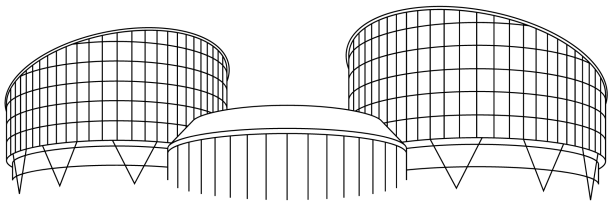

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF FYODOROV AND FYODOROVA v. UKRAINE

(Application no. 39229/03)

JUDGMENT

STRASBOURG

7 July 2011

FINAL

07/10/2011

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

In the case of Fyodorov and Fyodorova 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 14 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 39229/03) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Vladimir Georgiyevich Fyodorov and Mrs Tatyana Sergeyevna Fyodorova ("the applicants"), on 30 October 2003.

2. The applicants, who had been granted legal aid, were represented by Mr A.P. Bushchenko, a lawyer practising in Kharkiv. The Ukrainian Government ("the Government") were represented by their Agent, Mr Y. Zaytsev.

3. The applicants alleged, in particular, that they were ill-treated by the police and that no effective investigation of their complaints took place. The first applicant also alleged that he had been unlawfully subjected to a psychiatric assessment and diagnosed with a psychiatric disorder and that he had been deprived of a fair trial in civil proceedings challenging the actions of the psychiatrists.

4. On 31 March 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 applicants, husband and wife, were born in 1948 and 1960 respectively and live in Takhtaulove.

A. The first applicant's psychiatric examination of 15 June 2001 and the ensuing civil proceedings

6. In June 2000 the first applicant had a fight with the Ls, his neighbours. As a result, Mrs L. sustained bodily injuries, for which the first applicant was eventually convicted on 20 January 2005 and sentenced to suspended restriction of liberty. The applicants were also involved with the Ls in several civil proceedings concerning land use and other issues.

7. On 10 June 2001 Mrs L. addressed a letter to V. T., the Chief Psychiatrist of the Poltava District Clinical Hospital ("the Poltava Hospital"), alleging that the first applicant suffered from a serious mental condition and needed psychiatric treatment. She noted that he had been harassing her family for some nine years. In particular, he had been calling them names, cursing, eavesdropping, photographing their activities, recording their conversations with him, threatening to throw them out of their house and put Mr L. in prison. In June 2000 the first applicant had also hit Mrs L. in the course of an argument, inflicting serious injuries on her, which were the subject of pending criminal proceedings. She further noted that he had been in conflict with a number of other villagers. In particular, he was suspicious of everybody's conduct; he photographed various allegedly "unlawful" acts; he threatened, cursed and argued with the villagers; he wrote various complaints to the authorities; he punctured the tyres of the village mayor's car, stole crops and hay and engaged in fights. Finally, she alleged that he was prone to sudden fits of anger, beat his wife and had killed a dog. Lastly, he owned two rifles and was generally dangerous.

8. On 15 June 2001 M. F., a hospital psychiatrist, arrived in the applicants' yard in an ambulance car and started questioning the first applicant about his relations with the Ls, in particular about their complaints that he had taken photographs of them without their consent. According to the first applicant, this conversation lasted about five minutes, after which he attempted to photograph the psychiatrist, the driver, and the ambulance car. In response, M. F. ran from the yard, shouting "this is abnormal".

9. On 18 June 2001 V. T. informed the Poltava District Court that the first applicant was suffering from chronic delusional disorder (*хронічний*

маячний розлад) and needed to undergo a forensic expert assessment with a view to receiving in-patient treatment.

10. On 30 June 2001 V. V., the Chief of the Regional Health Department, dismissed a complaint lodged by the first applicant, in which he alleged that the examination had been unlawful and the diagnosis incorrect.

11. In August 2001 the first applicant instituted court proceedings against M. F., V. T and V. V., complaining that he had been subjected to an unlawful examination and diagnosis in violation of the applicable law and medical guidelines.

12. On 6 February 2002 the Oktyabrsky District Court of Poltava allowed the first applicant's claim and ordered the medical authorities to remove the diagnosis from his record. It observed, in particular, that complaints by the Ls could not be deemed a sufficient basis for the examination of the first applicant without his consent. It also found that the examination had been carried out in violation of the applicable procedural standards. In particular, M. F. had not duly informed the applicant of the reason for his visit and made his conclusions after an extremely brief informal conversation.

13. M. F. appealed against this judgment.

14. At 10 a.m. on 30 April 2002 the Poltava Regional Court of Appeal opened the hearing on M. F.'s appeal. The court noted in the hearing minutes that the first applicant had requested that the case be heard in his absence and that there was no reason not to grant this request. It had then heard submissions from M. F., who had presented his version of events and noted, in particular, that his conversation with the first applicant had lasted at least twenty or twenty-five minutes. The court also allowed M. F.'s request to add an unspecified certificate to the case-file materials. The floor was then given to a representative of the Regional Health Department, who maintained that M. F. had acted in accordance with the provisions of section 11 of the Law "On Psychiatric Assistance", which lays down the circumstances under which a patient may be psychiatrically examined without his or her consent. In particular, there had been a serious cause for concern about the first applicant's state of health, as at the material time criminal proceedings were pending against him on charges of assault against Mrs L. The court then heard the manager of the local polyclinics, who alleged that it had not been possible at the material time to subject the first applicant to a more extensive in-patient assessment. The hearing ended at 11:30 a.m.

15. On the same day the Court quashed the judgment of 6 February 2002 and dismissed the first applicant's claim. By way of reasoning, the court noted the following:

"The conclusion of the first-instance court that ... M. F. infringed the requirements of section 11 of the Law of Ukraine "On Psychiatric Assistance" in examining V. G. Fyodorov is not supported by the evidence contained in the case file.

The first-instance court did not give sufficient consideration to explanations by the witness Fyodorova T.S. – the plaintiff's wife, who maintained at the court hearing that M. F., upon exiting the ambulance car, had introduced himself and begun asking questions. The witness also indicated that M. F. had visited them for more than ten minutes.

The court did not give sufficient weight to the testimonies by Fyodorov V. G. himself ... that M. F. had spoken to him concerning the photographing of the neighbour, Mrs L., and repeated the latter's words concerning this matter.

Therefore, the conclusion of the court that M. F. had not introduced himself before the examination of Fyodorov V. G. and had not informed him of the grounds and purpose of his examination does not follow from the facts of the case.

