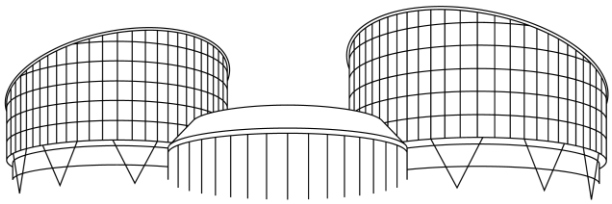

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF M. v. UKRAINE

(Application no. 2452/04)

JUDGMENT

STRASBOURG

19 April 2012

FINAL

19/07/2012

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

In the case of M. v. Ukraine**,**

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

Dean Spielmann, *President,*
Elisabet Fura,
Karel Jungwiert,
Boštjan M. Zupančič,
Mark Villiger,
Ganna Yudkivska,
Angelika Nußberger, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 27 March 2012,

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

PROCEDURE

1. The case originated in an application (no. 2452/04) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Ukrainian national, Ms M. ("the applicant"), on 5 January 2004. The President of the Fifth Section decided that the applicant's identity should not be disclosed to the public (Rule 47 § 3 of the Rules of Court).

2. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. The applicant alleged, in particular, that her placements in the psychiatric hospital had been contrary to Article 5 § 1 of the Convention.

4. On 10 September 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Odessa.

A. The applicant's admissions to the psychiatric hospital

1. The applicant's first hospitalisation

6. In the period between 10 September and 13 October 1999 the applicant had in-patient treatment in the Odessa Region Psychiatric Hospital ("the hospital") which is a State-run institution. In 2000 she was registered with the Odessa Region Psychoneurological Dispensary ("the psychoneurological dispensary") as a person with potential mental problems.

2. The applicant's second hospitalisation

7. On 24 September 2003 the applicant was assessed by a doctor at the psychoneurological dispensary and referred to the hospital for in-patient treatment for a serious mental disorder. However, the applicant ignored the referral and stayed at home with her mother. A report of the applicant's assessment was provided to the hospital.

8. In the next few days the applicant's condition worsened and her behaviour became aggressive towards her mother and neighbours. The mother and the housing maintenance authority therefore complained to the hospital about the applicant's conduct.

9. In the morning of 28 September 2003 the applicant was taken to the hospital by ambulance and was assessed by a psychiatrist of the hospital, who concluded that she needed to be hospitalised for a serious mental disorder. The applicant was therefore kept in the hospital.

10. On 29 September 2003 a panel of three different psychiatrists of the hospital assessed the applicant once again and issued a report stating that she was a danger to society due to her serious mental disorder, which required in-patient psychiatric treatment. The psychiatrists specified in the report that the applicant's manner of communication with her mother and neighbours was aggressive; she threatened them, threw glass jars, bottles and vases off the balcony, which was on the fifth floor, played loud music at night and damaged property in the apartment.

11. The hospital therefore lodged an application with a local court, seeking authorisation for compulsory admission to hospital in accordance with sections 14 and 16 of the Psychiatric Assistance Act.

12. On 30 September 2003 a judge at the local court conducted an on-site hearing of the applicant's case in the administration wing of the hospital. The hearing was held in the presence of a prosecutor and one of the doctors who had assessed the applicant earlier. Following the hearing the court allowed the application and held as follows:

> "... having examined the case file and heard a representative of [the hospital] and a prosecutor, the court considers that the application in question should be allowed.

It appears from the case file that the patient was taken from home to [the hospital] by the ambulance after showing signs of mental illness which suggested that she was a danger to society.

A panel of psychiatrists [of the hospital] has concluded that the patient should have in-patient treatment.

Relying on the Psychiatric Assistance Act and Article 202 of the Code of Civil Procedure, the court

has decided that

[M.] should be compulsorily hospitalised to undergo medical treatment.

The decision shall not be subject to appeal. ..."

13. On 19 December 2003 the compulsory treatment was completed and the applicant was discharged from the hospital.

14. According to the applicant, the sanitary and hygienic conditions in which she was kept in the hospital were unsatisfactory.

3. The applicant's third hospitalisation

15. On 15 July 2004 the applicant was assessed by a doctor at the psychoneurological dispensary and referred to the hospital for in-patient treatment for a serious mental disorder. The applicant refused the proposed treatment and stayed at home. A report of the assessment of the applicant was sent to the hospital.

16. After the assessment, the applicant's condition worsened in a similar way as before the second hospitalisation and the neighbours and the housing maintenance authority complained to the hospital about her behaviour.

17. In the morning of 19 July 2004 the applicant was taken to the hospital by ambulance and assessed by a psychiatrist there, who concluded that she was suffering from a mental disorder and needed to be hospitalised. The applicant was therefore kept in the hospital.

18. On 20 July 2004 a panel of three psychiatrists of the hospital, including the psychiatrist who had assessed the applicant the previous day, issued a report stating that the applicant was a danger to society due to her serious mental disorder and that she needed in-patient treatment. The hospital therefore applied to the court for an order for compulsory admission.

19. On 21 July 2004 the local court allowed the application, following an on-site hearing held in the administration wing of the hospital. The hearing was attended by the prosecutor and one of the psychiatrists who had previously assessed the applicant. The court held as follows:

"... having examined the case file and heard a representative of [the hospital] and a prosecutor, the court considers that the application in question should be allowed.

> It appears from the case file that on 19 July 2004 the patient was taken from home to [the hospital] by ambulance after showing signs of a serious mental disorder. For this reason a panel of psychiatrists found that the applicant was a danger to society and should be compulsorily admitted to [the hospital] for in-patient treatment.
>
> The representative of [the hospital] has submitted that the patient should be admitted to the hospital and treated for a serious mental disorder.
>
> Having regard to all the circumstances, the court comes to the conclusion that the patient's compulsory hospitalisation is required.
>
> Relying on the Psychiatric Assistance Act and Article 202 of the Code of Civil Procedure, the court
>
> has decided that
>
> [M.] should be compulsorily hospitalised to undergo medical treatment.
>
> The decision shall not be subject to appeal. ..."

