychiatric treatment in the psychiatric hospital between 25 May and 9 June 2005 did not constitute inhuman or degrading treatment. The first applicant's involuntary psychiatric hospitalisation was necessitated by the latter's mental state at the material time, which manifested itself in expressed depression with suicidal tendencies, which was confirmed by forensic psychiatric expert examination. During the period of hospitalisation the first applicant underwent treatment with Seroquel (atypical antipsychotic medication), Iskel (antidepressant), Carbamazepine (mood-stabilising drug), Triftazin (neuroleptic) and Cyclodol, prescribed by an attending psychiatrist of the hospital. The Government submitted that the medical need for the first applicant to be treated with the above medication could not be established at the present moment because of the latter's refusal to undergo a psychiatric evaluation.

80. The first applicant argued that his unlawful confinement in the psychiatric hospital and that his being treated with the antipsychotic drug Seroquel as scientific research and in the absence of an established medical necessity amounted to torture. He asserted that in 2005 the Seroquel medication was on trial on humans in Russia, whereas abroad it was tested only on rats, mice and dogs. It was contraindicated for patients like him suffering from cerebroasthenia, hypotension and tachycardia, of which the attending psychiatrist was aware. As a result of such treatment the first applicant began to experience frequent acute headaches, loss of consciousness, loss of speech, vision deterioration, insomnia, nausea, frequent bouts of tachycardia, and hypertension. The procedural guarantees for the decision to administer involuntary psychiatric treatment were not complied with either: a panel of psychiatrists was not constituted to determine the medical need for the first applicant's forced psychiatric

treatment, no application had been made to the court by the head of the psychiatric hospital in connection with the need for his continued involuntary stay in the psychiatric hospital, and thus no proceedings took place before the court. Regarding the Government's remark about his refusal to submit to a psychiatric evaluation, the first applicant stated that within the framework of criminal case no. 401966 opened in connection with his unlawful placement in the psychiatric hospital and his stay there he was voluntarily examined at psychiatric neurological hospital no. 14 in Moscow and was found to be mentally healthy. His refusal to submit to another psychiatric examination was found legitimate by the Moscow Prosecutor's Office, which noted the existence of a number of other medical documents in the file confirming that he was mentally healthy, and held that no further psychiatric examination was required.

2. The Court's assessment

(a) General principles

81. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV).

82. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects, and in some cases the sex, age and state of health of the victim. Although the purpose of such treatment is a factor to be taken into account, in particular the question of whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers v. Greece*, no. 28524/95, §§ 68 and 74, ECHR 2001-III, and *Grori v. Albania*, § 125, no. 25336/04, with further references).

83. In order for treatment to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment (see *Labita*, cited above, § 120).

84. In determining whether a particular form of ill-treatment should be classified as torture, consideration must be given to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. As noted in previous cases, it appears that it was the intention that the Convention should, by means of such a distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering (see *Ireland v. the United Kingdom*, 18 January 1978, § 167, Series A no. 25).

85. In addition to the severity of the treatment, there is a purposive element to torture, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which in Article 1 defines torture in terms of the intentional infliction of severe pain or suffering with the aim, *inter alia*, of obtaining information, inflicting punishment or intimidating (see *Selmouni v. France* [GC], no. 25803/94, § 97, ECHR 1999-V).

86. Allegations of ill-treatment must be supported by appropriate evidence (see, *mutatis mutandis*, *Klaas v. Germany*, 22 September 1993, § 30, Series A no. 269). To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences, or of similar unrebutted presumptions of fact (see *Ireland*, cited above, § 161 *in fine*, and *Labita*, cited above, § 121).

87. With respect to medical interventions to which a detained person is subjected against his or her will the Court has held that a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The Court must nevertheless satisfy itself that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied with (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, § 94, ECHR 2005-II (extracts); *Gorobet v. Moldova*, no. 30951/10, § 51, 11 October 2011; and *V.C. v. Slovakia*, no. 18968/07, § 103, ECHR 2011 (extracts)).