The court erred in concluding that M. F. examined Fyodorov V. G. without his consent and any request by the latter for such an examination.

The Panel of Judges considers that the written application by Mrs L. gave sufficient grounds for a psychiatric doctor to conduct a psychiatric examination in accordance with the requirements of paragraph 3 of section 11 of the Law of Ukraine "On Psychiatric Assistance".

Without substantiation, the first-instance court declared as wrongful the diagnosis ... concerning the state of Fyodorov's V. G.'s health, since at the time of consideration of the case the case file contained no evidence disproving that diagnosis.

The Panel of Judges considers that the actions of psychiatric doctor M. F., Chief Psychiatrist ... V. T ... were compliant with the requirements of section 11 of the Law of Ukraine "On Psychiatric Assistance".

The judgment of the first-instance court shall be quashed as the court's conclusions do not follow from the circumstances of the case ..."

16. The first applicant sought leave to appeal in cassation. He maintained, in particular, that the Court of Appeal had unlawfully held a hearing in his and his lawyer's absence, having failed to notify either of them of the date of the hearing. He noted that the case file contained an unsigned request to hold a hearing in his absence. However, the first applicant contended that this unsigned application was forged and that even if it were not, no application to hear the case in the absence of his lawyer had been submitted. The first applicant further contended that the judgment lacked reasoning. He noted, in particular, that, according to the applicable law, an individual could be subjected to a psychiatric assessment either (a) upon his (or his representative's) consent or (b) following a court decision or (c) in the event of urgent necessity. As the first applicant's examination had not been based either on his consent or on a court decision,

the court of appeal should have substantiated the finding that there had been an urgent need for it. Lastly, the first applicant complained that the court of appeal had not addressed his arguments concerning a violation of the applicable medical guidelines for diagnosing chronic delusional disorder, which presupposed extensive observation of a patient. In the first applicant's opinion, having based the conclusion concerning the correctness of the diagnosis on the lack of any evidence to the contrary, the court of appeal had infringed the legal provisions concerning the presumption of mental health.

17. On 23 May 2003 the Supreme Court dismissed the first applicant's request for leave to appeal in cassation, generally endorsing the findings of the court of appeal.

18. In May 2003 V. T. notified the first applicant's lawyer that the first applicant's name was not on the register of individuals suffering from mental disorders. On 9 September 2003 the Psychiatrists' Association informed the first applicant that, having studied his medical documents, they found no basis to consider that he suffered from any disorders. On 2 February 2004 the applicant was also examined at the Kyiv Institute of Psychiatry and found not to be manifesting any signs of disorder and not to require treatment. Subsequently, referring to these documents, the first applicant unsuccessfully attempted to obtain an extraordinary review of the judgment of 30 April 2002.

B. Placement of the first applicant in a psychiatric clinic on 7 March 2003 and the ensuing investigations

19. In January 2003 the Poltava Hospital received several complaints from the applicants' fellow villagers requesting that he be admitted to a psychiatric facility on account of various incidents of hostile behaviour towards them.

20. Referring to these complaints, V. T. requested the Poltava District Court to authorise the first applicant's confinement to the psychiatric clinic for assessment and, if necessary, for treatment. On 20 February 2003 the court discontinued the proceedings, having advised V. T. that this matter was within the discretion of the supervising psychiatrist.

21. On 4 March 2003 V. T. addressed a letter to the district police requesting assistance in the first applicant's hospitalisation in view of the danger he posed to others. In his letter he noted, in particular that "at the present moment Fyodorov V. G. is a danger to society. In connection with his mental disorders, during hospitalisation Fyodorov V. G. may use a hunting weapon in self-defence."

22. According to the first applicant, on 5 March 2003 V. T. signed a certificate testifying his psychiatric fitness for the purposes of extending his hunting rifle permit.

23. On 6 March 2003 M. F. and two police officers arrived at the applicants' home in the ambulance car and discussed the procedures concerning the extension of the permit. According to the first applicant, they invited him to follow them to the police station to complete the necessary formalities; however, he refused, assuring them that he would do so later.

24. At about 10:00 a.m. on 7 March 2003 the applicants went to the police station and requested instructions concerning the formalities to be completed for the rifle permit extension.

25. At about 12:00 p.m. M. F. arrived in the ambulance car and announced to the applicants that the first applicant was to be hospitalised. Notwithstanding the applicants' protests, four police officers escorted the first applicant to the ambulance car and took him to the Poltava Regional Psychiatric Clinic, where he underwent two psychiatric assessments on the same day.

26. On 8 March 2003 the first applicant was released from the Regional Clinic as he was not considered to be in need of in-patient treatment. Subsequently (on 17 March 2003) the first applicant's lawyer was informed by N. N., the Chief Psychiatrist of the Regional Clinic, that the first applicant's diagnosis of chronic delusional disorder, which had served as the basis for his hospitalisation, had not been confirmed. However, he had been found to be suffering from a "pathological behavioural personality disorder of the unstable epileptic type, in the sub-compensation stage" (*патохарактерологічний розлад особистості по епілептоїдно-нестійкому типу в стадії субкомпенсації*). In September 2003 the first applicant was informed by the Psychiatrists' Association that the stated diagnosis did not feature in the international classification table. On 11 October 2007 the first applicant underwent a psychiatric assessment in the Kyiv Centre for Forensic Assessment. The panel of experts concluded that neither on 15 June 2001, nor on 7 March 2003 or at the time of the assessment had the first applicant suffered from any psychiatric disorders.

27. On 11 March 2003 the applicants complained to the Poltava District Prosecutors' Office that they had been ill-treated by M. F. and the police officers on 7 March 2003. They noted, in particular, that the decision to hospitalise the first applicant had been arbitrary and taken in excess of V. T.'s power. They further complained that the police had applied excessive force in enforcing this decision, which had caused their injuries. The use of force had been excessive because the first applicant's protests were limited to a request to contact his lawyer and a demand to see the chief of the police department, which measures were legitimate in the context of the situation. In response he was restrained by four police officers, who also punched and kicked him, and dragged him down the stairs and into the ambulance car. The second applicant attempted to intervene, but in vain. According to her, the police officers punched her hands, pushed her in the

chest and pressed her against the door, keeping her away from the first applicant.