20. On 8 September 2004 the applicant was discharged from the hospital on completion of the treatment.

4. The applicant's fourth hospitalisation

21. On 13 February 2006 the applicant was assessed by a doctor at the psychoneurological dispensary, who concluded that the applicant's mental disorder had recurred.

22. On 17 February 2006 the applicant made a written application for admission to the hospital for treatment. The application was signed only by the applicant. According to the applicant, she had been compelled to do so under the threat of never being discharged from the hospital. She had been in poor health, mentally and physically, that day.

23. Subsequently, the application was marked and signed by a member of hospital staff, designating the department of the hospital to which the applicant was to be assigned.

24. According to the applicant, the regime under which she was kept in the hospital was strict, as she had to stay in the hospital for the whole day; her movements within the premises of the hospital were restricted; and her personal belongings were limited in number and inventoried.

25. On 19 April 2006 the applicant was discharged from the hospital.

B. Labour dispute

26. On an unspecified date the applicant instituted civil proceedings in the Suvorovskyy District Court of Odessa against Odessa Regional Oncological Hospital, seeking reinstatement in the position of doctor and payment of salary arrears.

27. On 9 February 2005 the court rejected her claim as unsubstantiated. On 15 June 2005 the Odessa Regional Court of Appeal upheld that judgment.

28. On the expiration of the time-limit the applicant lodged an appeal on points of law with the Supreme Court against the judgment of 9 February 2005. The applicant did not request the Supreme Court to extend the time-limit.

29. On 28 October 2005 the Supreme Court declared the applicant's appeal inadmissible as submitted out of time.

II. RELEVANT DOMESTIC LAW

A. Constitution of 28 June 1996

30. The relevant provisions of the Constitution read as follows:

Article 55

"Human and citizens' rights and freedoms are protected by the courts.

Everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of State power, bodies of local self-government, officials and officers. ...

Everyone has the right to protect his or her rights and freedoms from violations and illegal encroachments by any means not prohibited by law."

B. Codes of Civil Procedure

31. Article 202 of the Code of Civil Procedure of 18 July 1963 (in force until 1 September 2005) provided that a court decision had to be lawful and substantiated. The courts had to substantiate their decision with the pieces of evidence they had examined during the court hearing.

32. Article 248-1 of that Code provided that that anyone who considered that his or her rights or freedoms had been infringed by a decision, act or omission of a State body, legal entity or official could lodge a complaint with a court.

33. The Code of Civil Procedure of 18 March 2004 provides in Section XI, "Final and transitional provisions", as follows:

"1. This Code shall enter into force on 1 September 2005 ...

3. [The following normative acts] shall be repealed with the entry into force of this Code:

The Code of Civil Procedure of 18 July 1963 ...”

C. Code of Administrative Justice of 6 July 2005 (in force from 1 September 2005)

34. The relevant provisions of the Code read as follows:

Article 2 Role of the administrative justice system

“1. The role of the administrative justice system shall be the protection of the rights, freedoms and interests of physical persons, and the rights and interests of legal entities in the field of public-law relations, from violations by public authorities ...

2. Any decisions, actions or inaction on the part of public authorities may be appealed against in administrative courts, except for cases in which the Constitution and laws of Ukraine foresee a different procedure of judicial appeal against such decisions, actions or inactivity ...”

Article 3 Definition of terms

“1. The terms listed below shall have the following meaning:

1) the administrative jurisdiction case (hereinafter ‘the administrative case’) – a public-law dispute, referred to an administrative court, in which one of the parties shall be a body of the executive power, local self-governance, its official or the other subject empowered to perform public administrative functions on the basis of legalisation, including those aimed at the exercise of delegated powers;

...”

Article 17 Jurisdiction of administrative courts in deciding administrative cases

“1. The jurisdiction of the administrative courts shall cover legal relationships arising in the course of the exercise of public administrative powers by the subjects of public authority and [legal relationships arising] in the course of public formation of a subject of public authority by way of election or referendum.

...”

D. Psychiatric Assistance Act of 22 February 2000

35. The relevant extracts from the Act read as follows:

Section 13 Hospitalisation of a person in a mental health facility

“A person shall be hospitalised in a mental health facility voluntarily, either at his or her request or with his or her conscious agreement. ... Consent to hospitalisation shall

be included in the medical documentation following the signature of the person concerned or his or her legal representative and a psychiatrist."

Section 14 Grounds for compulsory hospitalisation of a person in a mental health facility

"A person who is suffering from a mental disorder may be hospitalised in a mental health facility without his or her conscious agreement or without the agreement of his or her legal representative if the medical examination or treatment of that person is possible only within the mental health facility and if, as a result of the serious mental disorder, such a person:

commits or expresses real intentions to commit acts which are directly dangerous to this person or to others; or

is unable to meet his or her vital needs at the basic level."

Section 16 Assessment of persons compulsorily hospitalised in a mental health facility

"A person who has been hospitalised in a mental health facility upon a decision of a psychiatrist on the grounds provided for in section 14 of this Act, shall be assessed, within twenty-four hours, by a panel of psychiatrists of the mental health facility to determine whether the hospitalisation is required. If the hospitalisation is found to be unnecessary and the person concerned does not wish to stay in the mental health facility, he or she shall be immediately discharged.

If compulsory hospitalisation of the person is required, a representative of the mental health facility in which the person is being kept shall apply, within twenty-four hours, to the court ... for compulsory hospitalisation of the person on the grounds provided for in section 14 of this Act. ..."

Section 17 Continuation of compulsory hospitalisation

A person shall be compulsorily retained in a mental health facility exclusively for the period when the grounds justifying his or her hospitalisation exist.