(b) Application of those principles to the present case

88. The Court observes with regard to the existence of a medical necessity for the first applicant's forced psychiatric treatment, that according to the 2008 report of the first applicant's forensic psychiatric examination, while his involuntary hospitalisation on 25 May 2005 had been justified in view of his attempted suicide, his mental state between 27 May and 9 June 2005 did not fall under the definition of a "severe" mental disorder or any other acute mental condition, and did not require involuntary psychiatric treatment (see paragraph 34 above). No evidence proving otherwise was produced by the Government. The Court considers therefore that the medical necessity for the first applicant's involuntary psychiatric treatment has not been convincingly shown to exist between 27 May and 9 June 2005.

89. The Court further notes that while forced psychiatric treatment was being administered to the first applicant, the latter was made part of scientific research into the effects of a then new antipsychotic drug and prevented from having any contact with the outside world (see paragraphs 13 and 38 above).

90. In the light of the foregoing, the Court considers that the first applicant's forced psychiatric treatment in the absence of an established medical need and his being included in this context in unconsented scientific research into a new antipsychotic drug, was such as to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him. The Court finds unacceptable, in the light of international standards (see paragraphs 51-55 above), that a program of scientific research with new drugs be implemented without the consent of the subject submitted to the experimentation. Accordingly, the Court considers that the treatment to which the applicant was subjected against his will amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention (compare to *Gorobet*, cited above, §§ 47-53).

91. Accordingly, the Court concludes that there has been a violation of Article 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S BEATINGS IN THE PSYCHIATRIC HOSPITAL

92. The first applicant further complained with reference to Article 3 of the Convention, cited above, that he had been subjected to beatings during his confinement in the psychiatric hospital and that there had been no effective investigation in that respect.

A. Admissibility

93. The Government pleaded non-exhaustion of domestic remedies, since the first applicant had failed to appeal before the court against the decisions of 22 December 2012 and 9 January 2013.

94. The Court observes that on 22 December 2012 the investigating authorities ordered that the proceedings in connection with the first applicant's allegations of ill-treatment in the psychiatric hospital be discontinued. Shortly afterwards, on 9 January 2013, the above decision was set aside by the supervising prosecutor and the case-file material was referred to the investigation department for additional investigation, which remains pending to the present day. In such circumstances an appeal before the court against the above decisions would have been devoid of any purpose. The Court finds, therefore, that the first applicant was not obliged to pursue that remedy, and holds that the Government's objection should be dismissed.

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

B. Merits

1. The parties' submissions

96. The Government submitted that the criminal proceedings were instituted in connection with the infliction of bodily injuries on the first applicant during the night of 26-27 May 2005. Throughout the proceedings all possible investigative measures were carried out to establish the circumstances of the alleged beatings. However, since it was impossible to identify the alleged perpetrators, the proceedings were discontinued. The Government concluded therefore that there had been no violation of either the substantive or the procedural aspect of Article 3 of the Convention in the present case.

97. The first applicant maintained his complaints. He argued that the domestic authorities had made every effort to prevent the crime committed from becoming public and to exempt the perpetrators from criminal liability. Unjustified refusals to open criminal proceedings and failure to act by investigators and prosecutors had made the investigation a mere formality and had resulted in termination of the criminal proceedings as the charges had become time-barred.

2. The Court's assessment

(a) Procedural aspect of Article 3 of the Convention

(i) General principles

98. The Court reiterates that where an individual makes a credible assertion that he has suffered treatment infringing Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation (see *Labita*, cited above, § 131). Even though the scope of the State's positive obligations might differ between cases where treatment contrary to Article 3 has been inflicted through the involvement of State agents and cases where violence is inflicted by private individuals, the requirements in respect of an official investigation are similar (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December).

99. Any investigation into serious allegations of ill-treatment must be both prompt and thorough. The authorities must always make a serious attempt to find out what happened, and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which

undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. Thus, the mere fact that appropriate steps were not taken to reduce the risk of collusion between alleged perpetrators amounts to a significant shortcoming in the adequacy of the investigation. Furthermore, the investigation must be independent, impartial and subject to public scrutiny. It should result in a reasoned decision to reassure a concerned public that the rule of law had been respected (see *Lyapin v. Russia*, no. 46956/09, § 126, 24 July 2014, with further references).

