



## Shtukaturov v. Russia

App. No. 44009/05, Eur. Ct. H.R. (2008).

**Country:** Russia

**Region:** Europe

**Year:** 2008

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Informed consent, Mental health

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to privacy

### Facts

The applicant, Mr. Shtukaturov, was born in 1982 and first began showing signs of mental illness in 2002. In August 2002, he was held for approximately 8 months in a psychiatric hospital, receiving a diagnosis of simple schizophrenia. On August 3, 2004, Shtukaturov's mother petitioned the Vasileostrovskiy District Court of St. Petersburg, claiming that her son was incapable of taking care of himself and seeking to make herself his legal guardian. In response, the District Court commissioned a psychiatric examination on October 12, 2004 to examine the applicant's mental health.

Relying primarily on the examination, which found that the applicant suffered from schizophrenia, autism, and a "evolutional defect," the District Court granted the applicant's mother's petition in a hearing on December 2004 which lasted only ten minutes. Because it was not appealed within ten days, the judgment became final on January 11, 2005. The applicant was not present at the hearing, nor was he notified of its taking place. He only learned of it later, by chance, when he found court documents pertaining to the hearing in his mother's house.

Under his mother's power as legal guardian, the applicant was placed in a psychiatric hospital against his will on November 4, 2005. The primary doctor at the hospital refused the applicant access to a lawyer on the grounds that only his guardian could act for him legally. Under Article 29 of the Civil Code of the Russian Federation of 1994, a person who cannot understand or control his or her actions because of mental illness may be placed under the care of a guardian, who has sole legal authority for that person.

The applicant contested the December 28, 2004 decision of the District Court of Vasileostrovskiy on the basis of his not being made aware of the proceedings, despite the judgment having been finalized. On December 22, 2005, the Vasileostrovskiy District Court rejected the petition, finding that only his guardian could act for him legally. Under Article 135 of the Russian Federation's Code of Civil Procedure 2002, a claim made to a court by an individual found incapable under Article 29 of the Civil Code should be returned without examination. The applicant applied to the European Court of Human Rights, claiming that the Russian court "depriving him of his legal capacity without his participation and knowledge" violated Articles 6 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, while his detention in the psychiatric hospital violated Articles 3 and 5 of the Convention. On 23 May 2006, The European Court of Human Rights formally accepted the application.

### Decision and Reasoning

The European Court of Human Rights ("the Court") held that the deprivation of applicant Shtukaturov's legal capacity without his participation and knowledge violated Articles 6 and 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention"), that the detention at the psychiatric hospital violated Article 5 of the Convention and that the refusal of the Russian authorities to allow the applicant access to his lawyer violated Article 34 of the Convention. The applicant's claim that his detention in the psychiatric hospital violated Article 3 of the Convention was rejected.

Article 6 of the Convention required "a fair . . . hearing . . . by [a] tribunal" in the determination of "civil rights and obligations." The Court noted that while national authorities were given a certain margin of appreciation with regard to procedural rules for persons of an unsound mind, those adjustments could not affect "the very essence" of a person's right to a fair trial. The Court found that, although the Russian court's proceeding without the applicant's presence or knowledge complied with Russian Federation law, such proceeding

violated Article 6 of the Convention because the right to a fair trial required the applicant to be able to present his own case and the judge to form an independent opinion as to the applicant's sanity.

Article 8 of the Convention stated that "everyone has the right to respect for his [or her] private and family life" outside of interference which is necessary in the interest of "national security, public safety, or . . . for the protection of health . . ." In analyzing Article 8, the Court balanced the interests of the person claimed to be of unsound mind against those interests asserted by the state. The more serious the intrusion into private life, the more rigorous the Court's review of the national court's procedural and substantive fairness would be. Because this interference in this instance was very severe (the applicant's guardian made virtually all life decisions for him), the Russian court's decision-making process and reasoning were found to be insufficient to justify the deprivation. This conclusion was based on three procedural failings. The first failing was the applicant not being allowed to take part in the proceedings and be examined by the judge in person. The second failing was applicant being unable to challenge the judgment except through the action of his guardian. The third failing was the informality of the hearing on the merits on December 28, 2004, which lasted only ten minutes. The Court also noted that the medical report which the Russian court had relied upon during the hearing on the merits did not sufficiently concern "the kind and degree" of the applicant's medical illness as to justify the full legal incapacitation of the applicant. Ultimately, the Court concluded the interference with the applicant's private life was disproportionate to the legitimate state aims pursued.

