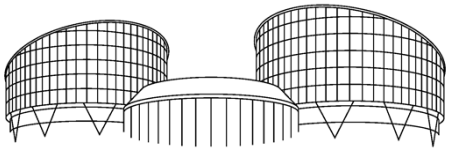

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SPIVAK v. UKRAINE

(Application no. 21180/15)

JUDGMENT

Art 5 § 1 • Unlawful continued compulsory hospitalisation of the applicant despite a court order to cease his compulsory inpatient psychiatric treatment
Art 5 § 4 • Applicant's inability to challenge the lawfulness of his compulsory psychiatric confinement • Findings in Gorshkov v. Ukraine applicable • Domestic system at the time lacking basic safeguard of providing patients compulsorily detained in a psychiatric hospital an independent right to lodge an individual application with a court • Systemic problem • Compulsory hospitalisation in a mental care facility, as ordered by a criminal court, included automatic authorisation to treat patients against their will without a remedy • Periodic ex officio judicial review of the applicant's case marked by a manifest lack of diligence and incompatible with basic justice requirements • Lack of an adequate judicial response
Art 3 (substantive and procedural) • Positive obligations • Respondent State's failure at the time to establish and apply effectively a legal and regulatory framework governing compulsory medical measures in psychiatric institutions and the investigation of complaints about such measures • Absence of procedural safeguards • Criminal authorities' failure to investigate the applicant's allegations
Art 3 (substantive) • Inhuman and degrading treatment • No proven therapeutic necessity for persistent and prolonged daily administration of neuroleptic medication, in different forms and dosages, without a predetermined course and against the applicant's will • Coercive medical treatment continued despite court order for its cessation • Treatment with a retaliatory aim and intended to exert control over the applicant's behaviour • Lack of effective legal safeguards against arbitrariness and abuse by medical staff
Art 3 (substantive) • Degrading treatment • Inadequate conditions of detention in the psychiatric hospital
Art 13 + (Art 3) • Lack of an effective remedy

Prepared by the Registry. Does not bind the Court.

STRASBOURG

5 June 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Spivak v. Ukraine,

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

Mattias Guyomar*, President*,
María Elósegui,
Gilberto Felici,
Andreas Zünd,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,
and Victor Soloveytchik, *Section Registrar,*

Having regard to:

the application (no. 21180/15) 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, Mr Gennadiy Igorovych Spivak ("the applicant"), on 23 April 2015;

the decision to give notice to the Ukrainian Government ("the Government") of the complaints under Article 3, Article 5 §§ 1, 4 and 5 and Article 13 of the Convention and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 13 May 2025,

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

INTRODUCTION

1. The application concerns the compulsory psychiatric treatment of the applicant in a high-security psychiatric hospital pursuant to an order issued by a criminal court, and his inability to initiate court proceedings to review the lawfulness of his continued confinement, which, along with the material conditions, allegedly amounted to ill-treatment. The applicant relied on Articles 3, 5 and 13 of the Convention.

THE FACTS

2. The applicant was born in 1980 and lives in Kamyanske. The applicant was represented by Mr D.Y. Zharyy, a lawyer practising in Dnipro.

3. The Government were represented by their Agent, Ms M. Sokorenko, from the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S PLACEMENT IN A PSYCHIATRIC HOSPITAL AND HIS DISCHARGE

5. On 15 December 2011 the applicant was apprehended by the police at the home of an acquaintance. He was found in a state of severe emotional distress and alcohol intoxication, covered in blood and with physical injuries. A criminal investigation in respect of the attempted murder of his acquaintance was opened, with the applicant as a suspect. He was later committed to stand trial for this offence.

6. During the investigation, taking into account the applicant's condition when the police found him at the scene of the crime and his claim not to remember the events in question, an in-patient forensic psychiatric examination was conducted by a commission of experts at the Dnipropetrovsk Regional Psychiatric Hospital. The Commission presented its conclusions in report no. 90, dated 22 March 2012, as follows:

> "Reasoning part:
>
> On the basis of the foregoing, the commission concludes that the applicant has not previously suffered from – [and] nor does he currently suffer from – any mental illness. The present psychiatric condition of [the applicant] is such that he is aware of and can control his actions (or inactivity) and can participate in the court hearing.
>
> A retrospective analysis of the applicant's mental state at the time of the criminal act – in conjunction with the case material and the results of the present clinical psychiatric examination – allows for the conclusion that at the time of the act in question [the applicant] was in a state of temporary mental disorder (classified as an exceptional condition) in the form of a twilight state of consciousness.
>
> This is evidenced by the emergence – against the backdrop of existing organic pathology (previous head injuries, episodes of loss of consciousness) and exogenous intoxication – of: affective tension, anxiety [and] anticipation of trouble (which preoccupied almost all of his thoughts); delirious ideas that he was entitled to special status (*бредовые идеи своего особого значения)*; attitudes [consistent] with the imminent development of an acute psychotic state, characterised by disturbed consciousness [combined] with chaotic, impulsive [and] automatic actions (*импульсивными, автоматическими действиями*); ... the applicant's ability to engage in basic orientation; and superficial interaction with those around him.
>
> The aforementioned temporary mental disorder deprived [the applicant] of the ability to understand and control his actions at the time of the act in question.
>
> Article 19 paragraph 2 of the Criminal Code is applicable.
>
> The [applicant's] mental condition requires the application of compulsory measures of a medical nature.
>
> Conclusions:
>
> 1. [The applicant] has not previously suffered from – [and] nor does he currently suffer from – any mental illness. The present psychiatric condition of [the applicant] is such that he is aware of and can control his actions (or inactivity) and can participate in the court hearing.

2. During the period of time relating to the act in question, [the applicant] was in a state of temporary mental disorder in the form of a twilight state of consciousness, which deprived him of the ability to give an account of his actions (or inactivity) and to control them.

3. It is recommended a compulsory measure of medical nature be applied [to the applicant] in the form of hospitalisation in a psychiatric hospital with an ordinary supervision regime."

7. On 9 October 2012, relying on the above-mentioned report, the Dniprovskyi District Court of Dniprodzerzhynsk found that the applicant had committed the offence of attempted murder but that he should be exempted from criminal responsibility on the basis of his mental condition at the time of the offence. It ordered the applicant's compulsory medical treatment in a high-security psychiatric hospital, in accordance with Article 94-5 of the Criminal Code. In doing so, the court noted that, although according to the experts, the applicant had not been suffering from any mental illness prior to the crime and was currently mentally healthy, the circumstances and nature of the offence, the sudden onset of the applicant's twilight state during the crime, and the lack of any definitive evidence that that condition would never recur rendered him particularly dangerous to others. This decision was not appealed against, and thus became final.

8. According to the applicant, he did not feel the need to lodge an appeal at the time because the forensic psychiatric report had clearly stated that he was mentally healthy. He therefore believed that if hospitalisation was considered necessary, it would only be a short-term measure. He could not have anticipated that the hospital would "convert" him into a mentally ill person and refuse to release him within six months. He was also unaware of the risk of potential mistreatment at the hands of the medical staff and the conditions in which patients were kept at the facility. By the time he was admitted to the hospital and realised the gravity of his situation – two months after the criminal court's decision of 9 October 2012 – it was too late to lodge an appeal.

9. On 6 December 2012 the applicant was transferred from a detention facility to the National High Security Psychiatric Hospital in Dnipro ("the Dnipro hospital"), a State-run institution.

10. On 11 March 2013 the medical consultation board of the Dnipro hospital examined the applicant with a view to "clarifying his diagnosis". Following the examination he was diagnosed with organic personality disorder. The relevant part of the examination report, to the extent that it is legible, reads as follows:

"..... From the moment of his admission to the hospital to the present day, the patient's mental state has [been characterised by] emotional lability. He exhibits egocentricity, [with] an over-high regard for himself, and a ... sense of distancing [himself from others] [*сглаженное чувство дистанции*]. Eccentric [*Ексцентричен*]. Fixated on his somatic condition. He demanded special treatment as a citizen of two States, spoke of his intention to complain to the Israeli embassy. ... Regarding the crime he committed,

he claims that something may have been put into his beer – possibly clonidine. ... He considers himself mentally healthy and not in need of treatment. ... He perceives the treatment as a punishment and evidence of a biased attitude towards him. He has incited other patients to disobey the regime, has associated with rule-breakers, and has been found in possession of prohibited items. He has defied the instructions of the medical staff, is angry and [displays] a negative [attitude]. His thinking has elements of circumstantiality. The experimental-psychological examination [*эксперементально-психологическое исследование*] revealed "... (against a backdrop of anxiety and tension) mild disorders of both organic origin (some absent-mindedness, attention fluctuations, reduced speed in acquiring new skills, slow mental processes, forgetfulness, and increased fatigue by the end of the examination) and of an endogenous nature (reduced critical thinking, pedantic judgments, a tendency to focus on weak signs [*тенденции к использованию слабых признаков*], and impaired goal-directed behaviour). In the emotional-volitional sphere – rigidity, overconfidence, inconsistency of moral values, inflated self-esteem, impulsive actions, a tendency to antisocial behaviour, sensitivity to criticism, and irritability and selectivity in interpersonal contacts were observed. No paroxysms were observed. Received treatment: ... Tizercine 150 milligrams per day. ...