(ii) Application of those principles to the present case

100. The Court notes that in October 2005 the first applicant complained to the Russian Federation Ombudsman about unlawful committal and treatment in the psychiatric hospital, and beatings by hospital nurses and two of the patients during the night of 26-27 May 2005. His complaint was referred to the Meshchanskiy District Prosecutor's Office, from where it was further referred to the Meshchanskiy District Department of the Interior.

101. The first applicant's allegations of beatings were supported by medical evidence, confirming the presence of a haematoma under his right eye, as well as bruises and contusions in the area of his chest and waist upon his discharge from the psychiatric hospital (see paragraph 14 above). In the Court's view, the allegations thus raised an arguable claim of ill-treatment, giving rise to an obligation on the domestic authorities to carry out an effective official investigation into the circumstances in which the first applicant sustained his injuries.

102. The Court notes that in response to the first applicant's complaint of beatings in the psychiatric hospital criminal proceedings were instituted by the domestic authorities. It remains therefore to be seen whether the investigation which was conducted in connection with the first applicant's allegations was such as to meet the requirements of Article 3 of the Convention.

103. The Court observes that the investigative authority did not open a criminal case until 2 November 2006, that is over a year after the first applicant's alleged ill-treatment had been brought to its attention (see paragraph 16 above). The Court considers that a delay in the opening of the criminal proceedings into the applicants' credible assertions could not but have had a major adverse impact on the investigation, significantly undermining the investigating authority's ability to secure the evidence concerning the alleged ill-treatment (see *Razzakov v. Russia*, no. 57519/09, § 61, 5 February 2015, with further references).

104. The Court further observes that the proceedings were subsequently suspended on four occasions: twice in 2007 and once each in 2008 and 2009, on the grounds that it was impossible to identify the alleged

perpetrators. The proceedings were also discontinued on three occasions: in 2007, 2010 and 2012, all on the grounds of expiry of the procedural time-limit for prosecution. The latest decision of 2012 on termination of the proceedings was set aside in January 2013, and the case-file material was again referred to the investigation department for additional investigation, which remains pending to the present day (see paragraphs 16-26 above).

105. Regard being had to the foregoing, the Court finds that the significant delay in opening the criminal case in connection with the first applicant's credible assertions of beatings in the psychiatric hospital, and the subsequent handling of the criminal proceedings which remain pending some ten years after the events complained of, show that the authorities failed in their obligation to conduct an effective investigation of the allegations of the first applicant's beatings in the psychiatric hospital.

106. Accordingly, there has been a violation of Article 3 of the Convention under its procedural aspect.

(b) Substantive aspect of Article 3 of the Convention

(i) General principles

107. Further to the general principles summarised above (see paragraphs 81-86 above), the Court reiterates its constant approach that Article 3 imposes on the State a duty to protect the physical well-being of individuals who find themselves in a vulnerable position by virtue of being under the control of the authorities (see *Denis Vasilyev*, cited above, § 115, with further references).

108. The Court notes in particular that where a person is injured while in detention or otherwise under the control of the authorities, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment (see *Bursuc v. Romania*, no. 42066/98, § 80, 12 October 2004). It is incumbent on the State to provide a plausible explanation of how the injuries were caused, failing which a clear issue arises under Article 3 of the Convention (see *Selmouni*, cited above, § 87).

109. The position of inferiority and powerlessness which is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with (see *M.S. v. Croatia (no. 2)*, no. 75450/12, § 98, 19 February 2015, and *Bureš v. the Czech Republic*, no. 37679/08, § 87, 18 October 2012).

(ii) Application of those principles to the present case

110. The Court observes at the outset that the psychiatric hospital to which the first applicant was involuntarily admitted and where he was held was a public institution, and that the first applicant while there was under the exclusive control of State authorities.

111. The Court further observes that while being held in the psychiatric hospital during the night of 26 to 27 May 2005 the first applicant sustained bodily injuries including a haematoma under his right eye, as well as bruises and contusions in the area of his chest and waist (see paragraph 14 above). The Government were therefore required to provide a plausible explanation as to how those injuries could have been caused.