A person, who has been compulsorily hospitalised in a mental health facility shall be assessed by a panel of psychiatrists at least once a month to determine whether the person should remain in hospital or be discharged.

If compulsory hospitalisation is required for more than six months, a representative of the mental health facility shall apply to the court ... seeking an extension of the compulsory hospitalisation. A report of a panel of psychiatrists giving grounds for an extension of the hospitalisation shall be enclosed with the application... The person's hospitalisation may subsequently be extended, on each occasion for a period which does not exceed six months.

A person subjected to compulsory hospitalisation or his or her legal representative shall be entitled to lodge requests with a court for termination of the compulsory

hospitalisation every three months, starting from the date of the court decision extending the hospitalisation."

Section 18 Discharge of a person from a mental health facility

"A person shall be discharged from a mental health facility when the assessment or expert examination of his or her mental state has been completed, or when he or she has recovered from the illness, or when his or her mental state has changed to the extent that any further in-patient treatment is no longer required. A person who was voluntarily admitted shall be discharged upon written application by that person or his or her legal representative or upon a decision of a psychiatrist.

The discharge of a person who was voluntarily hospitalised may be refused if a panel of psychiatrists finds grounds for compulsory hospitalisation of the person as provided for in section 14 of this Act. In this event procedures for compulsory hospitalisation, continuation of the hospitalisation and discharge shall be conducted as provided for in sections 16, 17 and 22 (paragraphs 2 and 3) of this Act and paragraph 3 of this section.

A person subjected to compulsory hospitalisation shall be discharged upon a decision of a panel of psychiatrists or a court decision refusing extension of the hospitalisation. ..."

Section 22 The procedure for judicial examination of applications for compulsory provision of psychiatric assistance

"... An application by a representative of a mental health facility for compulsory hospitalisation of a patient shall be examined by a court ... within twenty-four hours of receipt of the application. ...

Cases concerning compulsory provision of psychiatric assistance shall be examined in the presence of the person concerned. A prosecutor, a legal representative of the person concerned and either a psychiatrist or a representative of the mental health facility shall participate in the hearing."

E. Prosecution Service Act of 1 December 1991 (with amendments)

36. The relevant provisions of the Act provide:

Section 12 Examination of applications and complaints

"The public prosecutor shall examine applications and complaints of violation of rights of individuals and legal entities, except for those complaints which are within the competence of a court.

...

A decision taken by a public prosecutor can be appealed against before a higher public prosecutor or a court."

III. RELEVANT INTERNATIONAL MATERIAL

A. UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care adopted by General Assembly resolution 46/119 of 17 December 1991

37. The relevant extracts of this international instrument provide as follows:

Principle 11 Consent to treatment

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7, 8, 13 and 15 of the present principle.

2. Informed consent is consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:

(a) The diagnostic assessment;

(b) The purpose, method, likely duration and expected benefit of the proposed treatment;

(c) Alternative modes of treatment, including those less intrusive;

(d) Possible pain or discomfort, risks and side-effects of the proposed treatment.

3. A patient may request the presence of a person or persons of the patient's choosing during the procedure for granting consent.

4. A patient has the right to refuse or stop treatment, except as provided for in paragraphs 6, 7, 8, 13 and 15 of the present principle. The consequences of refusing or stopping treatment must be explained to the patient.

...

Principle 15 Admission principles

...

3. Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time unless the criteria for his or her retention as an involuntary patient, as set forth in principle 16 below, apply, and he or she shall be informed of that right.

Principle 16 Involuntary admission

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

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

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

In the case referred to in subparagraph (b), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.

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

...

Principle 17 Review body

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

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

3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law.

4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law.

5. At each review, the review body shall consider whether the criteria for involuntary admission set out in paragraph 1 of principle 16 above are still satisfied, and, if not, the patient shall be discharged as an involuntary patient.

6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient.

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

..."

B. Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder (Adopted by the Committee of Ministers on 22 September 2004 at the 896th meeting of the Ministers' Deputies)

38. The relevant extracts of the Recommendation provide as follows:

Article 17 Criteria for involuntary placement

1. A person may be subject to involuntary placement only if all the following conditions are met:

i. the person has a mental disorder;

ii. the person's condition represents a significant risk of serious harm to his or her health or to other persons;

iii. the placement includes a therapeutic purpose;

iv. no less restrictive means of providing appropriate care are available;

v. the opinion of the person concerned has been taken into consideration.

...

Article 20 Procedures for taking decisions on involuntary placement and/or involuntary treatment

Decision

1. The decision to subject a person to involuntary placement should be taken by a court or another competent body. The court or other competent body should:

i. take into account the opinion of the person concerned;

ii. act in accordance with procedures provided by law based on the principle that the person concerned should be seen and consulted.

...

3. Decisions to subject a person to involuntary placement or to involuntary treatment should be documented and state the maximum period beyond which, according to law, they should be formally reviewed. This is without prejudice to the person's rights to reviews and appeals, in accordance with the provisions of Article 25.

...

Article 25 Reviews and appeals concerning the lawfulness of involuntary placement and/or involuntary treatment

1. Member states should ensure that persons subject to involuntary placement or involuntary treatment can effectively exercise the right:

i. to appeal against a decision;

ii. to have the lawfulness of the measure, or its continuing application, reviewed by a court at reasonable intervals;

iii. to be heard in person or through a personal advocate or representative at such reviews or appeals.

2. If the person, or that person's personal advocate or representative, if any, does not request such review, the responsible authority should inform the court and ensure that the continuing lawfulness of the measure is reviewed at reasonable and regular intervals.

3. Member states should consider providing the person with a lawyer for all such proceedings before a court. Where the person cannot act for him or herself, the person should have the right to a lawyer and, according to national law, to free legal aid. The lawyer should have access to all the materials, and have the right to challenge the evidence, before the court.