Mental status: The patient is amenable to contact, correctly oriented, and carries himself with a sense of dignity, displaying courtesy. He strives to present himself in the best light. He provides detailed and thorough information about his medical history, paying particular attention to head injuries and headaches. His thinking is circumstantial, and he exhibits rigidity [of thinking and behaviour]. Attention is adequately concentrated and maintained, and he easily shifts to abstract topics, showing an inclination towards lofty discussions on morality and justice. His intellectual capacity corresponds to his educational background and life experience. Memory is intact in respect of past and present events but impaired regarding the time of the offence [committed by him]. Emotionally unstable. No signs of psychotic symptoms are present. He does not consider himself mentally ill and denies the need for treatment. He does not critically assess his current situation.

Conclusion of the panel: Taking into account the patient's history of head injuries and periods of alcohol abuse, as well as clinical examination data (the presence of cognitive dysfunction and emotional-volitional changes, [and] scattered residual neurological symptoms) and EEG data, the patient can be given the principal psychiatric diagnosis: organic personality disorder (organic pseudopsychotic personality). Experienced a twilight state of consciousness (15 December 2011), F 07.0."

11. On 5 April and 1 October 2013 and on 25 March 2014 the panel of Dnipro hospital specialists (including those who signed the conclusion of 11 March 2013) examined the applicant with a view to deciding on whether there was a need for further compulsory treatment. Each time the panel noted that the emotional and volitional instability of the applicant, and his irritability and anger – together with the egocentric rigidity of his beliefs and attitudes, his denial of guilt for the socially dangerous act that he had committed, his lack of understanding of the need for treatment, and his failure to recognise the presence of mental disorders – determined the clinical picture of his disease and rendered him particularly dangerous to society. The panel concluded that the applicant's compulsory medical treatment in a high-security hospital should be continued.

12. On 16 April, 24 October 2013 and 25 April 2014, the Krasnogvardiiskyi District Court of Dnipropetrovsk ("the District Court") accepted the panel's recommendation and ruled accordingly in the presence of a prosecutor, a lawyer (apparently state-appointed, each time a different lawyer) and a representative of the Dnipro hospital. The relevant part of the decision of 16 April 2013 reads:

> "...
>
> By a decision of the Dniprovsky District Court of 9 October 2012, [the applicant] was committed to a psychiatric hospital under strict supervision for compulsory treatment ...
>
> The psychiatrist's submission (to which the report of the panel of psychiatrists of 5 April 2013 is attached) states that [the applicant] suffers from an organic personality disorder and that, owing to his mental condition, he must continue to undergo compulsory treatment in a psychiatric hospital under strict supervision.
>
> Having discussed the application, heard the parties, and examined the case file, the Court considers that the application should be granted because [the applicant] suffers from a severe mental disorder and has committed acts that constitute an imminent danger to himself and others.
>
> In the light of the foregoing – and in accordance with Article 95 of the Criminal Code, Article 514 of the Criminal Procedure Code, and Articles 19 and 22 of the Psychiatric Assistance Act – the court has decided to continue the use of coercive measures of a medical nature ... in a psychiatric hospital under strict supervision. ..."

The decision of 24 October 2013 reads as follows:

> "...
>
> By a decision of the Dniprovsky District Court of 9 October 2012, [the applicant] was committed to a psychiatric hospital under strict supervision for compulsory treatment ...
>
> The psychiatrist's submission (to which the report of the panel of psychiatrists of 1 October 2013 No. 1575 is attached) states that [the applicant] suffers from an organic personality disorder (organic pseudopsychotic personality). He experienced a twilight state of consciousness on 15 December 2011 and, owing to his mental condition, he must continue to undergo compulsory treatment in a psychiatric hospital under strict supervision.
>
> Having discussed the application, heard the parties, and examined the case file, the court considers that the application should be allowed for the following reasons.
>
> It is clear from the conclusion of the psychiatric panel and the statements made by the [hospital's] representative at the court hearing that the [applicant's] mental state remains unstable, which indicates that [the applicant] remains a particular danger to others and that it is necessary to continue to apply to him coercive medical treatment in a psychiatric hospital under strict supervision.
>
> Therefore, taking into account the fact that [the applicant's] state of health remains unstable – and given the seriousness of the socially dangerous act committed – the court concludes that it is necessary to continue his compulsory treatment in a psychiatric hospital under strict supervision, in accordance with the provisions of Article 94-5 of the Criminal Code.

In the light of the foregoing – and in accordance with Articles 94 and 95 of the Criminal Code, Articles 19 and 22 of the Psychiatric Assistance Act, and Article 514 of the Criminal Procedure Code – the court has decided to continue the use of coercive measures of a medical nature ... in a psychiatric hospital under strict supervision. ...”

The decision of 25 April 2014 reads:

“...

By a decision of the Dniprovsky District Court of 9 October 2012, [the applicant] was committed to a psychiatric hospital under strict supervision for compulsory treatment ...

In the psychiatrist’s submission (to which the report of the panel of psychiatrists of 25 March 2014 is attached) states that [the applicant] suffers from an organic personality disorder and that, owing to his mental condition, he must continue to undergo compulsory treatment in a psychiatric hospital under strict supervision.

Having discussed the application, heard the parties, and examined the case file, the court considers that the application should be granted for the following reasons.

It is clear from the conclusions of the psychiatric panel and the statements made by the [hospital’s] representative at the court hearing that the [applicant’s] mental state remains unstable, which indicates that [the applicant] remains a particular danger to others and that it is necessary to continue to apply coercive medical measures treatment in a psychiatric hospital under strict supervision.

Therefore, taking into account that [the applicant’s] state of health remains unstable and given the seriousness of the socially dangerous act committed, the court concludes that [the applicant] requires continued compulsory treatment in a psychiatric hospital under strict supervision, in accordance with the provisions of Article 94-5 of the Criminal Code.

In the light of the foregoing – and in accordance with Articles 94 and 95 of the Criminal Code, Articles 19 and 22 of the Psychiatric Assistance Act, and Article 514 of the Criminal Procedure Code – the court has decided to continue the use of coercive measures of a medical nature ... in a psychiatric hospital under strict supervision. ...”

13. The applicant did not attend any of the court hearings; each time he signed a pre-typed request for the case to be considered in his absence. According to him, he – like other patients – had been forbidden by the Dnipro hospital administration to attend the court hearings and had been forced to sign waivers of his right to participate.

14. On 18 September 2014 the panel of psychiatrists from the Dnipro hospital again decided (on the same grounds as on the previous occasions) that the applicant’s compulsory psychiatric treatment should be continued, since no changes had been observed in the applicant’s condition. The Dnipro hospital requested the District Court to rule accordingly.

15. On 29 September 2014 the applicant signed a legal aid agreement with a private lawyer, S., engaged by his mother.

16. On 8 October 2014, apparently during a meeting with S., the applicant lodged a request with the District Court to be allowed to attend the forthcoming hearing in which the issue of his continued medical confinement would be considered. On the same day, S. submitted a copy of the applicant’s

request to the Dnipro hospital administration and requested that the applicant be brought to the District Court on 13 October 2014. The request was granted. According to the applicant, all this had only been possible thanks to the support of the Ombudsperson; he did not provide any details in this regard.