28. On the same day the applicants were examined by medical experts, who found that the first applicant had contusions of the soft head tissue, face, left leg and neck, cumulatively qualified as "light bodily injuries", which could have been sustained on the date and under the circumstances described by him. The second applicant had contusions of the right hand, left arm, left knee and right leg, caused by blunt objects, possibly on the date and under the circumstances described by her. The second applicant's injuries were also cumulatively qualified as "light".

29. On 16 April 2003 the Poltava District Prosecutor's Office refused to institute criminal proceedings, having found that in restraining the first applicant, who had objected to the lawful actions of M. F. and the police officers' order to get into the ambulance car, the police officers had not acted in excess of the authority conferred on them by applicable law.

30. On 27 June 2003 the first applicant was X-rayed and found to have a fractured jaw.

31. In July 2003 the first applicant underwent an additional assessment by medical experts, who found that the fractured jaw could have been sustained during his placement in the ambulance car in March 2003, as he had described, and re-qualified the injuries sustained during this period as of "medium severity". Based on these findings, the applicants again requested the initiation of criminal proceedings against M. F. and the police officers.

32. On numerous occasions (14 August, 11 November and 24 December 2003, 25 May 2004 and 4 March 2005) the District Prosecutor's Office refused to institute criminal proceedings for want of evidence of criminal conduct on the part of the officers and M. F. All those decisions were subsequently annulled either by the supervising prosecuting authorities or by the Oktyabrsky District Court with reference to the insufficiency of the investigations and various procedural omissions.

33. On 18 November 2003 the Deputy Poltava Regional Prosecutor wrote to the Poltava District Prosecutor, reprimanding him for having failed to organise a thorough examination of the applicants' complaints. He noted, in particular, that the District Prosecutor had failed to study the case-file materials and provide written instructions as to the inquiry; that eyewitnesses of the incident had not been identified and questioned; and that the measures taken had been perfunctory. The Deputy Regional Prosecutor also gave various instructions as to the further investigation of the case.

34. On 28 July 2005 the Poltava Regional Prosecutors' Office initiated criminal proceedings to investigate the circumstances in which the first applicant had sustained injuries.

35. On 18 October 2005 the Oktyabrsky District Court of Poltava also instituted criminal proceedings concerning the second applicant's injuries.

36. On numerous occasions (in particular, 25 December 2005, 10 June 2006 and 29 December 2007) the above criminal proceedings were discontinued for want of evidence of criminal actions on behalf of M. F. and the police officers. Those decisions were set aside by the superior prosecutorial or judicial authorities with reference to the inadequacy of the measures taken to investigate the applicants' complaints.

37. On 22 May 2009 the prosecutors' office discontinued the criminal proceedings. It noted, in particular, that the Poltava District Hospital had received numerous complaints from the applicants' neighbours concerning the first applicant's aggressive behaviour. In particular, one such complaint, signed by five villagers, had been received in February 2003. Having obtained a ruling from the local court that the decision to hospitalise the first applicant could be taken by the supervising psychiatrist, V. T. had asked the police for assistance in ensuring the hospitalisation. Neither M. F. nor the policemen had exceeded the authority vested in them by applicable law in demanding the first applicant's hospitalisation. The force applied to the applicants had been proportionate and had not exceeded that which was necessary in order to overcome their resistance. In particular, according to expert assessments and reconstructions of the crime scene, the first applicant had apparently fractured his jaw when he accidentally banged his head against the ambulance vehicle while resisting the efforts of the police officers to place him inside.

38. By a decision of 14 September 2009, upheld on appeal on 29 October 2009, the Oktyabrsky District Court quashed that decision. The courts noted, in particular, that while the prosecution had conducted a reconstruction of the crime scene based on the police officers' version of the events, they had failed to verify the applicants' version of events. Likewise the medical assessment had verified the police's version of events only. The police had also failed to identify any eye-witnesses of the incident in order to question them about their impressions and had not fulfilled various instructions, given, in particular, by the court in reviewing previous decisions to discontinue the proceedings.

39. According to the case-file materials the investigation of the applicants' complaints about ill-treatment is still pending.

II. RELEVANT DOMESTIC LAW

A. Constitution of Ukraine 1996

40. The relevant provision of the Constitution reads as follows:

Article 29

"Every person has the right to freedom and personal inviolability.

No one shall be arrested or held in custody other than pursuant to a reasoned court decision and only on grounds and in accordance with a procedure established by law.

In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by a court within seventy-two hours. The detained person shall be released immediately if he or she has not been provided, within seventy-two hours of the moment of detention, with a reasoned court decision in respect of the holding in custody.

Everyone who has been arrested or detained shall be informed without delay of the reasons for his or her arrest or detention, apprised of his or her rights, and from the moment of detention shall be given the opportunity to personally defend himself or herself, or to have the legal assistance of defence counsel.

Everyone who has been detained has the right to challenge his or her detention in court at any time ..."

B. Code of Criminal Procedure

41. The relevant provisions of the Code can be found in the judgment in the case of *Kozinets v. Ukraine* (no. 75520/01, §§ 40-42, 6 December 2007).

C. Code of Civil Procedure of 1960

42. The relevant provisions of the Code concerning notification arrangements are summarised in the judgment in the case of *Strizhak v. Ukraine* (no. 72269/01, §§ 30-31, 8 November 2005) and the admissibility decision in the case of *Shytik v. Ukraine* (no. 2911/03 of 30 September 2008).

D. Law of Ukraine "On Psychiatric Assistance"

43. The relevant provisions of the Law of Ukraine "On Psychiatric Assistance" read as follows:

Section 3. Presumption of mental health

"Each individual shall be considered as having no mental disorders unless the presence of such a disorder is established on the grounds of and according to the procedure established by this Law and other laws of Ukraine."

Section 11. Psychiatric examination

"A psychiatric examination shall be carried out for the purposes of establishing whether or not an individual suffers from a mental disorder, whether she or he requires psychiatric assistance, and determining of the type of such assistance and the procedure for providing it.

A psychiatric examination shall be carried out by a psychiatric doctor at the request or with the conscious consent of the individual...

A psychiatric examination may be carried out without the individual's conscious consent ... where the information available provides sufficient grounds for a reasonable assumption that the individual suffers from a severe mental disorder, as a result of which she or he:

- commits or manifests an actual intention to commit an act which constitutes an imminent danger to her or himself or others; or

- is unable on her or his own to meet her or his basic vital needs at the level necessary to sustain her or his life; or

- will cause significant harm to her or his own health ... in the event that psychiatric assistance is not provided.