112. On the basis of all the material placed before it, the Court finds that neither the authorities at the domestic level nor the Government in the proceedings before the Strasbourg Court have advanced any explanation as to the origin of the first applicant's injuries. The Court concludes therefore that the Government have not satisfactorily established that the first applicant's injuries were caused otherwise than by the treatment he underwent while being held in the psychiatric hospital.

113. Accordingly, having regard to the nature and the extent of the first applicant's injuries, the Court concludes that the State is responsible under the substantive aspect of Article 3 on account of the inhuman and degrading treatment to which the first applicant was subjected while in the psychiatric hospital.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

114. The second and third applicants complained under Articles 3 and 5 of the Convention that the first applicant's psychiatric internment had been unlawful, that no judicial review had been available, that the first applicant had been ill-treated in the psychiatric hospital, and that there had been no effective investigation of this. The first, second and third applicants further complained that the first applicant's psychiatric hospitalisation and treatment amounted to a violation of Article 2 of the Convention, and that the absence of effective domestic remedies in connection with the complaints raised in the present application amounted to violation of Articles 13 and 17 of the Convention.

115. The Court reiterates that under Article 34 of the Convention it may receive applications from individuals and others "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". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure (see *Buckley v. the United Kingdom*, 25 September 1996, §§ 56-59, *Reports of Judgments and Decisions* 1996-IV). Turning to the present case, the Court notes that the second and third applicants were not victims of the alleged violations. It therefore considers that their complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4 of the Convention.

116. As regards the complaints under Articles 2, 13 and 17 of the Convention raised by the first applicant, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that these complaints must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

117. 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

118. The first applicant claimed 36,900 euros (EUR) in respect of pecuniary damage, broken down as follows:

(a) EUR 34,100 as compensation for his loss of income in the form of salary which he could have received from June 2005 onwards;

(b) EUR 2,800 as compensation for the cost of his medication for "depressive hypochondriasis against the background of traumatic encephalopathy" diagnosed in August 2005, "traumatic encephalopathy, closed head injury, concussion, incised wounds forehead and right hand" diagnosed in April 2007, "traumatic encephalopathy with cephalgic syndrome, osteochondrosis of the cervical spine, cervicalgia" diagnosed in September 2009 and "discirculatory traumatic toxic encephalopathy, motoric aphasia, syndrome of parkinsonism, low back pain, strabismus, oculomotoric disorders" diagnosed in July 2011.

119. In respect of non-pecuniary damage the first applicant claimed EUR 80,000.

120. The Government submitted that the first applicant had failed to show a clear causal connection between the violations alleged and the pecuniary damages claimed. The Government further considered that the first applicant's claims for non-pecuniary damage were excessive, and that if the Court were to find a violation the finding of such a violation would constitute in itself sufficient just satisfaction.

121. The Court notes that it has found a combination of serious violations in the present case. The first applicant was unlawfully detained in a psychiatric hospital for two weeks and was not entitled to take proceedings to test the lawfulness of his detention by a court. Besides, he was subjected to forced psychiatric treatment and beatings in the psychiatric

hospital, and the domestic authorities have failed to investigate effectively the circumstances under which the first applicant sustained the injuries he suffered.

122. As regards the compensation for pecuniary damage claimed by the first applicant, the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim.

123. As regards the non-pecuniary damage, the Court considers that the first applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the first applicant EUR 26,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on it.

B. Costs and expenses

124. The first applicant also claimed EUR 325 for photocopying, translation and postal expenses and EUR 2,720 for his legal representation before the Court.

125. The Government argued that the first applicant had failed to prove that he had incurred expenses in the amount of EUR 2,720 for his legal representation before the Court.

126. 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, and bearing in mind that the applicants were granted EUR 850 in legal aid for their representation by Ms I. Sergeyeva, the Court considers it reasonable to award the sum of EUR 2,000 for costs and expenses incurred in the proceedings before the Court.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 3 and 5 §§ 1 (e) and 4 of the Convention brought by the first applicant admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the first applicant's forced psychiatric treatment;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of the first applicant's ill-treatment in the psychiatric hospital and failure of the domestic authorities to carry out an effective investigation;

6. *Holds*

(a) that the respondent State is to pay the first 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 26,000 (twenty-six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the first 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;

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

Done in English, and notified in writing on 23 July 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President