17. On 13 October 2014, in the applicant's presence, the District Court refused the Dnipro hospital's request for the continued application of coercive medical measures (see paragraph 14 above). The relevant part of the decision reads as follows:

> "... The psychiatrist's submission (to which the report of the panel of psychiatrists of 18 September 2014 No. 1355 is attached) states that [the applicant] suffers from an organic personality disorder and that, owing to his mental condition, he must continue to undergo compulsory treatment in a psychiatric hospital under strict supervision.
>
> At the court hearing, the prosecutor, the lawyers and [the applicant] considered that the psychiatrist's application should be rejected.
>
> Having discussed the application, heard the parties, and examined the case file, the court considers that the psychiatrist application should be rejected for the following reasons:
>
> ... The forensic report of 22 March 2012 regarding the applicant's inpatient psychiatric examination stated that [the applicant] had never suffered and was not suffering from any psychiatric illness. ... It was recommended that a compulsory measure of medical nature be applied [to the applicant] in the form of hospitalisation in a psychiatric hospital with ordinary supervision regime. However, ... he was placed into a high-security psychiatric facility. ...
>
> It was established at the court hearing that [the applicant] has been held in the high-security psychiatric hospital since December 2012.
>
> [The applicant] was diagnosed with "organic personality disorder" (organic pseudopathic personality). Experienced twilight state of consciousness on 15 December 2011. It appears from the psychiatrist's submissions that [the applicant] experienced the twilight state of consciousness only once (on 15 December 2011) since this disorder is of a short-term nature and in [the applicant's] case was caused by alcohol intoxication. During his stay in [the Dnipro hospital] the applicant did not experience a recurrence of that mental condition. According to the psychiatrist's submission, it can be assumed that under the influence of alcohol, the [same] personality disorder may recur.
>
> However, the court cannot take into account the psychiatrist's assumption that the applicant could suffer a recurrence of the disease under the influence of alcohol in the future.
>
> Paragraph 25 of the report of the panel of psychiatrists of 18 September 2014 attests that the applicant did not manifest any perceptual disorders or delusions during his stay in the hospital (for more than two years).
>
> In addition, the court has established that [the applicant] has [voluntarily] taken part in refurbishment works [at the Dnipro hospital], and participates in group therapy in order to develop the right attitude to his condition and to consolidate socially acceptable stereotypes of behaviour.
>
> Furthermore, during the court hearing [the applicant] behaved calmly, and adequately answered the questions.

> Taking into account the fact that the applicant has suffered from twilight personality disorder only once (on 15 December 2011, under the influence of alcohol), and that he has not experienced any further relapses or exacerbation of his mental state, and given also that the applicant has not displayed any aggressive behaviour, perceptual disorders or delusions, the court has concluded that the psychiatrist's request should be refused. ..."

18. The applicant's treating doctor lodged an appeal against the decision of 13 October 2014, stating, *inter alia*, that the domestic court did not have any specific knowledge of psychiatry enabling it to assess the applicant's mental condition and had therefore acted *ultra vires* when refusing the hospital's request. The doctor observed that the applicant's behaviour during the hearing could well have stemmed from his belief that he was not ill.

19. On 24 October 2014 the Dnipropetrovsk Regional Court of Appeal ("the Court of Appeal") returned the appeal to the hospital, noting that it had been lodged by an inappropriate party (namely, by the psychiatrist instead of the head of the Dnipro hospital). Accordingly, the decision of 13 October 2014 became final on the same day.

20. Also on the same day (24 October 2014) S. and the applicant's mother requested the Dnipro hospital (both orally and in writing) to release the applicant. After the Dnipro hospital director refused to do so (noting that there was no court decision ordering the applicant's discharge), the applicant's mother and his lawyer complained to the Ombudsperson's Office.

21. On 28 October 2014 the Dnipro hospital psychiatric panel conducted another examination of the applicant and concluded that he required continued psychiatric treatment – but under enhanced supervision (rather than the high-security regime that had applied until then). The panel requested the District Court to order that such supervision be imposed.

22. On the same day, upon the written instruction of a prosecutor (apparently given after an intervention by the Ombudsperson), the applicant was discharged from the Dnipro hospital. Pending his release, the applicant was required to continue taking neuroleptics. Before being discharged from the hospital, he signed a written statement to the effect that he had no complaints against the Dnipro hospital with regard to his medical treatment and the conditions of his stay. According to the applicant, he had no choice but to sign this document in order to be discharged.

23. On 14 November 2014 the District Court refused the Dnipro hospital's request of 28 October 2014 for a change of the compulsory medical measures (see paragraph 21 above) on the same grounds as those that it had given on 13 October 2014. That decision was final.

24. In her interview to a newspaper, released on 2 December 2014, the Ombudsperson stated the following:

> "[The applicant] is the only patient of the [Dnipro hospital] who has been released so far. The fact is that, pursuant to an order issued by the Ministry of Health, after the medical examination that patients undergo every six months, there are only two options: to remain in the psychiatric hospital that follows this regime or to be transferred to a

similar institution that follows another regime. No third option exists. No one – neither doctors nor judges – cares: maybe the patient was cured in the first three months, and it is no longer necessary to keep him in this medical institution for six months. In our country, a patient cannot apply to a court for an early medical commission [hearing] or ask for an independent opinion ... not to mention the fact that, according to established practice, patients are usually not present in court.

I have the right to visit psychiatric hospitals without [giving] advance notice. So, when I travelled to visit [the Dnipro hospital], I also attended a court hearing [concerning a different case] headed by the judge who [later] considered [the applicant's] case. We had a long discussion. The judge explained that he was not an expert in psychiatry and could not decide whether a [certain course of] treatment should be prolonged or not. He said there were doctors for that. I argued: "You have a document on your desk – a statement from the psychiatric hospital that it is necessary to continue the treatment of a woman who "poses a great danger to society". What can you understand from this document, honourable judge? Nothing at all. Meanwhile, if you had bothered to invite the patient to court, you would have known that this "woman [who is] dangerous to society" was an 85-year-old bedridden, blind and almost deaf woman". After our conversation, the judge became thoughtful. And it was thanks to that [meeting with the judge] that [the applicant] was eventually able to attend the hearing at which his future fate was decided.

A visit to the [Dnipro hospital] left me with a depressing impression. Instead of people in white coats, we were met by real prison guards – in uniform, with batons and handcuffs on their belts. The dormitories did not provide the slightest personal space to patients. There were no bedside tables with photos of loved ones or books on them. The distance between beds was about twenty centimetres. You can't even put your feet down. How can one recover in such an atmosphere?

It seems to me that this hospital (which existed under the NKVD in Soviet times) is a remnant of the [old] healthcare system and is not designed to cure patients at all. All the patients I have seen there are in a lethargic somnambulistic state. And the conditions in which they live appalled me. Even the women wear the same nightgown day and night – for walking, for eating and for sleeping. They are allowed to wash themselves and change their shirts once a week! Only relatives are allowed to visit patients – and only on weekdays, during working hours. It is not clear why. ... In general, in my opinion, all conditions have been created in that hospital [to ensure] that people never recover and never leave. No wonder many people die there.

After looking around this institution, we gathered in the office of the head doctor, made our comments and recommendations to him and sent them in writing to the Ministry of Health. The Ministry, instead of taking action, sent this document back to the head doctor, who replied to us that our comments were untrue. That was the end of it. However, we have other means of [exerting] influence. [I will do] as much as I can ... to solve this problem and help the patients – just as I helped [the applicant] (with the assistance of the Dnipropetrovsk regional prosecutor's office)."

II. MEDICAL TREATMENT AND MATERIAL CONDITIONS

A. Medical treatment

1. The applicant's medical file

25. The applicant's medical file – the full copy of which has been provided to the Court by the applicant – sets out (day by day) the care and treatment received by the applicant from 6 December 2012 until 28 October 2014. It contains records made by the attending psychiatrist during his daily visits to the applicant, documents concerning the general medical care and specialised care administered to the applicant.

26. The daily notes of the attending psychiatrist reveal that throughout his hospital stay, the applicant was consistently well-oriented and did not experience delusions, hallucinations, or anxiety. He showed no signs of aggression, self-harm, or psychosis. Generally, he remained calm, avoided creating conflicts, and adhered to the hospital regime. No considerable changes in his condition are apparent from his medical documents.

27. The records further indicate that the applicant's attitude was consistently negative towards his hospitalisation and treatment. On a daily basis he insisted that he was mentally healthy, objected to the administration of neuroleptics, and asserted that the treatment constituted an assault and a means of humiliating and punishing him for his "fight for justice". He vowed to raise his grievances about his treatment and detention conditions with a lawyer, influential acquaintances, and consular institutions (citing his alleged dual citizenship). On several occasions, he complained to the attending psychiatrist that his lawyer had not defended him in court and had failed to respond to his enquiries.

28. According to his admission record of 6 December 2012, the applicant was admitted to the Dnipro hospital with "twilight state of consciousness (resolved)" as his "diagnosis". During the initial medical examination carried out on the day of his admission, the applicant behaved appropriately and maintained that he was mentally healthy, with the duty psychiatrist noting no symptoms of any mental disorder and prescribing no treatment. On the same date the applicant gave written consent to the processing of his personal data and to an HIV test being performed on him.

29. On 7 December 2012 a "rehabilitation-therapeutic" plan for the first, "adaptation-diagnostic" stage of the applicant's treatment was drawn up. It appears to be a standard template document, with the applicant's name and diagnosis – "resolved twilight state" – manually entered, by pen. The plan included, among other things, the requirement to establish and justify the main clinical diagnosis within ten days and to record it in accordance with the World Health Organization's International Statistical Classification system of Diseases and Related Health Problems. It also provided in general term for the treatment of the primary psychopathological symptoms (which

could include, for example, anti-psychotic therapy, general strengthening therapy, vitamin therapy). Additionally, psychotherapeutic activities, explanations to the patient regarding the purpose of hospitalisation, his rights, and the conditions of the detention regime were noted in the plan. The length of time for which it was intended that the treatment plan would last was not specified, but it was indicated that once all the measures outlined in the plan had been implemented, it would be necessary to move on to the second stage.