The decision to carry out a psychiatric examination of an individual without her or his conscious consent ... shall be taken by a psychiatric doctor upon an application [by any person], which contains information giving sufficient grounds for such an examination. ...

In urgent situations ... the decision to carry out a psychiatric examination of an individual without her or his conscious consent ... shall be taken by the psychiatric doctor alone, and the psychiatric examination shall be carried out immediately.

In [other] cases, ... a psychiatric doctor shall submit an application to the court ... A forcible psychiatric assessment shall be carried out by the psychiatric doctor following a court order.

Data concerning the psychiatric examination and the conclusion concerning the individual's state of mental health, and the reasons for the application to the psychiatric doctor, shall be recorded in medical documents."

Section 14. Grounds for forced hospitalisation of an individual in a psychiatric establishment

"An individual suffering from a mental disorder may be hospitalised without her or his conscious consent ..., if examination and treatment are possible only on an in-patient basis, and in the event of a finding that the individual is suffering from a severe mental disorder, as a result of which she or he:

- commits or manifests an actual intention to commit an act which constitutes an imminent danger to her or himself or others; or

- is unable on her or his own to meet her or his basic vital needs at the level necessary to sustain her or his life."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION IN RESPECT OF THE FIRST AND THE SECOND APPLICANT

44. The first applicant complained that on 7 March 2003 he had been humiliated by having been unlawfully hospitalised by force. Both applicants also complained that they had been injured as a result of the application of disproportionate force in response to their resistance to the first applicant's hospitalisation, and that the investigation following their respective complaints had been ineffective. The applicants invoked Article 3 of the Convention in respect of these complaints, which reads as follows:

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

A. Admissibility

45. The Government submitted that the proceedings concerning the applicants' ill-treatment complaints were still pending. The applicants have therefore not exhausted the relevant domestic remedies and their complaints concerning the ill-treatment should be rejected as inadmissible.

46. The applicants alleged that the Government's objection should be examined in the light of the complaints concerning the effectiveness of the investigation.

47. The Court considers that the Government's objection raises issues, which fall to be examined together with the substantive provision of the Convention relied on by the applicants. It therefore joins this objection to the merits (see e.g. *Vergelskyy v. Ukraine*, no. 19312/06, § 94, 12 March 2009).

48. The Court further notes that the above complaints are not otherwise manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Concerning the alleged ill-treatment

(a) Submissions by the parties

49. The applicants alleged that they were the victims of inhuman and degrading treatment by M. F. and police officers. In particular, they referred to Article 29 of the Constitution and the Law of Ukraine "On Psychiatric Assistance" and maintained that in order to be lawful, a forced psychiatric intervention, in particular, confinement to a hospital, had to be ordered by a competent court. The decision, taken in respect of the first applicant by the Chief Psychiatrist of the local hospital unilaterally and in absence of any procedural guarantees, had been manifestly arbitrary and unlawful. The application of physical force to enforce it and deliver the first applicant to the psychiatric clinic against his will had therefore also been unlawful and arbitrary, having caused the first applicant humiliation beyond the threshold allowed by Article 3 of the Convention, particularly in the context of the following circumstances.

50. The applicants had arrived at the police station in order to obtain an extension of the first applicant's rifle permit upon the invitation of the police and had waited patiently for some two hours for the paperwork to be done. On 5 March 2003, two days before the incident, the first applicant had been issued with a psychiatric fitness certificate for the purposes of extending his rifle permit. Being informed about the confinement decision and ordered to comply with it immediately in these circumstances had been particularly unexpected. The appearance of manifest arbitrariness in this order was highlighted by the fact that M. F., who represented the psychiatric service, was the first applicant's adversary in pending civil proceedings concerning the lawfulness of his previous psychiatric examination and diagnosis.

51. In refusing to comply with the order, the first applicant had acted in good faith and for the purpose of protecting his civil rights. He had only wished to contact the chief of the police department to obtain assurances as to the orders he had given to his subordinates and to consult his lawyer concerning his rights and obligations in the circumstances. Even assuming that the confinement decision had been lawful, the way the applicants protested against it had made application of any physical force at all excessive and degrading.

52. Finally, irrespective of the necessity of the application of force, the manner in which it had been applied to both applicants had been manifestly out of proportion and had amounted to inhuman treatment. The applicants had been of senior age and not athletes. They had never acted violently or intended to hurt or harm anyone. The incident had taken place on the

premises of the police station, where the officers had been numerous and had had significant advantage in controlling the situation. Moreover, unlike the applicants, who had been caught by surprise, the officers and M. F. had had the opportunity to plan the operation in advance. In the meantime, the officers had acted in brutal and conscious disregard of the fact that they were inflicting injuries, if not out of a direct intention to harm the applicants (they punched, kicked and pushed the applicants and pressed a door against the second applicant to prevent her exit). The kicking of the first applicant had continued after he had been put in the ambulance car. Regard being had to all the above, the injuries sustained by both applicants could not be justified under Article 3 of the Convention.

53. The Government alleged that the decision to subject the first applicant to in-patient examination had been taken on reasonable grounds and in good faith. In particular, the authorities had received numerous complaints by his neighbours and fellow villagers concerning various instances of deviance and aggression on his part, including infliction of bodily injuries of medium severity on Mrs L. in 2000. On 20 February 2003 the Chief Psychiatrist had obtained a court decision authorising him to act at his discretion with regard to the first applicant's hospitalisation. He had thus acted lawfully in taking the confinement decision and requesting the police officers' assistance in enforcing it.

54. On 7 March 2003, when the applicants had arrived at the police station in connection with the extension of the first applicant's rifle permit, the psychiatric service had been informed and M. F. had arrived in order to escort the first applicant to the hospital. The force applied in the applicants' respect had not exceeded that which had been strictly necessary to enforce the legitimate hospitalisation order and overcome the applicants' resistance. The applicants had been at fault for their own injuries, sustained primarily by banging against various objects, while the officers' actions had been aimed exclusively at restraining them and ensuring the first applicant's compliance with the hospitalisation order. These actions had been strictly proportionate to the need to place the first applicant in the ambulance car and deliver him to the clinic. The applicants had therefore not been subjected to ill-treatment contrary to Article 3 of the Convention.

(b) The Court's assessment

55. The Court observes that it is common ground between the parties to the present case that that the first applicant's jaw was fractured and that both applicants sustained bruises, abrasions and other minor injuries on 7 March 2003 in connection with their confrontation with the police and M. F. The parties disagree as to whether the decision to apply physical force and the manner in which it was applied were justified under Article 3 of the Convention in the context of the applicants' personal situation.