...

7. A procedure to appeal the court's decision should be provided.

..."

C. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT")

39. The CPT standards (document no. CPT/Inf/E (2002) 1-Rev. 2006, page 40) provide, in so far as relevant, as follows:

"V. Involuntary placement in psychiatric establishments

... 41. Patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The admission of a person to a psychiatric establishment on an involuntary basis should not be construed as authorising treatment without his consent. It follows that every competent patient, whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances.

Of course, consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed. ... Consequently, all patients should be provided systematically with relevant information about their condition and the treatment which it is proposed to prescribe for them. Relevant information (results, etc.) should also be provided following treatment. ...

52. The procedure by which involuntary placement is decided should offer guarantees of independence and impartiality as well as of objective medical expertise. ...

55. The CPT also attaches considerable importance to psychiatric establishments being visited on a regular basis by an independent outside body (eg. a judge or supervisory committee) which is responsible for the inspection of patients' care. This body should be authorised, in particular, to talk privately with patients, receive directly any complaints which they might have and make any necessary recommendations. ...

56. Involuntary placement in a psychiatric establishment should cease as soon as it is no longer required by the patient's mental state. Consequently, the need for such a placement should be reviewed at regular intervals. ..."

40. The relevant excerpts from the Report to the Ukrainian Government on the visit to Ukraine carried out by the CPT from 24 November to 6 December 2002 (CPT/Inf (2002) 19) read as follows:

"D. Mental health establishments

...

2. Chernivtsi Regional Clinical Psychiatric Hospital

f. safeguards offered to psychiatric patients

... 166. A few patients were officially admitted on a non-voluntary basis under a civil committal procedure.

Nevertheless, as previously mentioned (cf. paragraph 146 above), a large number of the 510 adult patients in the secure wards had not consented to their admission to a psychiatric hospital and could not leave the hospital of their own free will. In practice, they did not have the slightest opportunity to benefit from the safeguards provided by the 2000 Law on Psychiatric Care, in particular the opportunity to contest their

admission to hospital. In many cases, the files contained only a request for treatment made by a relative.

Worse still, an examination of the patients' files revealed that some of them had been admitted to hospital without their consent simply on the basis of a letter from a public prosecutor or at the request of the Militia, without an involuntary committal request having been submitted to the competent court.

By letter of 15 April 2003, the Ukrainian authorities informed the CPT that instructions had been issued to put into practice at Chernivtsi the 2000 Law on Psychiatric Care. **The CPT wishes to receive confirmation that this is currently the case. In addition, it recommends that the Ukrainian authorities immediately take all the necessary steps to ensure that the sections of the 2000 Law on Psychiatric Care concerning involuntary admission to hospital are scrupulously observed in all Ukrainian hospitals which admit non-voluntary patients.** ..."

THE LAW

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

41. The applicant complained that her right to liberty under Article 5 § 1 was infringed during her involuntary and voluntary hospitalisations in a mental health facility.

42. The relevant parts of Article 5 § 1 of the Convention provide:

"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

1. Parties' submissions

43. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of her complaint about the fourth hospitalisation. In particular, the applicant should have applied to a prosecutor who was authorised to maintain domestic legal order and consider complaints about violations of individual rights. The applicant could have lodged a complaint with a court under Article 248-1 of the Code of Civil Procedure 1963 that her fourth hospitalisation had been unlawful. The applicant could have raised the matter before the administrative courts seeking to have the actions of the hospital declared unlawful. Moreover, the

applicant could have applied to court seeking damages under the Civil Code for allegedly unlawful placement in the hospital. As an alternative, the Government contended that the applicant did not comply with the six-month rule when complaining about the fourth hospitalisation as she had only raised that issue in her submissions of 18 October 2006.

44. The Government further maintained that the applicant had abused her right of petition by not revealing the real circumstances of her fourth hospitalisation. In particular, in her submissions the applicant concealed from the Court the fact that the fourth hospitalisation was conducted on the basis of her personal application written on 17 February 2006.

45. Lastly, in the Government's opinion the part of the application referring to the fourth hospitalisation was manifestly ill-founded due to the voluntary nature of her admission to the hospital.

46. The applicant insisted that her complaint was admissible. She contended that she had signed the application for the fourth hospitalisation under the threat of never being discharged from the hospital. Moreover, on that day she was in particularly bad health.

2. The Court's assessment

47. The Court notes at the outset that the complaint about the first hospitalisation was submitted by the applicant to the Court on 29 May 2006 while the hospitalisation itself ended on 13 October 1999. The applicant did not raise this matter at the domestic level. The Court considers that, in view of the requirements of Article 35 § 1 of the Convention, the applicant should have either made use of the domestic remedies or, in the event they were absent or ineffective, should have applied to the Court within the six-month time-limit from the moment when the measure complained of ceased to exist. As this has not been done, the respective part of the application should be dismissed as inadmissible.

48. Concerning the Government's contention that the applicant did not comply with the rule of exhaustion of domestic remedies and the six-month rule when complaining of the fourth hospitalisation, the Court notes that these issues are closely connected with the merits of the complaint. The Government's objections in this respect should therefore be joined to the merits of the application.

49. Concerning the issue of abuse of the right of petition, raised by the Government, such a finding may be made by the Court in exceptional circumstances, in particular, if it appears that the application was based on untrue statements in a deliberate attempt to mislead the Court (see *Ismoilov and Others v. Russia*, no. 2947/06, § 103, 24 April 2008). The circumstances surrounding the applicant's fourth admission to the mental health facility did not affect other aspects of the application relating to the previous instances of the applicant's hospitalisation in a mental health facility. Neither did they affect the applicant's submissions to the effect that

she was compulsorily kept in hospital during the fourth hospitalisation after the admission procedure had been completed. Lastly, proper regard should be given to the applicant's further arguments as to the alleged lack of her real agreement for the fourth admission to the hospital. In sum, the applicant's failure to initially specify the circumstances referred to by the Government did not relate to a greater part of the application, that failure cannot be interpreted as a deliberate attempt to mislead the Court and in the end it did not impede the proper conduct of the proceedings before the Court. The Government's objection to this effect is therefore dismissed.