30. The psychiatrist notes dated 10 December 2012 cited a letter from the applicant to his mother in which he asserted his innocence. The psychiatrist further noted that "an individual talk was held with the applicant, during which were explained the reasons for and aim of his placement in the psychiatric facilities, his rights, detention regime and daily schedule, as well the necessity of the prescribed treatment and its potential side effects".

31. On 13 December 2012 the treating psychiatrist indicated that the main clinical diagnosis was one of a resolved twilight state of consciousness (*разрешившееся сумеречное расстройство личности*). This was amended on 11 March 2013 to include organic personality disorder as the principal disease (see paragraph 10 above).

32. From 14 December 2012 the applicant was given neuroleptic medication; he continued with that treatment until his discharge from the Dnipro hospital on 28 October 2014. According to the medical records, the applicant was administered Aminazin (chlorpromazine), Tizercine (levopromazine) and Sonapax (thioridazine) in various dosages and forms.

33. The first prescription of neuroleptic medication (Aminazin) was made by the applicant's attending psychiatrist because the applicant "requested a meeting, during which he expressed irritation and dissatisfaction with the detention conditions and the behaviour of other patients." The prescribed dosage was 25 milligrams twice daily, with no specified duration. Within a few days it was noted that the applicant had become calm and ceased expressing dissatisfaction, now that he was under the influence of Aminazin. However, he was described as arrogant and unconstructive.

34. On 19 December 2012 the applicant was transferred from the admissions unit to the treating department. The transfer report noted that during his stay in the admissions unit the applicant was responsive to contact, logical, coherent, and showed no signs of psychosis, although his emotional reactions were labile, and his critical faculties were impaired. A resolved twilight state of consciousness was indicated again as the diagnosis.

35. A medical examination of the applicant in the treating department recorded that the applicant insisted that he was mentally healthy and questioned the reasons for his hospitalisation (asking many questions about the prospects of his hospitalisation and its timing). He contended that he did not know why the forensic experts had decided that he needed to be hospitalised. He was described as polite, without delusions or hallucinations, but in a low mood due to his situation. The diagnosis was that of a "twilight

state of consciousness, completely dissipated." The doctor indicated that given the anxiety and emotional lability expressed by the applicant it was necessary to sedate him. Aminazin at a reduced dose (25 milligrams per day) was prescribed, with no specified duration.

36. On 25 December 2012, after the applicant refused to shower (alleging that it was too cold in the premises), the dosage of Aminazin was increased to 75 milligrams per day, owing to what was described as his affective reactions, negativism, and protest behaviour.

37. On 14 January 2013 the attending physician switched the applicant's treatment from Aminazin tablets to Tizercine injections, administered three times per day for an unspecified duration. This change was explained by the applicant's negative attitude towards the therapy, daily challenges to the necessity of the treatment, alleged hiding of prohibited items, incitement of another patient to disobey the hospital regime, confrontational behaviour towards hospital staff (whom he accused of unfair and biased treatment), and overall resistance to correction.

38. On 21 January 2013, the applicant was seen by the Dnipro hospital's chief psychiatrist, who observed that the applicant had been calm, had been asleep for almost the entirety of the preceding days, and had adhered to the detention regime. The examination revealed that the applicant was communicative and accurately aware of time, place, and his own identity, with no impairment of intelligence or memory. He did not display any anger but rather tended to engage in discussions about morality and justice, insisted on his innocence, and maintained a negative attitude towards his hospitalisation and treatment, asserting that he was mentally healthy and did not require the neuroleptic treatment. The chief psychiatrist ordered the continuation of sedative treatment with Tizercine, but switched the delivery method of that treatment from injections to tablets (150 milligrams per day).

39. On 5 April 2013, the applicant's treating psychiatrist approved a rehabilitation-therapeutic plan for the second stage, focusing on intensive therapeutic and rehabilitation measures. The plan referred to the diagnosis established on 13 December 2012 and authorised the use of neuroleptic – medications that do not induce epileptic seizures – specifically Tizercine, Ridazin (thioridazine), Aminazin and Clopixol (zuclopenthixol). The declared objective was to compensate for any emotional-volitional disorders and to prevent the progression of personality changes. Additionally, the plan prescribed psycho-corrective activities aimed at fostering the applicant's awareness of his illness and its alcohol-related nature, promoting anti-alcohol attitudes, and emphasising the need for treatment. It also included therapeutic labour activities.

40. In December 2013, Tizercine was replaced with Sonapax (75 milligrams per day), but that was switched back to Tizercine (75 milligrams per day) in August 2014. In extending the treatment the attending psychiatrist mainly cited the applicant's negativistic attitude

towards his hospitalisation and treatment, reluctance to receive treatment, irritability and persistence in defending his point of view, lack of critical insight into his mental illness and the actions he had committed, his expression of dissatisfaction with regime issues, rapid mood changes and egocentric behaviour.

41. The applicant's medical file contains no records suggesting that the administration of neuroleptics had resulted in any serious side effects, although it is apparent that it caused the applicant to feel sleepy and weak and had to be supplemented (following the applicant's complaints) with analeptic and heart medication.

42. According to the medical file, during his hospital stay the applicant also participated in group social training sessions and some psychological and pedagogical activities.

2. The applicant's submissions

43. According to the applicant, in March 2013, Dnipro hospital practitioners had deliberately changed the forensic expert's standing diagnosis (which had declared him mentally healthy), and had instead misdiagnosed him with a mental illness in order to prolong his stay in the hospital as a form of imprisonment for the crime that he had allegedly committed. After his admission to the Dnipro hospital, the hospital staff had refused to inform him about his treatment plan, arguing that such information should not be shared with patients. They had also unsuccessfully urged him to apply for a disability allowance, which would then be at their disposal.

44. The applicant contended that shortly after his admission he had been ordered to take anti-psychotic drugs – not for medical reasons, but as a form of punishment for what the staff perceived as misbehaviour. This included his questioning the need for his continued hospitalisation and treatment, complaining about the hospital conditions or staff conduct, and standing up for other patients. His attempts to challenge the unnecessary treatment had been unsuccessful, and had resulted in his drug dosages being increased. The applicant alleged that prescribing anti-psychotic drugs as a form of punishment – as well as verbal, emotional, and physical abuse by the staff – had been a common practice in the hospital. As an example, he submitted that in December 2012, after disputing the need for neuroleptic treatment, he had been subjected to thirty injections of Aminazin (three per day for ten days); in early 2013, he had received ten more injections of Aminazin for failing to comply with an unjustified order to stop talking to his neighbour; on another occasion, he had been prescribed a higher dose of anti-psychotic medication after defending a patient who was being insulted by a nurse.

45. The neuroleptics, which he had not required, had caused him severe psychological suffering, physical pain, and left him in an anabiotic state, causing a total loss of his sense of reality and impairing his ability to think

and function normally. At some point, he secretly stopped taking the pills and began to feel much better.

3. The Government's submissions

46. The Government denied the applicant's assertions. Their referred to information notes issued by the Dnipro hospital at their request on 10 November 2021 and 16 April 2024 in which the Dnipro hospital had submitted that the applicant's compulsory treatment had been required since the criminal court had ordered it. The Dnipro hospital had pointed to the contradictory nature of the forensic report, which had declared the applicant mentally healthy but had nevertheless recommended hospitalisation. It had argued that the intended purpose of the order to hospitalise the applicant had been to prevent a possible recurrence of a twilight state by treating the organic pathology of traumatic origin mentioned in the forensic report. The hospital had also submitted that the twilight state was not a mental illness *per se*, but rather a symptom that could indicate various mental conditions, and that it had therefore been necessary to examine the applicant in order to determine the underlying mental illness from which he had been suffering. This examination had taken place on 11 March 2013 and treatment had been subsequently prescribed on the basis of the diagnosed condition.

47. The Dnipro hospital had further asserted that the neuroleptic treatment had been a response to the applicant's manifest emotional and volitional disorders and had been in accordance with national clinical protocols. The neuroleptic drugs in question had been officially registered in Ukraine, had been administered within average therapeutic limits and could not have caused any harm to the applicant. The Dnipro hospital had strongly denied the allegations regarding the use of anti-psychotic drugs as punishment, asserting that those allegations – along with other allegations of staff misconduct – had been completely untrue and had been fabricated by the applicant with the intention of defaming the hospital's medical personnel.