56. The Court reiterates that according to its well-established case-law, 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 level of severity 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. Allegations of ill-treatment must be supported by appropriate evidence assessed by the Court based on the standard of proof "beyond reasonable doubt" (see, as a recent authority, *Jalloh v. Germany* [GC], no. 54810/00, § 67, ECHR 2006-IX).

(i) With respect to the first applicant

57. In the present case, no evidence was provided that the officers inflicted any injuries on the first applicant after they succeeded in placing him in the ambulance car. The Court therefore dismisses this allegation as unsubstantiated.

58. As regards the assessment of the force applied in order to put the first applicant in the car, the Court notes, first, that the type and severity of bodily injuries inflicted on the first applicant are not the only elements to be examined in deciding whether his treatment fell within the Article 3 ambit.

59. In this regard the Court refers to the general principles established in its case-law and notes that where treatment or punishment is not connected with any physical injuries, it will fall within the Article 3 ambit if it provokes in the applicant suffering or humiliation beyond that inevitably connected with a given form of legitimate treatment or punishment (see, for example, *Jalloh,* cited above, § 68). What is essential for the measure to qualify as "degrading", is the extent to which it arouses in its victim feelings of fear, anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance, or driving him to act against his will or conscience (ibid.). It may well suffice that the victim is humiliated in his or her own eyes, even if not in the eyes of others (see, for example, *Erdoğan Yağız v. Turkey*, no. 27473/02, § 37, ECHR 2007-III (extracts)).

60. Thus, the Court has qualified as "degrading" a variety of coercive measures, whether lawful or arbitrary, where they were found to have been applied in a manner offensive to human dignity and without consideration for the victim's particular situation and conduct. For instance, Article 3 was found to be infringed where, without sufficient security justifications, the applicants were placed in a metal cage separating them from the general public during a criminal trial against them (*Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 99-102, 27 January 2009) or were subjected to unjustified public exposure in handcuffs (see, for example, *Erdoğan Yağız*, cited above, §§ 45-48, and *Gorodnichev v. Russia*, no. 52058/99, §§ 104, 108-109, 24 May 2007); where a strip search was conducted without a legitimate purpose (see, for example, *Iwańczuk v. Poland*, no. 25196/94,

§ 59, 15 November 2001; *Wieser v. Austria*, no. 2293/03, § 40, 22 February 2007; and *Malenko v. Ukraine*, no. 18660/03, §§ 59-61, 19 February 2009); where the applicant's hair was arbitrarily shaved as a part of disciplinary punishment for writing critical remarks against the State organs and his prison wardens (*Yankov v. Bulgaria*, no. 39084/97, §§ 117-122, ECHR 2003-XII (extracts); or where the applicant detained in a sobering-up facility was forcibly undressed by three employees, including two of the opposite sex, and left for a period of ten hours in restraining belts (*Wiktorko v. Poland*, no. 14612/02, §§ 54-55, 31 March 2009).

61. The Court notes next that the first applicant was placed in a psychiatric clinic against his will, a measure which can be deemed a serious interference with his physical and mental integrity and personal inviolability. On a number of occasions it has already ruled that forced medical interventions, while in principle justifiable, must be subjected to rigorous scrutiny under Article 3 of the Convention (see, *mutatis mutandis*, *Herczegfalvy v. Austria*, 24 September 1992, §§ 82-83, Series A no. 244). In deciding on the compliance of such measures with the above provision, the Court has examined, among other relevant factors, whether the preceding decision-making process afforded sufficient procedural guarantees to the applicant (see *Nevmerzhitsky v. Ukraine*, no. 54825/00, §§ 94 -99, ECHR 2005-II; *Jalloh*, cited above, §§ 69, 76 and 82); *Ciorap v. Moldova*, no. 12066/02, § 89, 19 June 2007; and *Kucheruk v. Ukraine*, no. 2570/04, §§ 139 - 146, ECHR 2007-X).

62. In the present case, the decision to confine the first applicant in the psychiatric clinic was taken unilaterally by a district psychiatrist, who appears not to have ever examined him in person. The first applicant was never given the opportunity to challenge this decision before its execution. On the contrary, according to his submissions, undisputed by the Government, the announcement of the confinement order caught the first applicant by surprise, as he had allegedly obtained a psychiatric fitness certificate two days before the events in question and reported to the police believing in good faith that he would obtain a rifle permit. Further, the first applicant was not afforded an opportunity to contact either the chief of the police department or his advocate before the measure was applied. The decision-making process leading to his confinement in the present case therefore lacked basic procedural safeguards, casting serious doubts concerning the therapeutic necessity for the measure at issue and even more serious doubts concerning the need for its forceful execution.

63. Conversely, a number of factors suggest that there was no urgent need to apply force to enforce the confinement decision with respect to the first applicant. In particular, the latter reported to the police of his own free will and behaved neither aggressively nor deviously before the confinement order was announced. It is clear from the case-file that he refused to get into the ambulance car and vigorously demanded access to his lawyer and the

chief of the police department to protest against his confinement. However, it does not appear that he attempted to inflict any physical harm on anyone or to escape from the police quarters. In view of this, the Court considers that this case is to be distinguished from those where the applicants resisted violently when faced with a simple obligation to submit to the legitimate requirements of law enforcement officers - an obligation which is part of the general civil duty in a democratic society (see *Berliński v. Poland*, nos. 27715/95 and 30209/96, § 62, 20 June 2002, and *Barta v. Hungary*, no. 26137/04, § 71, 10 April 2007). The Court further notes that it is unclear whether the police officers acted in good faith, given the information about the applicant's alleged dangerousness, and to what extent they were bound by the psychiatrist's request. In particular, the Government did not inform the Court whether any specific regulations in this respect existed. However, in the Court's view, in the context of the situation, the manner in which they reacted to the first applicant's demands for clarification concerning the legality of his confinement order, namely, by applying force to put him in the ambulance car, was manifestly disproportionate.

64. The Court therefore finds that, regard being had to the gravity of the interference with the first applicant's personal inviolability inherent in his confinement to the psychiatric clinic, the application of physical force in response to his attempts to clarify the legitimacy of the measure was capable of humiliating him to an extent that went beyond the threshold allowed by Article 3 with respect to forced medical procedures. It was therefore degrading.

