**Shtukaturov v. Russia**

**Application No:** 44009/05

**Judgment:** 27.3.2008

**Subject -** Deprivation of legal capacity (violation of ECHR art. 8); fairness of proceedings for an order depriving a patient suffering from borderline mental illness of his legal capacity (violation of ECHR art. 6) and inability of the patient to challenge that order or his subsequent confinement in a psychiatric hospital (violation of ECHR art. 5)

**Facts -** The applicant, an adult male, had a history of mental illness and was declared officially disabled. His mother applied to a district court for an order depriving him of his legal capacity on the grounds that he was incapable of leading an independent life and required a guardian. The applicant was not officially notified of the proceedings. In December 2004 the district court examined the application at a hearing which was attended by the district prosecutor and a representative of a psychiatric hospital where the applicant had been placed earlier in the year. The applicant was not notified of the hearing and so did not attend. After deliberations lasting ten minutes the district court declared him legally incapable under Article 29 of the Civil Code, which prescribed such a measure if a person could not understand the meaning of his actions or control them. In reaching its decision, the district court relied on a psychiatric report which concluded that he was suffering from schizophrenia. His mother was appointed his guardian and so was authorised by law to act on his behalf in all matters. The applicant later contacted a lawyer whom he met to discuss his case and draft an appeal. The lawyer considered that the applicant was fully capable of understanding complex legal issues and giving relevant instructions. The appeal was rejected without being examined on the ground that the applicant had no legal capacity and could only appeal through his official guardian. In November 2005 the applicant’s mother had the applicant admitted to a psychiatric hospital. The applicant and his lawyer were refused permission to meet, but the applicant managed to get a form to his lawyer authorising him to lodge an application with the European Court on his behalf. From December 2005 onwards, the applicant was refused all contact with the outside world. He and his lawyer both made a series of requests to various authorities, including the district prosecutor, for his discharge from hospital, but without success. The district prosecutor advised the lawyer that the applicant had been placed in the hospital at the request of his official guardian, and that all questions related to his eventual release should be decided by her. In March 2006 the European Court indicated to the Russian Government under Rule 39 of its Rules of Court that the applicant and his lawyer should be provided with the necessary time and facilities to meet and prepare the case pending before it. However, the authorities refused to comply with that measure as they did not regard it as binding on them. The applicant was discharged from hospital in May 2006 but appears to have been later readmitted on his mother’s request.

(a) Decision to deprive the applicant of his legal capacity: **Article 6 § 1 –** The outcome of the proceedings was important to the applicant as it affected his personal autonomy in almost all areas of life and entailed potential restrictions on his liberty. Moreover, the applicant played a dual role in the proceedings as in addition to being an interested party he was the main subject of the court’s examination. His participation had therefore been necessary both to enable him to present his case and to allow the judge to form a personal opinion about his mental capacity. Accordingly, the judge’s decision to decide the case on the basis of documentary evidence without seeing or hearing the applicant – who, despite his condition, was relatively autonomous – was unreasonable and in breach of the principle of adversarial proceedings. The presence of a hospital representative and the district prosecutor, who had remained passive throughout the ten-minute hearing, had not made the proceedings truly adversarial. Nor had the applicant been able to challenge the decision as his appeal was rejected without examination. In sum, the proceedings before the district court were unfair.

Conclusion: violation (unanimously).

**Article 8 –** There had been a very serious interference with the applicant’s private life which had resulted in him having become fully dependent on his official guardian in almost all areas of his life for an indefinite period. That interference could only be challenged through his guardian, who had opposed all attempts to discontinue the measure. The Court had already found that the proceedings were flawed procedurally, with the applicant being totally excluded from the decision- making process. The district court’s reasoning had also been inadequate, as it had relied solely on a medical report which had not sufficiently analysed the degree of the applicant’s incapacity, the consequences of his illness on his social life, health and pecuniary interests and his ability to understand or control his actions. Contrary to a Committee of Ministers’ recommendation that legislation should provide a “tailor-made response” to each individual case of mental illness, Russian law only made a distinction between full capacity and full incapacity and made no allowances for borderline situations. The interference with the applicant’s private life had therefore been disproportionate to the legitimate aim of protecting the interests and health of others.

Conclusion: violation (unanimously).

(b) Placement in psychiatric hospital: **Article 5 § 1 (e) –** On the question of admissibility, the Government had argued that the applicant’s hospitalisation was “voluntary” under domestic law and so did not constitute a “deprivation of liberty”. However, having regard to the facts, and in particular the applicant’s attempts to secure his discharge from the hospital, the Court found that even though the applicant was legally incapable of expressing his opinion, he could not be said to have agreed to his continued stay in the hospital. The complaint was therefore admissible. As to the merits, the Government had not “reliably shown” that the applicant was of unsound mind at the time of his confinement: they had not explained why his mother had requested his hospitalisation and no medical records had been provided to show his condition on admission. Accordingly, it had not been “reliably shown” that his mental condition had necessitated his confinement.

Conclusion: violation (unanimously).

**Article 5 § 4 –** The courts had had no involvement in the decisions to confine the applicant and domestic law did not provide for the automatic judicial review of confinement in a psychiatric hospital in situations such as his. Nor could he challenge his continued detention independently, as he had been deprived of the legal capacity to do so, or bring proceedings through his mother, as she opposed his release. Lastly, while it was unclear whether the inquiry by the prosecution authorities concerned the “lawfulness” of his detention, it could not be regarded as a form of judicial review. Given that the applicant’s confinement was not voluntary and that the only court assessment of his mental capacity had taken place ten months previously – in proceedings which were seriously flawed and in which the need for confinement was not examined – his inability to obtain judicial review of his detention infringed Article 5 § 4.

Conclusion: violation (unanimously).

**Article 34 and Rule 39 –** The ban on contact with his lawyer had lasted throughout the period of the applicant’s hospitalisation and the ban on communications with other parties for most of it. Those restrictions had made it almost impossible for the applicant to pursue his case before the Court, even though the authorities must have been aware of his application. The authorities had also refused to comply with the interim measure indicated to the Government under Rule 39, on the grounds that it was addressed to the State as a whole, not to any particular body, that Russian law did not recognise the binding force of such measures, that the applicant could not act without his mother’s consent and that his lawyer was not regarded as his lawful representative. Such an interpretation was contrary to the Convention. It was for the Court, not the domestic courts, to determine who was the applicant’s representative for the purposes of proceedings before it. An interim measure was binding to the extent that non-compliance could lead to a finding of a violation under Article 34 and it made no difference whether it was the State as a whole or any of its bodies which refused to implement it. In sum, by preventing the applicant from meeting his lawyer or communicating with him over a lengthy period and by failing to comply with the interim measure the State was in breach of its Article 34 obligations.

**Conclusion:** failure to comply (unanimously).