B. Conditions of detention

48. The facts are disputed, and the parties' respective accounts of them are as follows.

49. According to the applicant, upon his arrival, his hair had been cut off with the same set of clippers – first the hair on his genitals and then the hair on his head. In response to his questions, the doctor on duty had told him that the fewer questions he asked, the less his health would suffer. She had also told him that he would not leave the hospital for at least five years.

50. Throughout his detention, he had been housed in overcrowded rooms. Between 6 and 19 December 2012, he had been confined with two other individuals in a reception room measuring 2.2 by 3 metres, without the possibility to leave the cell freely. From 19 December 2012 onwards, he had

been held with twenty other patients in a ward measuring 8 by 5.5 metres in the hospital's Fifth Ward (*П'яте відділення*). The rooms had been furnished with beds and bedside tables, leaving no room to move around. Visits to the toilet, which had been located outside the rooms, had been permitted not when needed but at the discretion of the staff, who had not always been available or willing to assist. After the working day had ended at 5 p.m. (after which only one nurse had been on duty) it had been impossible to go to the toilet, and patients had often been forced to relieve themselves in the room in front of others. They had been required to then clean up after themselves. Showers had been allowed once a week, with groups of twenty patients all showering together within a period of minutes. There had been an insufficient number of taps, and patients had had to share soap; only a few taps had been usually functioning, and it had been impossible to regulate the water temperature. Patients who had agreed to carry out unpaid refurbishment work at the facility had been afforded additional access to showers and a reduction in their sedative dosage, which had often compelled him to volunteer for the work. The food had been of poor quality – during the summer of 2014, animal eyelids, eyelashes, and teeth had often been found in the meals.

51. The Government, relying on the above-mentioned information notes from the Dnipro hospital, submitted that upon the applicant's arrival, his hair and nails had been cut for medical reasons, he had been washed, and his personal belongings had been taken away for safekeeping (pursuant to the relevant regulations). Then he had been placed in a room and provided with a separate bed and clean bed linen. Under the relevant legislation, the hospital cells had not had to contain a toilet. Access to a toilet had not been restricted: it had sufficed for a patient to call a nurse, who would then accompany him or her to the toilet "for security reasons". Personal hygiene items, such as soap, had had to be brought in with them by patients themselves and had not been provided by the hospital at all. A one-hour walk outdoors had been allowed on each day. The applicant had helped in the undertaking of refurbishment works in the hospital voluntarily, at his own request.

52. The Government further submitted that sanitary-epidemiological and hygienic conditions in the hospital had been satisfactory. They had regularly been monitored by the competent authorities, which had never found any breach of the relevant national standards. According to the Government, the applicant's weight gain during his two-year stay in the hospital indicated that he had received adequate nutrition.

53. The Government also provided photos of the hospital's premises, including dormitories and bathing facilities and the inspection reports.

III. THE APPLICANT'S COMPLAINTS

A. Complaint to the police

54. On 19 March 2015, the applicant lodged a criminal complaint with the police, alleging his unlawful detention at the hospital between 24 and 28 October 2014, the compulsory administration of neuroleptics (without any necessity), and the Dnipro hospital's disclosure to third persons of his health information which had led to his being dismissed from his employment. He requested that the police open criminal proceedings against the hospital administration and psychiatrists in respect of torture and ill-treatment, breach of medical confidentiality, unlawful detention, the illegal administration of psychotropic substances, and abuse of power.

55. In April 2015, the police rejected his complaint without conducting any investigation. On 22 May 2015, after the applicant complained about the police's refusal to open a criminal investigation, the District Court ordered the prosecutor to register the case and to open an investigation. Criminal proceedings were initiated in respect of non-compliance with a court decision (namely, the decision of the District Court of 13 October 2014 – see paragraph 17 above) in the light of the applicant's delayed release from the Dnipro hospital. The applicant was granted victim status.

56. During his questioning by the investigator on 8 June 2015, the applicant further asserted that instead of releasing him because he showed no signs of mental illness, the Dnipro hospital had deliberately misdiagnosed him as mentally ill and had repeatedly requested his continued detention – contradicting the forensic experts' conclusions that he was mentally healthy. He also submitted that he had been coerced into performing unpaid tasks in exchange for reduced medication. Investigators questioned the applicant's mother, his lawyer (S.) and the Dnipro hospital staff, and requested his medical records and certain other documents from the hospital.

57. On three occasions (on 6 November 2015, 26 December 2016 and 22 May 2019) the criminal proceedings were discontinued for lack of evidence of a criminal offence, but were reopened on the orders of domestic courts, which noted that the investigation was incomplete.

58. On 7 April 2020, the investigator again decided to discontinue the criminal investigation. He noted that it appeared impossible to establish all the elements of the alleged offence and noted that no prosecution could be based solely on assumptions.

59. On 2 November 2021 the District Court annulled the decision of 7 April 2020 and ordered a new investigation. The court found that the decision to discontinue the investigation had not been properly reasoned and had not contained any analysis of the pre-trial investigation material. It further noted that the investigator had failed to take any measure to establish the circumstances of the case.

60. The outcome of the criminal proceedings, if any, is not known to the Court.

B. Civil claim

61. On 20 May 2016 the applicant lodged a claim for damages against the Dnipro hospital in a civil court, seeking 115,000 Ukrainian hryvnias (UAH) (approximately 4,000 euros (EUR)) in compensation in respect of non-pecuniary damage sustained as a result of the deliberate misdiagnosis and unjustified administration of neuroleptics, the poor conditions of his detention, the forced labour that he had carried out and the failure to release him on 24 October 2014. He provided a detailed account of his stay in the hospital and requested the court to study his medical file.

62. On 29 September 2016, the District Court dismissed the applicant's claim for lack of evidence. The applicant appealed, maintaining his claim and arguing*, inter alia,* that the first-instance court had disregarded the fact that he had been isolated from the outside world and had been under the full control of the Dnipro hospital staff (whom he accused of violating his rights); as a result, he had been placed in conditions in which he had been unable to adduce evidence of those violations. The applicant argued that he had provided the District Court with a detailed account of his stay in the Dnipro hospital and the circumstances in which the alleged violations had occurred.

63. On 9 April 2019, after the above-stated violations had been examined in different courts, the Court of Appeal partly allowed the applicant's claim, finding that the applicant's stay in the hospital between 24 and 28 October 2014 had been in breach of Article 17 of the Psychiatric Assistance Act. It awarded the applicant UAH 8,000 in compensation (equivalent to EUR 256 at the material time), finding that this amount constituted adequate compensation.

64. The Court of Appeal further ruled that the applicant's claims that he had been detained in the Dnipro hospital in unsanitary conditions, without proper nutrition, and without an effective review of his mental-health status (treatment that had been accompanied by coercive treatment) had to be dismissed. It noted, firstly, that while the 2012 forensic report (on which the applicant relied as evidence) had indeed declared him mentally healthy, it had nevertheless recommended his compulsory hospitalisation. In following that report, the criminal court that had ordered the application of coercive medical measures in criminal proceedings against the applicant had taken into account the explanations given during the trial by the forensic expert – namely, that the aim in respect of which the panel had recommended compulsory hospitalisation had been to minimise the likelihood of a recurrence of the twilight state by treating the organic pathology that had given rise to that twilight state; the decision of the criminal court had not been appealed against by the parties and had therefore been final. The Court of Appeal then stated

that the purpose of the application of compulsory medical measures in respect of mentally ill persons who have committed criminal offences was their compulsory medical treatment and the prevention of recidivism.

65. The Court of Appeal further held that the applicant's allegations of improper medical treatment were based on the applicant's subjective perceptions and were not supported by any evidence or any findings made by a competent authority. A similar conclusion was reached with regard to the applicant's conditions of detention. The Court referred to the written statement made by the applicant on the day of his release (see paragraph 22 above) and noted that he had not complained in that statement (or shortly thereafter) of the conditions that he had endured during his hospitalisation, but only a year and a half after his release. Moreover, the Court noted that the applicant's participation in the Dnipro hospital's renovation works had been viewed positively and had contributed to the District Court's decision to terminate his compulsory medical treatment.

66. The applicant appealed to the court of cassation, maintaining his complaints and seeking the satisfaction in full of his claim and the award of a higher amount of damages.