65. Further, the Court considers that even in matters concerning the lawful application of force to counter resistance, State agents are responsible for reasonably planning their interventions in order to minimise potential injuries (see, *mutatis mutandis*, *Rehbock v. Slovenia*, no. 29462/95, §§ 71-72, 76, ECHR 2000-XII; *R.L. and M.-J.D. v. France*, no. 44568/98, §§ 66-73, 19 May 2004; and *Kopylov v. Russia*, no. 3933/04, §§ 162-165, 29 July 2010). In the present case, the Court takes note that both the psychiatric professionals and the police officers involved in the incident had time to plan their operation well in advance, including to prepare for potential violence and resistance on the part of the first applicant, who was allegedly in need of in-patient treatment on account of his aggressive and uncooperative behaviour. Further, the Court remarks that the confrontation took place on the premises of the police station, where the officers, specially trained in the art of combat, outnumbered the two applicants, who had no particular force or skills to resist them. The officers were placed in a considerably superior position in terms of controlling the situation. Based on the above considerations, the Court finds that, irrespective of whether the first applicant's injuries were self-inflicted by banging against various objects, as argued by the Government, or inflicted by the police officers, as suggested by him, the Government have failed to show that these injuries

could have been caused by an application of force which was appropriate in the circumstances. The Court therefore finds that the force used was disproportionate and amounted to inhuman and degrading treatment of the first applicant.

66. The first applicant was therefore subjected to ill-treatment in breach of Article 3 of the Convention.

(ii) With respect to the second applicant

67. The Court notes that the second applicant sustained bruises and other minor injuries as a result of her attempts to interfere with the actions of the police officers in the context of the forced hospitalisation of her husband. It considers that these injuries were sufficient to attract the applicability of Article 3 of the Convention as the violent reaction of the police which has to be seen in connection with the degrading treatment of the second applicant's husband was clearly disproportionate. In assessing whether the State can be held responsible for the injuries at issue, the Court refers to its reasoning in paragraph 65 above and considers that the Government have failed to provide a plausible explanation releasing them from responsibility for the second applicant's injuries. The force applied in respect of the second applicant therefore amounted to inhuman and degrading treatment.

68. There has therefore been a breach of Article 3 of the Convention in respect of the ill-treatment of the second applicant.

2. Concerning the effectiveness of the investigation

(a) Submissions by the parties

69. According to the applicants, the investigation of their ill-treatment complaints lacked the basic requirements of effectiveness guaranteed by Article 3 of the Convention. It was not until two years after the incident of 7 March 2003 that the criminal proceedings were finally initiated (28 July 2005 with respect to the first applicant and 18 October 2005 with respect to the second). These delays could not but lead to the loss of valuable evidence. Furthermore, even following the institution of the proceedings, the investigation was superficial and the authorities have not been able to identify and punish those responsible for the applicants' ill-treatment to this day, that is, more than seven years after the incident of ill-treatment.

70. The Government disagreed. They alleged that the investigation was being carried out by the prosecutor's office, which was independent of the authorities implicated in the incident. They further maintained that a number of investigative measures, including witness interviews, medical expert assessments and crime scene reconstructions had taken place, and that the authorities were doing everything in their power to establish the

circumstances of the incident and to decide on the guilt and punishment of those (if any) responsible for the ill-treatment.

(b) The Court's assessment

71. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated by the State authorities in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation (see, for example, *Assenov and Others v. Bulgaria*, 28 October 1998, § 102, *Reports of Judgments and Decisions* 1998-VIII).

72. As regards the circumstances of the present case, the Court notes at the outset that the applicants lodged their complaints about ill-treatment within several days of the incident. It further notes that the identities of the officials implicated in the acts of ill-treatment were specified in those complaints. In the meantime, the investigation, which has lasted more than seven years, has not led to a decision as to whether or not these officials should be held liable for their actions.

73. The Court further notes that the investigation was discontinued on a number of occasions, as the prosecution was not able to detect evidence of ill-treatment. All of the decisions to discontinue the investigation were subsequently annulled by the higher prosecutorial or judicial authorities, as the prosecution had fallen short of employing all the means available to them to establish the relevant circumstances. In their relevant decisions the authorities expressly pointed to a number of measures which could have been taken, and noted that their previous instructions had not been fully complied with. In spite of this, on numerous occasions the investigations were again discontinued on essentially the same grounds as before and without further substantive measures being taken.

74. The Court finds that the factual circumstances surrounding the investigation of the applicants' ill-treatment complaints in the present case are similar to the situations in which it has found violations in a number of recent cases (see, for example, *Mikheyev v. Russia*, no. 77617/01, §§ 112-113 and 120-121, 26 January 2006; *Kozinets*, cited above, §§ 61-62 and 65; and *Kobets v. Ukraine*, no. 16437/04, §§ 53-56, 14 February 2008).

75. In the light of the circumstances of the present case and its settled case-law, the Court concludes that in the present case there has been a violation of Article 3 of the Convention on account of the ineffective investigation of the applicants' complaints about their ill-treatment in connection with the execution of the order for the first applicant's hospitalisation. It follows that the Government's admissibility objection (see paragraph 45 above) must be dismissed.

76. In light of all the above, the Court finds that there has been a breach of Article 3 of the Convention on account of the ineffective investigation of the applicants' complaints about ill-treatment.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT

77. The first applicant next complained under Article 8 of the Convention that he was subjected to a psychiatric examination on 15 June 2001 and diagnosed as suffering from chronic delusional disorder in violation of the applicable law. The provision at issue reads as follows:

> "1. Everyone has the right to respect for his ... private life ...
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

78. The Government provided no comments concerning the admissibility of the first applicant's complaint under Article 8 of the Convention.

79. The Court considers that the above 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. Submissions of the parties

80. The first applicant submitted that both his examination on 15 June 2001 and his labelling as suffering from chronic delusional disorder as a consequence were unlawful. He maintained, in particular, that the outcome of his ensuing domestic civil proceedings was irrelevant, as the judicial authorities had failed to ensure a fair hearing and to state the grounds for applying section 11 of the Law "On Psychiatric Assistance" in his particular case, as well as to consider his argument that the procedure for his examination and establishing the diagnosis had been arbitrary. The courts' conclusion that the assessment itself had been carried out properly was fully unsubstantiated. He also argued that Mrs L.'s letter could not be taken as a

sufficient basis for subjecting him to a forced examination. Finally, he submitted that the brief informal conversation of which the examination consisted could not qualify as a formal psychiatric examination and a basis for diagnosing him with a serious mental disorder.