50. In the light of the material in its possession the Court considers that the applicant's complaint under Article 5 § 1 of the Convention concerning her second, third and fourth hospitalisation in the mental health facility is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It also notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

51. The Government submitted that the case file contained sufficient evidence substantiating the need for the applicant's second and third hospitalisation in a mental health facility. They further contended that those hospitalisations were conducted in conformity with domestic procedure, which offered appropriate procedural safeguards to comply with the requirements of lawfulness under Article 5 § 1 of the Convention.

52. The Government further maintained their position that no issue could arise under Article 5 § 1 of the Convention with respect to the fourth hospitalisation, which had been conducted voluntarily at the applicant's request.

53. The applicant argued that she had been hospitalised contrary to her right to liberty. She insisted that the courts had not examined her case properly when they ordered her second and third hospitalisations and that she had been compelled to sign an application for the fourth hospitalisation.

2. The Court's assessment

(a) As to the second and third hospitalisations

54. The parties have not disputed that the applicant's retention in a mental health facility during the second and third hospitalisations amounted to detention within the meaning of Article 5 § 1 of the Convention. The Court finds no reason to hold otherwise. It is therefore necessary to

determine whether the impugned measures were justified under that Convention provision.

(i) Recapitulation of the relevant principles

55. The Court reiterates that an individual cannot be deprived of his liberty on the basis of unsoundness of mind unless three minimum conditions are satisfied: (i) he must reliably be shown by objective medical expertise to be of unsound mind; (ii) the mental disorder must be of a kind or degree warranting compulsory confinement; (iii) the validity of continued confinement depends upon the persistence of such a disorder (see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33 and *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, 17 January 2012).

56. The lawfulness of detention depends on conformity with the procedural and substantive aspects of domestic law (see *Winterwerp*, cited above, pp. 17-18, § 39). However, not every fault discovered in a detention order renders the underlying detention as such unlawful for the purposes of Article 5 § 1. A period of detention is, in principle, "lawful" if it is based on a court order. For the assessment of compliance with Article 5 § 1 of the Convention a basic distinction has to be made between *ex facie* invalid detention orders – for example, given by a court in excess of jurisdiction or where the interested party did not have proper notice of the hearing – and detention orders which are *prima facie* valid and effective unless and until they have been overturned by a higher court. A detention order must be considered as *ex facie* invalid if the flaw in the order amounted to a "gross and obvious irregularity" in the exceptional sense indicated by the Court's case-law (see *Mooren v. Germany* [GC], no. 11364/03, §§ 74 and 75, 9 July 2009 with further references). The reasoning of the detention order is a relevant factor in determining whether a person's detention must be considered as arbitrary. The Court has considered the absence of any grounds given by the judicial authorities in their decisions authorising detention for a prolonged period of time to be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 § 1 (see *Stašaitis v. Lithuania*, no. 47679/99, § 67, 21 March 2002; *Nakhmanovich v. Russia*, no. 55669/00, § 70, 2 March 2006; and *Belevitskiy v. Russia*, no. 72967/01, § 91, 1 March 2007).

57. The detention of an individual is such a serious measure that it is only justified where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained. That means that it does not suffice that the deprivation of liberty is executed in conformity with national law, but it must also be necessary in the circumstances (see *Witold Litwa v. Poland*, no. 26629/95, § 78, ECHR 2000-III).

58. Given the importance of personal liberty, the relevant national law must meet the standard of "lawfulness" set by the Convention, which

requires that domestic law be sufficiently precise and foreseeable in its application (see, for example, *Kawka v. Poland*, no. 25874/94, § 49, 9 January 2001). Moreover, the condition that detention be "in accordance with a procedure prescribed by law", requires the existence in domestic law of "fair and proper procedures" and adequate legal protection against arbitrary deprivation of liberty (see *Winterwerp*, cited above, pp. 19-20, § 45; *Amuur v. France*, judgment of 25 June 1996, *Reports* 1996-III, pp. 851-52, § 53; and *H.L. v. the United Kingdom*, no. 45508/99, § 115, ECHR 2004-IX).

(ii) Application of these principles to the present case

59. In the present case the need for the applicant's second and third hospitalisations was corroborated by an individual opinion provided by a psychiatrist working at the psychoneurological dispensary, then by an individual opinion provided by a psychiatrist working at the receiving hospital, and lastly by a collective opinion of the board of psychiatrists of the same hospital (see paragraphs 7, 9, 10, 15, 17 and 18 above). The applicant's diagnosis was therefore established and confirmed by several mental health practitioners, one of them belonging to a facility not connected, administratively or financially, with the receiving hospital. The Court accepts that in both cases there existed adequate evidence suggesting that the applicant suffered from a mental disorder which might have required her admission to the mental health facility for in-patient treatment.

60. Reviewing the court decisions authorising the applicant's second and third hospitalisation, the Court notes that according to section 22 of the Psychiatric Assistance Act cases concerning compulsory provision of psychiatric assistance should be heard in the presence of the person concerned. However, there is no indication that the applicant was given any notice of the relevant hearings. The texts of the decisions do not suggest that she was present at the hearings. Neither do they suggest that the courts took any account of the applicant's opinion as to the matters in question. No explanation was given by the courts as to why the applicant was absent and why her opinion on the appropriateness of hospitalisations was not examined.