67. On 6 June 2019, on the basis of Article 389 of the Code of Civil Procedure, the Supreme Court refused to open proceedings in respect of the applicant's appeal on points of law, citing the insignificance of the case as a legal ground.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. LEGAL PROVISIONS ON MENTALLY ILL PERSONS AND COMPULSORY MEDICAL MEASURES

A. Criminal Code (2001)

68. Chapter 14 of the Criminal Code, as it was worded at the relevant time, set out the legal grounds for compulsory medical measures in respect of persons found to be criminally irresponsible for their acts or who had developed a mental illness in the period after committing a crime. It provided that the purpose of applying compulsory medical measures was to provide compulsory medical treatment to such persons and to prevent the commission of socially dangerous acts (Article 92). It further stipulated that the decision whether to place such persons in a psychiatric establishment was to be taken by a court (Article 93); it also specified the type of regime to which the person concerned was to be subject (Article 94). In particular, the court could order admission to a high-security psychiatric hospital in respect of a person who had committed a socially dangerous act involving an attempt on the life of others and who presented a particular danger to society given his or her mental condition, and who was in need of psychiatric treatment under

conditions of strict supervision. If the application of such measures in respect of a mentally ill person was not considered necessary (or after the termination of the application of such measures), the court could entrust their guardianship to relatives or guardians (provided that they ensured that the person underwent mandatory medical monitoring).

69. Under Article 95 of the Criminal Code, reviews of compulsory inpatient treatment had to be carried out at least every six months. For this purpose, persons subjected to compulsory treatment were to be examined by a panel of psychiatrists (in practice, the treating hospital's psychiatric commission) who would determine any reasons that could justify the hospital lodging a court application seeking the discontinuation or change of any such measures. If no reasons were found to justify the discontinuation or change a measure, that hospital's director would have to lodge an application with a court (together with an opinion from that hospital's psychiatric commission), providing reasons for the continuation of the compulsory treatment. If the measure needed to be extended beyond a six-month period, the same procedure applied.

B. Code of Criminal Procedure (2012)

70. Article 514 of the Criminal Procedure Code (as in force at the relevant time) provided that the extension, modification, or termination of compulsory medical measures was conducted by a court upon an application lodged by a representative of the medical facility (who had to be a doctor or a psychiatrist) where the individual in question was being held, in accordance with Article 95 of the Criminal Code and Article 512 of that Code. The application had to include a conclusion reached by a panel of psychiatrists (*висновки комісії лікарів-психіатрів*) that substantiated the need for the continuation, modification, or termination of such compulsory measures.

71. Article 512 of the Code stipulated that the court proceedings were to be conducted by a single judge, with the participation of the prosecutor, legal representative, and defence counsel. The participation of the person in respect of whom compulsory medical measures were being considered was not mandatory and could occur if it was not hindered by the nature of their mental disorder or illness.

72. Articles 393 and 425 of the Code identified the defence counsel or a legal guardian as persons with standing to appeal against a decision concerning the application of compulsory medical measures.

C. Psychiatric Assistance Act (2000)

73. The Psychiatric Assistance Act (Law no. 1489-III of 22 February 2000) sets out the general principles of mental health policy and regulates the

voluntary and compulsory hospitalisation of patients with psychiatric disorders. As worded at the relevant time, the Act provided as follows:

74. Article 3 stipulated that every person was to be considered of sound mind unless the existence of a psychiatric disorder was established on grounds laid down by law and in compliance with the established procedures.

75. Article 7 mandated that a diagnosis of a psychiatric disorder had to be established in accordance with internationally recognised diagnostic standards and the international statistical classification of illnesses. It specified that such a diagnosis could not be based on an individual's disagreement with societal political, moral, legal, religious, or cultural values, or on any other grounds unrelated to their psychiatric health. This Article further stated that medication should only be used for therapeutic purposes, should be tailored to the nature of the mental disorder, and should be prescribed as punishment or for the benefit of others. Medications that posed an increased risk to the patient's health had to be prescribed under the supervision of a committee of psychiatrists, and with the informed consent of the patient.

76. Article 18 stipulated that the discharge of a person who had committed socially dangerous acts and in respect of whom compulsory medical measures had been applied by a court had to be approved by a court decision.

77. Article 19 stated that compulsory medical treatment could only be ordered by a court in compliance with the legally established procedure. The measures applied could be continued, changed, or lifted by a court upon an application lodged by the mental health facility in which the person was being treated, on the basis of a conclusion reached by a panel of psychiatrists. Persons to whom such measures had been applied were required to undergo periodic examinations by a commission of psychiatrists at least every six months in order to verify whether the measures remained justified.

78. Article 25 provided that individuals receiving psychiatric care had several rights. These included the right to respectful and humane treatment, access to information about their rights, and psychiatric and social assistance provided in sanitary conditions. They also had the right to refuse psychiatric treatment (except when their being subjected to such treatment was mandatory by law), to give or withdraw consent for new treatments or educational participation, and to be treated in a psychiatric institution only as long as necessary. Safe care had to be ensured, and they were entitled to free legal assistance on matters relating to psychiatric care and compensation for unlawful confinement or unsafe conditions. Patients could request a second opinion and the involvement of any specialist in psychiatry in the work of the panel of psychiatrists. They were also entitled to participate in court hearings regarding their psychiatric care.

79. While hospitalised, individuals retained the right to receive visitors (including a lawyer) in private, to send and receive confidential correspondence, to access media, to engage in creative and religious

activities, and to lodge appeals with facility leadership regarding their treatment. Certain rights (such as receiving private visitors or to spend time alone) could be restricted for health and safety reasons, but any restrictions had to be documented and were subject to legal challenge. Forced labour was strictly prohibited.

80. Under Article 26, a psychiatrist was required to provide information to individuals receiving psychiatric assistance in an accessible manner, and with due regard to their mental state. Such information included details about the state of their mental health, the potential progression of their condition, diagnostic and treatment methods, alternative treatment options, possible risks and side effects, and the conditions, procedures, and duration of psychiatric care. Additionally, the psychiatrist had to inform individual of their rights and any potential limitations on those rights, as stipulated by law.

81. Article 30 provided that the provision of psychiatric care services should be overseen by the central executive authority responsible for State health policy, and by local executive authorities and local-government bodies. It also allowed for public oversight by citizen associations, which were permitted to visit psychiatric institutions when and as allowed by the internal regulations of those institutions.

82. Article 31 assigned to the Prosecutor General and subordinate prosecutors the responsibility of monitoring compliance with laws in the provision of psychiatric care.

83. Article 32 established the procedure for appealing against decisions, actions, and inaction in respect of the provision of psychiatric care. It allowed citizens to appeal against violations of their rights during the provision of psychiatric services; it allowed citizens to choose with which entity they would appeal to – including the owner of the psychiatric institution or bodies designated by it, higher authorities, or directly to a court.

D. Regulations on Applying Compulsory Medical Measures to Persons with Mental Disorders Who Have Committed Socially Dangerous Acts and Who Are Held in a High-Security Psychiatric Hospital (repealed in August 2017)

84. The relevant extracts from the Regulation (Ministry of Health Decree no. 397 of 8 October 2001), as in force at the time, provided that patients were admitted because their mental state, and the nature of their actions rendered them a significant threat to society and thus necessitated their being treated in such a facility. The admission process could be initiated only on the basis of a court ruling, and such hospitals operated under the direct supervision of the Ministry of Health.

85. Upon arrival, each patient underwent a thorough examination conducted by a duty physician. This examination included an assessment of their mental, neurological, and physical condition. Medical documentation

was verified, and the necessary information was recorded in the patient's file. The care and treatment provided to patients were managed by the attending physician, who reviewed the patient's state of health no later than on the first day of their stay. Treatment plans were drafted, and the patient's condition was monitored continuously. The clinical diagnosis was confirmed within ten days on the basis of all available data and in accordance with the current international classification of diseases, injuries and causes of death.

86. Patients had several rights during their stay. They had the right to access to information about their treatment, which was communicated either to them or their legal representatives (although the extent of such information might be limited by the attending physician in order to prevent potential harm to the patient or to others). They were also allowed to receive parcels and visits from relatives and legal representatives, but those visits were closely supervised by medical and security staff, and the hours for visiting and for receiving parcels were regulated by the internal rules approved by the chief physician. The hospital's administration retained the right to restrict visits, if necessary for the patient's treatment. Additionally, patients could use personal and hygiene items, unless such items might pose a threat. Complaints about mistreatment could be submitted orally or in writing – either by the patient or his/her relatives. Those complaints had to be immediately reviewed by the hospital administration and addressed in accordance with the legal framework governing citizens' appeals.

87. A patient's condition was reviewed regularly by a commission of psychiatrists, which assessed whether the compulsory medical measures should be continued, modified, or terminated. This commission met at least every six months. In complex or contested cases, experts from other institutions could be invited (at the request of the head of the psychiatric hospital in question) to contribute to the evaluation. If the court decided to modify or discontinue the medical measures, the patient could either be transferred to another facility or discharged.

88. Security at hospitals was stringent, with a strict no-exit policy for patients. Security personnel and a checkpoint system were in place to prevent escapes and unauthorised entry. In the event of an escape, the hospital administration had immediately to notify law-enforcement authorities, the prosecutor's office, and the court.