81. The Government disagreed. They accepted that the first applicant's psychiatric examination constituted interference with his private life within the meaning of Article 8 of the Convention. They argued, however, that this interference was justified under paragraph 2 of the provision at issue. In particular, the assessment had been carried out based on Mrs L.'s complaints about the first applicant's deviant behaviour, which had posed a threat to her own safety and the safety of others. These complaints had not been unsubstantiated; in particular, in June 2000 the first applicant had injured Mrs L. Other villagers had also complained to various authorities about the first applicant's provocative conduct. The Government submitted in this regard copies of complaints concerning the first applicant's conduct signed by various individuals and dated 2000 – 2003. In the light of this, the first applicant's psychiatric examination had pursued a legitimate aim – namely, protection of the rights of others. It had been necessary in a democratic society and was conducted in accordance with the law. In particular, the relevant provision was section 11 of the Law of Ukraine "On Psychiatric Assistance", authorising forcible psychiatric assessments of persons manifesting real intention to commit acts putting others in danger. Lastly, the Government submitted that the lawfulness of the application of that provision in the first applicant's case had been confirmed by judicial authorities of two levels in the course of the contested proceedings.

2. The Court's assessment

82. The Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity (see, for example, *A v. Croatia*, no. 55164/08, § 60, ECHR 2010-...) and that mental health is a crucial part of private life (see, for example, *Dolenec v. Croatia*, no. 25282/06, § 165, 26 November 2009). In line with these principles, it finds that the first applicant's examination by a psychiatrist from a State-run clinic in the present case and his diagnosis with a chronic delusional disorder constituted an interference with his private life. The fact of that interference is not disputed between the parties.

83. The Court further reiterates that an interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 and furthermore is "necessary in a democratic society" in order to achieve the aim (see, as a recent authority, *Guţu v. Moldova*, no. 20289/02, § 65, 7 June 2007). The expression "in accordance with the law" refers, in particular, to a requirement of reasonable clarity concerning the scope and manner of

exercise of discretion conferred on the public authorities (see *Domenichini v. Italy*, 15 November 1996, § 33, *Reports* 1996-V).

84. In their submissions, the Government referred to section 11 of the Law of Ukraine "On Psychiatric Assistance" (see paragraph 43 above) as the legal ground for the interference and pointed to Mrs L.'s and other villagers' letters as immediate grounds for considering the first applicant in need of psychiatric assistance.

85. The Court observes that the law at issue provides exhaustive grounds for subjecting an individual to examination by a psychiatrist (see paragraph 43 above). As follows from the analysis of the relevant text, these grounds are (a) the individual's (or his representative's) consent or request; (b) a court decision or (c) urgent necessity (in the event that the individual presents an imminent danger to himself or others).

86. The Court notes that an analysis as to which of the above-mentioned grounds applied in the first applicant's case is missing from the judgment of the Poltava Regional Court of Appeal, which had found that the examination was lawful (see paragraph 15 above).

87. The Court refers in this regard to the Government's remark that the examination had been carried out on the basis of Mrs L.'s complaint to the Chief Psychiatrist of the Poltava Hospital concerning the first applicant's deviant and harassing behaviour. It has not been suggested, either in the relevant court decision, in other case-file materials or in the Government's observations, that the latter either requested or consented to the examination or that prior judicial authorisation was sought to carry it out. As regards the remaining ground for an examination established by section 11 of the Law "On Psychiatric Assistance", that is, "urgent necessity", an explicit reference to it in the case-file materials is likewise missing. Moreover, the Court notes that Mrs L.'s letter alleged a lasting pattern of behaviour (referring to a nine-year period), including swearing, arguing, photographing, eavesdropping, and so on. While she also referred to instances of physical violence, the only dated one concerned an incident which had taken place a year preceding her letter (in June 2000). Neither the domestic judicial authorities, nor the Government in their observations, suggested that any of Mrs L.'s complaints could be interpreted as denoting an "urgency," which would dispense a psychiatrist from the obligation to seek the first applicant's consent or prior judicial authorisation for his examination. As based on the available documents it is not possible to establish the exact legal ground for the first applicant's psychiatric examination, the Court finds that the examination was not conducted in accordance with the law.

88. The Court likewise notes that the domestic judicial authorities did not respond in any particular way to the first applicant's arguments that the manner in which the examination was carried out (an informal conversation in the yard concerning his relations with his neighbours, which lasted

between five (according to the applicant) and 25 (according to M. F.) minutes was not in conformity with applicable medical guidelines. The Court considers that analysis of the alleged procedural shortcomings of the applicant's psychiatric examination was of crucial significance in the present case. The Government likewise did not provide any plausible explanation as to conformity of the procedural aspect of the applicant's psychiatric examination with applicable law. The Court therefore considers that the establishment of the first applicant's diagnosis was not in accordance with the law.

89. These considerations are sufficient for the finding that there has been a violation of Article 8 of the Convention in respect of subjecting the first applicant to psychiatric examination against his will on 15 June 2001 and diagnosing him with chronic delusional disorder.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE FIRST APPLICANT ON ACCOUNT OF INSUFFICIENT REASONING IN THE JUDGMENT OF 30 APRIL 2002

90. The first applicant next complained under Article 6 § 1 of the Convention that the Court of Appeal had not stated sufficient reasons for reversing the judgment of 6 February 2002 and finding his psychiatric examination on 15 June 2001 lawful. This provision, insofar as relevant, reads as follows:

> "... In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ..."

91. The Government contested this allegation.

92. The Court notes that this complaint is linked to the first applicant's complaint under Article 8 and must therefore likewise be declared admissible.

93. It further reiterates that, notwithstanding the difference in the nature of the interests protected by Articles 6 and 8 of the Convention, which may require separate examination of the claims lodged under these provisions, in the instant case, regard being had to the Court's findings under Article 8 (see paragraphs 85-88 above) concerning the lack of precision as to which legal provision served as the basis for the first applicant's psychiatric examination, the Court considers that it is not necessary to examine the same facts also under Article 6 (see, *mutatis mutandis*, *Hunt v. Ukraine*, no. 31111/04, § 66, 7 December 2006).

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE FIRST APPLICANT'S ABSENCE FROM A HEARING OF HIS CASE ON APPEAL

94. The applicant also complained under Article 6 § 1 of the Convention that he had been unfairly denied the opportunity to participate in the hearing of his case against the psychiatrists on appeal either in person or through his lawyer on account of the failure of the Court of Appeal to notify him of the date of the hearing.