61. In ordering the compulsory hospitalisations of the applicant on the grounds that she was dangerous, the courts were expected to show that the conditions for compulsory hospitalisation, as provided by section 14 of the Psychiatric Assistance Act, had been met. However, in support of their conclusions the courts did not refer to any specific facts suggesting that those conditions had been complied with. In particular, no specific facts were established in the court hearings to show that the applicant had committed or expressed a real intention to commit acts which were directly dangerous to her or to other individuals (see also *Gajcsi v. Hungary*, no. 34503/03, §21, 3 October 2006).

62. The court decisions did not refer to any other medical opinions apart from the report from the receiving mental health facility. However, assessment of the medical opinions given by mental health practitioners independently of each other would contribute to the objectivity of the medical conclusions justifying compulsory hospitalisation. In this context the Court notes that according to principle 17 § 1 of the UN Principles for the Protection of Persons with Mental Illnesses and for the Improvement of Mental Health Care of 17 December 1991 ("the UN Principles") the procedures for compulsory hospitalisations should provide for the independent medical assessment of the patient (see paragraph 37 above).

63. Assessing the court decisions from the standpoint of the necessity of the compulsory hospitalisation, the Court notes that at no point did the courts examine other, less severe, measures that might have been sufficient for the protection of the applicant's and the public interests. In this context another question arises as to the degree of the intensity of the impugned measures. Different types and levels of mental disorders call for varying approach in selecting a regime under which a particular patient is to be kept. The courts did not address this issue, however.

64. The Court further notes that the above shortcomings in the court decisions could not be addressed at the stage of appeal as the courts specified that their decisions were not subject to appeal. Likewise, it has not been suggested by the Government that at the relevant time such court decisions could be challenged before the courts of appeal. Meanwhile, the availability of appeal procedure is a standard which has been recognised by the international community as essential guarantee which should exist for an involuntary patient in a mental health facility (see principle 17 § 7 of the UN Principles cited in paragraph 37 and Article 25 of the Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder ("the CM Recommendation") cited in paragraph 38 above).

65. Moreover, in ordering the applicant's hospitalisations, the domestic courts were not obliged to set any specific time-limits for those compulsory measures. In this context it is relevant to note that the CM Recommendation has endorsed the principle that the decisions to subject a person to involuntary placement in mental hospital should state the maximum period beyond which, according to law, they should be formally reviewed (see Article 20 of the CM Recommendation). The Court further notes that, according to section 17 of the Psychiatric Assistance Act, following the compulsory admission of a person to a mental hospital on the basis of judicial decision his or her mental health is subject to automatic review by a panel of psychiatrists at least once a month to determine whether it is necessary to keep the person in hospital. However, the law does not specify whether any external expert has to be involved in such examinations and does not put in place any other safeguards for the independent review of the

matter. At the same time, subsequent judicial review of compulsory hospitalisation is obligatory only in cases where the hospitalisation exceeds six months. The right of the patients to apply to a court seeking review of their status comes into being only three months after the date of the court decision extending the hospitalisation.

66. It follows that, in the absence of any time-limits set by the courts in the primary decisions for hospitalisation, the subsequent judicial review of the matter was not available to the applicant for a considerable period of time. Meanwhile, the monthly review by a panel of psychiatrists was not supported by adequate guarantees for independence, impartiality and objectivity of the medical examination (see, *mutatis mutandis*, *L.M. v. Latvia*, no. 26000/02, § 52, 19 July 2011). Accordingly, after the compulsory admission of the applicant on the basis of the court decisions, the practitioners of the mental health facility assumed effective internal control of the applicant's liberty and treatment for the whole period of the second hospitalisation, which lasted for two months and twenty-one days (from 28 September to 19 December 2003), and the third hospitalisation which lasted for one month and twenty days (from 19 July to 8 September 2004). The Court finds no indication that, following her admissions to the hospital, the applicant was subject to any assessment by an outside authority. Moreover, the Government did not provide any medical or other documentary evidence to show that after the admission the applicant's status was subsequently reviewed by specialists within the hospital.

67. Based on the foregoing considerations the Court concludes that the applicant's admissions to the hospital and subsequent retentions therein were not protected by appropriate safeguards against arbitrary deprivation of liberty. Moreover, it has not been reliably shown that the applicant's retention in the hospital was justified by the mental illness throughout the whole period of her second and third hospitalisations. Accordingly, there has been a violation of Article 5 § 1 of the Convention in this regard.

(b) As to the fourth hospitalisation

68. The question as to whether there was "deprivation of liberty" in respect of the fourth hospitalisation is in dispute between the parties. The Government maintained that the applicant was admitted to the hospital on the basis of her own application, which was sufficient to show that the hospitalisation was voluntary. The applicant disagreed, claiming that she was compelled to sign the admission application.

69. The Court reiterates that the notion of deprivation of liberty comprises both an objective element, namely a person's confinement in a restricted space for a significant length of time, and a subjective element, namely the person's lack of valid consent to the confinement (see *Storck v. Germany*, no. 61603/00, § 74, ECHR 2005-V, 16 June 2005). Nevertheless, the right to liberty is too important in a democratic society for

a person to lose the benefit of the protection of the Convention for the single reason that he gives himself up to be taken into detention. Detention may violate Article 5 even when the person concerned has agreed to it (see *Osypenko v. Ukraine*, no. 4634/04, § 48, 9 November 2010).

70. In the present case the Court shall first examine whether the severity of the restrictions imposed on the applicant and the factual background of the case suggest that the measure in question should be qualified as deprivation of liberty; if so, then whether the applicant's consent to hospitalisation could be viewed as valid and thus lawful for the purpose of the Convention, and lastly, whether the prolonged keeping of the applicant in the hospital was lawful.