89. Discharge procedures were strictly regulated. Upon discharge, each patient or his/her legal representatives received certificates detailing the length of that patient's stay. If the patient was transferred, his or her medical records and other relevant documents were sent to the new facility. The hospital covered travel costs for discharged patients, unless the legal representative agreed to assume those expenses.

90. The hospital administration also had the responsibility of informing the relevant authorities in the event of a patient's death (and of ensuring that all necessary legal steps were followed). The psychiatric care provided in the

hospital was regularly monitored by both the hospital administration and the Ministry of Health in order to ensure compliance with the law and medical protocols.

E. Law no. 2205-VIII of 14 November 2017

91. The Law "on Amendments to certain legislative acts of Ukraine regarding the provision of psychiatric assistance" entered into force on 10 June 2018 ("the 2018 law"). The amendments to the CCP introduced by that law provided the obligatory participation in court hearings of persons in respect of whom the issue of compulsory treatment was being decided. Under the 2018 law, the person concerned was entitled to express his/her personal opinion on the conclusions of psychiatrists regarding issues related to the provision of psychiatric care and the restriction of the rights of the person in question in this regard.

92. The 2018 law also entitled persons subject to compulsory medical measures (or their defence counsel) to appeal against the decision concerning their continued compulsory treatment no more than once every six months – regardless of whether the court had already considered this issue within the specified period. Any request for a change to or the termination of compulsory treatment had to be accompanied by the conclusion of the hospital's psychiatric commission (or, if available, by the conclusion of an independent psychiatrist of the patient's choice).

93. Furthermore, the 2018 law granted the patient the right to apply – either independently or through his/her defence counsel or legal representative – to a psychiatrist who was not an employee of the hospital for the purpose of conducting an alternative psychiatric examination. In the case of such a request, the treating psychiatrist was required to prepare an extract from the medical records within one day and to provide it to the independent psychiatrist conducting the alternative examination. The hospital's administration was obliged to provide – on the premises of the establishment in question – unrestricted access to the independent psychiatrist for the purpose of examining the person concerned.

II. RELEVANT DOMESTIC REPORTS AND OTHER MATERIAL

A. Reports issued by the Ukrainian Ombudsperson

94. Since November 2012 the Ombudsperson has exercised the National Preventive Mechanism ("NPM") functions provided by Article 17 of the 2002 Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The question of whether the rights of patients in mental health facilities in Ukraine,

including the Dnipro hospital) are observed has been addressed in a number of Ombudsperson's reports.

1. The 2012 report

95. In her 2012 annual report, the Ombudsperson noted a number of common shortcomings that were identified during visits to psychiatric facilities (including the Dnipro hospital, which the Ombudsperson visited on 27 July 2012). Such shortcomings included, among other things, the prolonged stays in the hospital of individuals with mental disorders who were not in an acute phase of illness, inadequate medical care and nutrition for patients and overcrowded wards.

2. The 2013 report

96. In her 2013 annual report in her capacity as NPM, the Ombudsperson emphasised the fact that patients in psychiatric facilities who disagreed with their diagnosis or the methods of treatment were unable to effectively challenge them owing to the lack of access to a mechanism to do so while they remained in psychiatric custody.

3. The 2014 report

97. In her annual report for 2014 in her role as NPM, which concerned her visits to several psychiatric facilities, including the Dnipro hospital, the Ombudsperson noted that the lack of any legal procedure regulating the use of physical restraints on patients with mental disorders and the violation of the right of patients to be present in person at court hearings concerning a proposed extension, change or termination of coercive medical measures to which they were subjected represented a systemic problem. With regard to the situation at the Dnipro hospital, the Ombudsperson pointed out that the hospital authorities had only begun taking patients to court for that purpose after her direct intervention. She further submitted that the process of their being taken to court by the Dnipro hospital administration was organised in a way that could be viewed as degrading treatment: the patients were taken to court accompanied by employees of the State Prison Service in the absence of an accompanying doctor, and were handcuffed the entire time, while handcuffing of patients with mental disorders was not provided for in any regulatory document in the field of healthcare.

98. The report further emphasised that the Dnipro hospital patients were subject to restrictions on visits (which were prohibited on weekends and public holidays), while visits during weekdays were only permitted in the presence of the staff. The report found that those practices contravened both national legal provisions and international standards. Additionally, the report emphasised the lack of rehabilitation programmes available to patients in the Dnipro hospital, alongside issues of overcrowding and inadequate nutrition –

both of which were recurring problems in the facilities inspected by the NPM during the reporting period.

99. The Ombudsperson further emphasised the following:

> "Particular attention should be paid to the continued failure of the Ministry of Health to implement the recommendations made by the Ombudsperson following several visits to the [Dnipro hospital], the first of which took place in July 2012.
>
> As part of the Ombudsperson's efforts to protect the rights of the Dnipro hospital's patients, a follow-up visit was carried out in August 2014. The monitoring team included specialists in the field of psychiatry. A number of new violations were identified, as well as the lack of an adequate response to violations identified during the previous visit – in particular:
>
> - the security and supervision of patients on the wards is carried out by a unit of the Prison Service, which [constitutes] a gross violation of national legislation and the relevant international standards;
>
> - keeping persons whose type of coercive medical measures has been changed by a court decision;
>
> - the restriction of patients' right to communicate – including the obstruction of private communication between a patient and a lawyer or legal representative;
>
> - inadequate medical care;
>
> - overcrowding, lack of access to sanitary facilities, and other violations.
>
> As a result of her monitoring, the Ombudsperson has repeatedly sent her observations to the Ministry of Health of Ukraine and requested that a thorough inspection and appropriate action be taken. However, each time, instead of carrying out an inspection, the Ministry of Health officials has forwarded the Ombudsperson's appeal to the Dnipro hospital itself, which [constitutes] a gross violation of the applicable legislation, calls into question the objectivity of the inspection results and actually indicates that the Ministry's leadership is declining to solve patients' problems. Accordingly, on 24 November 2014 the Ombudsperson lodged a request with the Prosecutor General of Ukraine for it to verify the information [acquired by the Ombudsman through her monitoring activities] and to take appropriate measures."

4. The 2015 report

100. In her annual report for 2015 in her role as NPM, the Ombudsperson pointed out that the practice of depriving patients of their right to participate in court hearings during the examination of their cases remained one of the problems in Ukraine's system of psychiatric care. The Ombudsperson noted that the management of psychiatric hospitals insisted that patients refuse to participate in court hearings and that the analysis of court decisions likewise raised doubts about the voluntary nature of the waivers issued by patients. In this respect, the report specifically addressed the situation of the Dnipro hospital as follows:

> "... In particular, it is difficult to explain the unanimous refusal of all forty five patients of the [Dnipro hospital] to participate in the court hearing. As can be seen from the rulings, Judge G. of the Krasnoarmeyskiy District Court of Dnipropetrovsk examined all forty-five cases on the same day (5 November 2015) without the participation of any

> patient. Only one of the hearings was attended by a patient's legal representative. At the same time, the judge made his decision solely on the basis of his consideration of the doctors' proposals, as set out in the applications lodged by the hospital. Only one of the forty patients had changes made in respect of [his respective] compulsory measure."

101. The report also referred to the visit to several psychiatric facilities (including the Dnipro hospital) carried out in November 2015 by the staff of the NPM (together with foreign experts in the field of psychiatric care) and to the report issued after the visit (see paragraph 102 below). In particular, the Ombudsperson drew attention to the conclusion reached following the visit that the system by which compulsory medical measures were applied was in practice aimed at restricting the freedom of persons subject to compulsory medical measures and at ensuring total control over them, and failed to fulfil its main function of providing persons with appropriate treatment and reintegrating them into society. It also pointed out that the application of compulsory medical measures did not depend on the seriousness of the mental health problem, but on the seriousness of the offence committed by the patient. With regard to the situation at the Dnipro hospital, the Ombudsperson noted:

> "In particular, the average stay of patients in the [Dnipro hospital] is six-eight years; then they are usually transferred to wards with enhanced supervision for four-five years, and only then to "hospitals with general supervision for two-three years."

B. Report entitled "Review of forensic psychiatric and prison mental health services in Ukraine", December 2015

102. At the end of November 2015, a team of representatives from the Ombudsperson's Office and foreign psychiatry experts visited several psychiatric facilities in Ukraine, including the Dnipro hospital, to collect information that would help to develop good practice and lead to a plan of reform. Following the visit their produced a report entitled Review of Forensic Psychiatric and Prison Mental Health Services in Ukraine (https://fgip-global.org/wp-content/uploads/2024/06/doc-3-final-report-undp-eng.pdf).