A. Admissibility

95. The Government provided no comments concerning the admissibility of the above complaint.

96. The Court considers that the complaint at issue 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. Submissions by the parties

97. The first applicant alleged that neither he nor his lawyer had been notified of the hearing of 30 April 2002. He noted that according to the applicable provisions of the Code of Civil Procedure, the Court of Appeal had been obliged to serve a subpoena on him or notify him of the hearing by registered mail. In the absence of a properly signed delivery slip, the court was obliged to adjourn the hearing. The case file did not feature any such delivery slip, while a reference in the transcript of the hearing to the effect that the first applicant had been duly informed of the hearing had been unspecific and unsubstantiated. Notwithstanding that the first applicant had availed himself of the opportunity to submit written objections to M. F.'s appeal, his absence from the hearing had deprived him of the opportunity to exercise important procedural rights, such as to ask and answer questions, respond to new submissions by the opponents and file requests. Consequently, he had been placed at a substantial disadvantage *vis-à-vis* his opponents.

98. The Government opposed this view. They submitted that under the applicable law an appeal hearing could be held in the absence of a party, in the event that he or she had been duly notified of its date and time. The first applicant had been so notified, as the transcript of the hearing showed. Moreover, the Court of Appeal had examined his written objections against

M. F.'s appeal, and so it could not be said that the parties had been placed on an unequal footing.

2. The Court's assessment

99. The Court reiterates that the principle of equality of arms – in the sense of a "fair balance" between the parties – requires that each party should be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among other authorities, *Dombo Beheer B.V. v. the Netherlands*, 27 October 1993, § 33, Series A no. 274). This principle would be devoid of substance if a party to the case were not notified of the hearing in such a way as to have an opportunity to attend it, should he or she decide to exercise a right to appear established in domestic law (see *Zagorodnikov v. Russia*, no. 66941/01, § 30, 7 June 2007). This is especially so where the judicial authorities are expected, as in the present case, to determine factual issues, and where the applicant's claim is, by its nature, largely based on his personal experience (see *Salomonsson v. Sweden*, no. 38978/97, § 39, 12 November 2002; *Kovalev v. Russia*, no. 78145/01, § 37, 10 May 2007; and *Shytik,* cited above).

100. Turning to the facts of the present case, the Court observes that, under the Code of Civil Procedure in force at the material time, parties to proceedings were entitled to participate in appeal hearings. The finding that a case was examined on appeal in the absence of a party not duly notified of the hearing was a ground for quashing the judgment on a further appeal in cassation. The Government have not presented any documents indicating when and how either the first applicant or his lawyer had been notified of the hearing of 30 April 2002. The Court considers that regard being had to the relevant provisions of the Code of Civil Procedure concerning notification of hearings (see paragraph 42 above), the general remark in the hearing record that the first applicant had been duly notified of it, on which the Government relies as the proof of such notification, is not sufficient to rebut the first applicant's submissions (see *Strizhak,* cited above, §§ 38-41 and, by contrast, *Shytik*, cited above).

101. The Court also notes that the appeal hearing at issue lasted for one and a half hours, during which the opposing party, represented by three persons, appears to have been afforded a substantial opportunity to present their oral arguments, including a description of the facts. Furthermore, the Court of Appeal admitted new evidence in the proceedings, on which the first applicant had not been able to comment before the bench (see paragraph 14 above). The hearing ended in a reversal of the first-instance court judgment, the Court of Appeal having reassessed not only the law, but also the facts of the case (that is, whether or not M. F. had duly conducted the psychiatric assessment; see paragraph 15 above).

102. Although the first applicant had had the opportunity to appeal against the judgment of 30 April 2002 on the points of law, the Supreme Court had rejected his request for leave to appeal in cassation without holding a hearing or providing any reasoning.

103. In the light of the above the Court considers that the first applicant's absence from the hearing before the Court of Appeal was in breach of the principle of the equality of arms guaranteed by Article 6 § 1 of the Convention.

104. There has therefore been a violation of this provision in that respect.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

105. The first applicant also complained under Article 6 § 1 of the Convention that the Supreme Court had not given any reasons for dismissing his request for leave to appeal in cassation and that the proceedings at issue had lasted an unreasonably long time.

106. Lastly, he complained under Article 10 of the Convention that he had been subjected to a psychiatric assessment on account of his deviant behaviour, which was part of his self-expression.

107. Having considered these complaints in the light of all the material in its possession, the Court finds that, 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.

108. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

109. 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

110. The applicants claimed 400,000 euros (EUR) jointly in respect of non-pecuniary damage.

111. The Government maintained that this claim was exorbitant and unsubstantiated.

112. The Court considers that the applicants have suffered anguish and distress on account of the violations found, which cannot be made good by the finding of these violations alone. It awards the first applicant EUR 15,000 and the second applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

113. The applicants, who had also been granted legal aid, claimed EUR 2,000 in legal fees for their representation before the Court.

114. The Government noted that the applicants had not provided any documents in support of their claim.

115. 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 fact that the applicants had been granted legal aid (EUR 850) and to the fact that they did not provide any evidence in support of their claim, the Court makes no award.

C. Default interest

116. 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 join to the merits the Government's objection as to the exhaustion of domestic remedies in respect of the applicants' complaints under Article 3 of the Convention and dismisses it after having examined the merits of the complaint concerning ineffective investigation;

2. *Declares* the complaints under Articles 3, 6 § 1 (with respect to lack of reasoning in the judgment of 30 April 2002 and absence from the appeal hearing) and 8 of the Convention admissible and the remainder of the application inadmissible;

3. *Holds* that there have been violations of Article 3 of the Convention in respect of both applicants under the substantive and procedural limbs;

4. *Holds* that there has been a violation of Article 8 of the Convention in respect of the first applicant;

5. *Holds* that it is not necessary to examine separately the first applicant's complaint with respect to the sufficiency of the reasoning in the judgment of 30 April 2002;

6. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the first applicant's absence from the appeal hearing;

7. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts in respect of non-pecuniary damage, to be converted into the national currency of Ukraine at the rate applicable at the date of settlement:

- first applicant – EUR 15,000 (fifteen thousand euros)
- second applicant – EUR 2,000 (two thousand euros)

plus any tax that may be chargeable on the above amounts;

(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;

8. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President