(i) The nature of the measure in question

71. With respect to the applicant's stay in the hospital, the Court notes that if in-patient psychiatric treatment is voluntary this presupposes that the patient has the guaranteed right to stop any further treatment and to leave the hospital whenever he or she wishes to do so. This freedom of action is subject to mental health practitioners' authority to refuse to discharge the patient, provided that the relevant compulsory admission procedures are immediately applied, following which the person shall be treated as an involuntary patient. This approach is recognised both internationally (see principle 15 of the UN Principles cited in paragraph 37 above) and at the domestic level (see section 18 of the Psychiatric Assistance Act cited in paragraph 35).

72. However, there is no indication that after being admitted the applicant was free to leave the hospital. The applicant contended that she was confined in the hospital in quite strict conditions, even as to freedom of movement within the premises of the hospital, let alone freedom to leave the hospital. The control over her liberty and privacy extended to strict limitations on her personal belongings. The applicant's account of the factual situation is indirectly corroborated by the CPT's observations expressed after the visit to a similar mental health facility in Ukraine. The CPT noted that a large number of adult patients, who had not been officially admitted as involuntary patients, could not in fact leave the hospital of their own free will (see paragraph 40 above).

73. At the same time the applicant's submissions have not been shown by the Government to be false in any way. No evidence has been provided by the Government as to the regime of the applicant's stay in the hospital specifying, in particular, what difference there was between the applicant's daily supervision and that of involuntary patients, the amount of social contact allowed, the restrictions on privacy and other matters of fact. These matters were in the possession of the authorities rather than of the applicant.

74. Therefore the Court, having regard to the overall context of the case, must give preference to the applicant's account of the facts and conclude

that after the admission the applicant was deprived of liberty throughout the period of the fourth hospitalisation, within the meaning of Article 5 § 1 of the Convention.

(ii) The consent to admission

75. With respect to the applicant's consent to admission, the Court considers that medical practitioners are required to pay particular attention to the validity of decisions made by a person whose mental health is questionable.

76. The international community has developed a set of relevant principles under which the validity of a patient's consent to psychiatric treatment can be ensured. In particular, under principle 11 § 2 of the UN Principles an agreement to psychiatric treatment implies that a patient has been provided with adequate and understandable information, in a form and language he or she understands on the diagnostic assessment; the purpose, method, likely duration and expected benefit of the proposed treatment; alternative modes of treatment, including those less intrusive; possible pain or discomfort, risks and side-effects of the proposed treatment (see paragraph 37 above). The CPT has specified that consent to treatment can only be qualified as free and informed if it is based on full, accurate and comprehensible information about the patient's condition and the treatment proposed (see paragraph 39 above).

77. Accordingly, the Court takes the view that a person's consent to admission to a mental health facility for in-patient treatment can be regarded as valid for the purpose of the Convention only where there is sufficient and reliable evidence suggesting that the person's mental ability to consent and comprehend the consequences thereof has been objectively established in the course of a fair and proper procedure and that all the necessary information concerning placement and intended treatment has been adequately provided to him.

78. In the present case the applicant's hospitalisation was conducted on the basis of the consent given by the applicant who, at the relevant time, had been diagnosed with a mental disorder. The only document evidencing the applicant's consent is her admission application. While section 13 of the Psychiatric Assistance Act requires that consent to hospitalisation should be signed by the person concerned and a psychiatrist, no such consent countersigned by a psychiatrist has been presented to the Court. There is no evidence suggesting that her mental ability to consent was established, that the consequences of the consent were explained to her or that the relevant information on placement and treatment was provided to her.

79. In these circumstances the Court considers that the applicant's consent to the fourth hospitalisation cannot be viewed as valid and lawful for the purpose of the Convention.

(iii) The lawfulness of keeping the applicant in the hospital

80. In determining whether keeping the applicant in the hospital could be justified on the grounds of her mental health, the Court notes that the only medical evidence available in the case file with respect to this period is a copy of a psychiatrist's opinion of 13 February 2006 preceding the applicant's admission to the hospital. However, there is no evidence suggesting that the applicant's mental illness continued to persist throughout the period of the fourth hospitalisation, which lasted from 17 February to 19 April 2006, that is for two months. In these circumstances the Court is unable to conclude that keeping the applicant in the hospital was justified for that period.

81. The Court further reiterates that the requirements of appropriate procedural safeguards against arbitrary retention in a mental health facility are inherent in the concept of lawfulness under Article 5 § 1 of the Convention. This issue is equally important with respect to voluntary patients, because without safeguards for this type of patient, there may be improper inducements to circumvent the complicated procedure for compulsory hospitalisation by admitting a person on a "voluntary" basis. As a result, the guarantees provided within a compulsory hospitalisation may lose their practical efficiency and not serve as a real shield against arbitrary deprivation of liberty.

82. The Court has noted above that the applicant's admission to the hospital was not supported by the necessary safeguards ensuring the validity of her consent to admission. As regards keeping the applicant in the hospital, no information has been provided by the Government as to the existing practice of regular visits to mental health facilities by an independent outside body with the aim of talking privately with patients, reviewing their status on its own initiative, receiving complaints, and dealing effectively with the issues raised by the patients. The importance of such supervisory procedures has been stressed by the CPT (see paragraph 39 above). In the Court's opinion the availability of these procedures offering independent review of the status of both voluntary and involuntary admitted patients are essential guarantees against possible abuses in their respect.

83. Considering further the issues of legal procedures, the Court cannot find that the remedies referred to by the Government in their objections as to the admissibility of the instant complaint on the grounds of non-exhaustion were effective for the purposes of the Convention. In the area of the exhaustion of domestic remedies there is a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success (see

Akdivar and Others v. Turkey, 16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV). Having regard to the vulnerability of persons placed in mental health facilities, the Court considers that it was the Government's *onus probandi* to show that the remedies, they mentioned, were effective.