Article 5§ 1 of the Convention stated that the right to "liberty and security of person" shall not be deprived. Article 5§ 1(e) provided an exception for "the lawful detention of persons . . . of unsound mind . . ." The Court held that while the detention of the applicant in the psychiatric hospital was "lawful" in that it complied with Russian law, it was not lawful in the sense that it was too arbitrary under an absolute standard. Under the Court's Winterwerp standard setting forth the conditions for the lawful detention of a person of unsound mind, the detention breached Article 5§ 1(e) because it had not been conclusively proven in a court of law that the applicant was of an unsound mind at the time of confinement.

Article 5§ 4 of the Convention stated that those arrested or detained were entitled to speedy proceedings to review the lawfulness of the arrest or detention. The Court noted that Russian law did not provide for automatic judicial review of confinement in a psychiatric hospital and that only the applicant's guardian could request legal review. Combined with the Court's findings that the applicant's hospitalization was not voluntary and that incapacitation court proceedings had been seriously flawed, the Court held that Article 5§ 4 "had been violated

Article 3 of the Convention stated that "torture," as well as "inhuman or degrading treatment or punishment" is forbidden. The Court found that, although the applicant claimed that both involuntary administration of the drugs Haloperidol and Chlorpromazine as well as being "secur[ed]" . . . to his bed "after an attempted escape" violated Article 3, the applicant did not provide sufficient evidence in his petition to substantiate an Article 3 finding of inhuman or degrading treatment.

Article 34 of the Convention guaranteed the right of an individual to petition the Court regarding alleged violations of the Convention. The Court found that the authorities had breached this Article by restricting the applicant's contact with his lawyer and by failing to comply with the interim order of the Court requiring the authorities to allow the applicant to meet his lawyer.

## Decision Excerpts

"It is not disputed that the applicant was unaware of the request for incapacitation made by his mother. Nothing suggests that the court notified the applicant *proprio motu* about the proceedings . . . Further, as follows from the report of 12 November 2004 . . . the applicant did not realise that he was being subjected to a forensic psychiatric examination. The Court concludes that the applicant was unable to participate in the proceedings before the Vasileostrovskiy District Court in any form." (Page 13).

"[T]he Court notes that the interference with the applicant's private life was very serious. As a result of his incapacitation, the applicant became fully dependent on his official guardian in almost all areas of his life. Furthermore, "full incapacitation" was applied for an indefinite period and could not, as the applicant's case shows, be challenged other than through the guardian, who herself opposed any attempts to discontinue the measure . . ." (Page 17-18).

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

mother, who was also the person who solicited the applicant's placement in the hospital. However, the Court observes that the notion of "lawfulness" in the context of Article 5 § 1(e) also has a broader meaning. The notion underlying the term "[a] procedure prescribed by law" ... is one of fair and proper procedure, namely that any measure depriving a person of his liberty should issue from and be executed by an appropriate authority and should not be arbitrary . . . (Page 22).

The Government claimed that the applicant could have initiated legal proceedings through his mother. However, that remedy was not directly accessible to him: the applicant fully depended on his mother who had requested his placement in hospital and opposed his release. As to the inquiry carried out by the prosecution authorities, it is unclear whether it concerned the "lawfulness" of the applicant's detention. In any event, a prosecution inquiry as such cannot be regarded as a judicial review satisfying the requirements of Article 5 § 4 of the Convention. (Page 24).

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