84. One of the principal issues in examining the effectiveness of a remedy is whether it could offer adequate redress. The Court would not exclude that certain complaints concerning deprivation of liberty may be adequately redressed by retrospective remedies. For example, complaints about short periods of detention or certain kinds of non-compliance with the formalities of the domestic law in exercising detention procedures may be (and, in some circumstances, may exclusively be) adequately protected by recourse to a retrospective remedy. However, where the complaint is about a continued and arbitrary deprivation of liberty conducted in the absence of a fair and proper procedure for admission to the facility, as in the present case, an adequate remedy is primarily one capable of immediately terminating the continued violation by ordering release. The specific requirements of Article 5 § 4 of the Convention concerning the judicial character of a necessary procedure, including guarantees of independent and impartial review based on the adversarial nature of the procedure and the principle of equality of arms, are inherent in such a remedy. A retrospective compensatory relief could be supplementary to that remedy.

85. As regards the complaint to the prosecutor referred to by the Government, this recourse cannot be regarded as an adequate remedy because of the lack of the above-mentioned procedural safeguards. Besides that, the Government have not provided any comparable examples of domestic practice where the prosecutors had offered adequate redress in an appropriate manner. The Court would reiterate that the remedy should offer direct and timely redress, and not merely indirect protection of the rights guaranteed by the Convention (see, *mutatis mutandis*, *Melnik v. Ukraine*, no. 72286/01, § 68, 28 March 2006).

86. The Government's argument that the applicant could have complained to a court under Article 248-1 of the Code of Civil Procedure of 1963 is immaterial, as that Code was no longer in force at the relevant time (see paragraph 33). As to the action in an administrative court, the Government have not provided any substantiation or any examples of domestic practice showing that such an action would have had any prospect of success, given that the jurisdiction of administrative courts covers only public-law disputes involving public authorities (see paragraph 34). Civil proceedings for damages under the Civil Code constitutes a purely compensatory remedy and, for the reasons set out in paragraph 84 above, would not offer appropriate protection in respect of the applicant's complaint.

87. Moreover, assessing the effectiveness of these remedies from the standpoint of their practical availability, the Court, having regard to the applicant's submissions as to the regime under which she was kept in the hospital, notes that no evidence has been provided suggesting that any appropriate mailing service or other means of communication with the outer world, protected by specific and practical safeguards ensuring the privacy of communication, existed in the hospital. Nor has it been shown that any legal aid schemes were available to the applicant to support her complaints and ensure that her interests were represented. As noted above, no information has been provided concerning any practice of visits to the hospital by outside authorities with the purpose of communication with the patients. The CPT's critical observations as to the practical availability of the legal safeguards for the patients of a similar mental health facility are quite pertinent in this context (see paragraph 40 above).

88. In the light of these considerations the Court rejects the Government's contention concerning non-exhaustion of domestic remedies.

89. It further notes that the present complaint was submitted to the Court on 7 October 2006 and the applicant was discharged from the hospital on 19 April 2006. The complaint was therefore lodged within six months of the moment when the continuing situation complained of ceased to exist (see, among other authorities, *Papon v. France (no. 1)* (dec.), no. 64666/01, ECHR 2001-VI). Accordingly, the Government's objections as to the six-month rule should also be dismissed.

(iv) Conclusion

90. The Court therefore concludes that it has not been reliably shown that the applicant's retention in the hospital was justified by the mental illness throughout the period of her fourth hospitalisation; moreover, her admission to the hospital and retention therein were not supported by adequate procedural safeguards against arbitrary deprivation of liberty. There has therefore been a violation of Article 5 § 1 of the Convention in this respect.

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

91. In her initial submissions the applicant complained of a violation of her right provided by Article 5 § 5 of the Convention.

92. However, the applicant did not pursue this complaint further. In particular, she made no submissions to this effect at the stage of communicating the application to the Government. It appears that this issue did not constitute a matter of concern for her.

93. In these circumstances, the Court considers that the applicant may not be regarded as wishing to pursue the complaint under Article 5 § 5 of the Convention, within the meaning of Article 37 § 1 (a) of the Convention

(see *Nikolay Kucherenko v. Ukraine*, no. 16447/04, §§ 39-41, 19 February 2009 and *Visloguzov v. Ukraine*, no. 32362/02, §§ 98-100, 20 May 2010). Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued consideration of the complaint. In view of the above, the Court finds it appropriate to discontinue the examination of this part of the application.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

94. The applicant complained of violations of Articles 3, 9, 10 and 14 of the Convention on account of her compulsory stays in the hospital. She further complained under Articles 4 and 6 of the Convention that the proceedings in her labour dispute were unfair.

95. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant claimed pecuniary damage without specifying the amount. She further claimed 4,000,000 euros (EUR) in respect of non-pecuniary damage.

98. The Government submitted that the claims were excessive and groundless.

99. The Court notes that the applicant failed to substantiate the pecuniary damage incurred. It therefore makes no award in this respect. As to non-pecuniary damage, the Court considers that the applicant must have suffered distress and anxiety on account of the violations found. Ruling on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 12,000 in respect of non-pecuniary damage.

B. Costs and expenses

100. The applicant also claimed compensation for costs and expenses incurred before the domestic authorities and the Court, without specifying the amount.

101. The Government maintained that the claim was unsubstantiated.

102. In the present case, no evidence has been presented within the time-limit fixed concerning the costs and expenses claimed. The Court therefore rejects the claim.

C. Default interest

103. The Court considers it appropriate that the default interest 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. *Decides* to discontinue the examination of the applicant's complaint of an alleged violation of Article 5 § 5 of the Convention;

2. *Joins to the merits* the Government's objections as to the applicant's compliance with the rule of exhaustion of domestic remedies and the six-month rule and dismisses them after an examination on the merits;

3. *Declares* the complaint under Article 5 § 1 of the Convention (concerning the second, third and fourth hospitalisations in a mental health facility) admissible and the remainder of the application inadmissible;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention as regards the second, third and fourth hospitalisations of the applicant in a mental health facility;

5. *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, EUR 12,000 (twelve thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 19 April 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President