103. The report described the visited facilities as "total institutions" that exerted excessive control over all aspects of patients' daily lives while failing to provide a comprehensive and effective range of modern psychiatric healthcare. It identified several systemic problems, including the routine use of neuroleptics (most commonly Aminazin) to sedate patients and as a punitive measure for behaviour deemed "inappropriate", with some patients claiming that simply voicing complaints could lead to such a punitive response. Patients – even if they were willing to do so – could not be involved in the process of their own treatment or do anything that would exert any impact on the length of their hospital stay. Another systemic issue identified by the experts was that the duration of patients' stays in the facilities was not

primarily determined by their actual mental health status or a well-founded evaluation of the danger that they posed; rather, it was based on the idea that the patient needed to remain hospitalised for at least as long as he would have been imprisoned for the crime committed.

104. With regard to the specific situation at the Dnipro hospital, the report noted:

> "Although our site visit was supposed to be unannounced, it was apparent that the director had received advanced notice of our arrival. ...
>
> The [hospital] is located in a building wholly unsuitable for its function. It is a standalone building on the grounds of a pre-trial detention facility, in part dating back to the nineteenth century, in part built some twenty-five years ago. ....
>
> Although unsuitable (and although the exterior of the building looked very dilapidated), the interior was well maintained and the premises were clean. ...
>
> ... Every six months, the hospital submits a statement to the court regarding the continuation or termination of the compulsory treatment of a patient. The statement sets out the conclusion [reached by] the psychiatrists' commission regarding the patient's mental state and recommendations regarding ... further treatment. Nevertheless, as indicated above, it remains unclear what criteria are used as a basis of the recommendations, since patients spend on average five-eight years in the hospital. In most cases they are diagnosed with a chronic mental disorder and are provided only with pharmacological treatment. In practice, no psychological or social assistance is provided to the patients, there are no real individual treatment programmes, and patients spend most of the time in locked wards with metal doors.
>
> The hospital has a procedure for [the submission and examination of patients' complaints, but few are received.
>
> ... The functioning of the hospital is overseen by the district prosecutor's office. All subsidiary activities (catering, laundering, cleaning, repairs, and son on) are performed without any contracts: services are provided by individuals (who are paid in cash). Support services are undertaken by a number of patients, and such work is considered as work therapy.
>
> All in all, the picture we observed was a very sad one. All patients were given medication – usually high dosages and often multiple medications at a time (the minimum being sedation with (for example) Aminazin, which made them drowsy and was probably also meant to limit their sexual drive).
>
> Patients are usually locked up for at least twenty hours a day, with one hour of "airing" in a caged courtyard and perhaps some time in the evening to watch television. Those in observation rooms had no time outside of their room, except for toilet and wash breaks. They have nothing to do, except smoke and read books, which in itself is difficult because medication makes reading sometimes impossible. ...
>
> On the whole there is no daytime activity program ... Patients reported seeing their psychologist only once every six months...
>
> Patients were escorted in groups once a week to a large, austere shower room where they are required to shower communally while being observed by orderlies. This is degrading and undignified. Showers on wards could only be used by those patients who went to work. All the men had compulsory monthly short haircuts, adding to their uniformity and depersonalisation. The patients were unnaturally quiet and passive.

Most of the patients have disability status, and thus receive a pension. This pension is administered by the hospital, yet all our efforts to understand the system of finance administration were in vain. When a group of competent outsiders have no ability to understand the system, how can patients understand how much money they have available and how they can spend it?

This issue is all the more important in the light of the fact that we saw in other institutions that a robust system can be developed easily, yet this particular hospital has repeatedly been accused of using patients' pensions for its own purposes. It would be in the institution's interest to prevent any of the air of suspicion that is now prevalent. It felt uncomfortable to see patients who are considered to be totally incompetent "voluntarily" spend their money on hospital furniture or even donate their pension to the hospital.

Patients have very little communication with the outside world as visits are rare and telephone communication is forbidden. Correspondence was carefully checked and censored ...

An important issue is the fact that patients do not know their rights. There appear to be no leaflets, no lawyers who come regularly to be consulted by the patients, no advocacy organisations that help them to find their way through the constant tension between restrictions and the need to prepare for life "on the outside".

Patients stated that they had not been given the option of attending court when their case was reviewed. They said that they had not heard of the video conferencing equipment available in the rehabilitation centre, which staff said had been used twenty two times in total. In addition, patients are uninformed about their mental state, their diagnosis, the treatment plan, the medications they receive and the reasons why they are administered those medications. When visiting the library we suggested having some books on psychiatry available to patients, but this was met with assertions that this would only excite them and make their situation worse. In short – patients are kept uninformed and that very much adds to the air of a "total institution".

The visit to the [Dnipro hospital] was probably the most emotional part of our tour. Staff described interacting with patients in order to develop their social and life skills, but we met many patients who had been crushed by the system, who were fully aware of their predicament, showed no sign of either mental illness or aggression, were intelligent and could articulate in detail what their situation was and what their future would be. In most cases we had to overcome fear among the patients in order to enable them to talk; some voiced their fear that they would be given an injection of Aminazin as a punishment for their willingness to talk. ..."

C. Other publicly available material

105. In January 2017 the then acting Minister of Health paid an unannounced visit to the Dnipro hospital, accompanied by Mr Shum, then the deputy director of the Ukrainian Scientific Research Institute of Social and Forensic Psychiatry and Narcology of the Ministry of Health of Ukraine. Excerpts from the video recording of the visit were later broadcasted on the Internet (see https://www.youtube.com/watch?v=gwBRKXw4Xrw). As can be seen in the YouTube video recording, the Minister and her accompanying staff were not allowed to enter the facility until a senior hospital official gave the guards permission to let them in. From the outside, stains could be seen

under almost each window of the hospital, which Mr Shum said were traces of urine. In the bathroom, there were two separate taps: one for hot water and one for cold water, with no mixer installed. Speaking to the head of the Dnipro hospital, the Minister said, *inter alia*, that during her visit she had discovered that the patients did not have access to the courts and were not receiving adequate medical and rehabilitation treatment.

106. Following the visit to the Dnipro hospital, the acting Health Minister made a statement on her social media page, which was cited by several media:

> "None of the [other] institutions we visited had such terrible conditions. Patients are unable to call their families; their letters home are read by doctors before being sent; treatment is purely medication-based; [and] the staff cannot give answers [to questions] about conditions, therapy, or the length of patients' stay. People are locked in cramped, stuffy wards and ... go to the toilet only when allowed by the staff. There is no rehabilitation or alternative methods of treatment. When asked about food, all the [patients] said that they had long forgotten the taste of meat. ... We saw a prison institution instead of a healthcare facility; we saw a system of punishing patients instead of their treatment and rehabilitation. ..."

107. On 6 February 2017, Robert van Voren, a member of the group of foreign experts who, together with the Ombudsperson, inspected the Dnipro hospital in November 2015 (see paragraph 102 above), published an article about his visit entitled "Hell on Earth" (*Ад на земле*) on the internet news platform New Voice of Ukraine. The relevant excerpts from the article are as follows:

> "The patients were well fed, and the hospital building was well maintained ... At the same time, we barely noticed that the patients were being treated. About seven hundred people are held in harsh prison-like conditions, drugged with neuroleptics every day. There were no classes or treatment programmes that would support people on their path to recovery and prepare them for re-entry into society. Emptiness day after day.
>
> The length of stay in the hospital was determined not by the disease, but by the seriousness of the crime. For example, a person who committed a murder in a state of acute psychosis and recovered in a few months would still have to stay in hospital for seven to eight years, during which time they would be pumped full of medication. Why? Because this is the minimum time that person would have to serve in prison if [that person] did not have a mental illness. The fact that a person has recovered from a mental illness is irrelevant.
>
> We also found that court decisions concerning the treatment were delivered ... without the patient being present. The court automatically followed the recommendations of psychiatrists. None of the patients were present at any court hearing, as it was demanded that they sign a refusal [to attend]. In addition, they are well aware that everything is predetermined. It makes no sense [for them] to oppose the well-established system of keeping people in a psychiatric hospital without any medical necessity.
>
> ... Patients who dared to talk to us were later punished with double doses of Aminazin. This is not treatment, it is pure punishment. ..."

108. In autumn 2018 Mr Shum, who at that time was entrusted with the reorganisation of the Dnipro hospital, again visited the hospital, accompanied by a journalist from the New Voice of Ukraine website. Following the visit,

on 31 January 2019 the New Voice of Ukraine published a report entitled "Half a century of madness. The dark past and disturbing present of a psychiatric hospital in Dnipro" (*Півстоліття божевілля. Темне минуле і тривожне сьогодення психіатричної лікарні в Дніпрі*). The report referred, *inter alia*, to complaints submitted by patients of the Dnipro hospital and their relatives to Mr Shum during the visit. The website reported that the mother of one of the patients had complained that the constant injections of medications given to her son had turned him into a vegetable and that the medical staff had warned her that her son would not be discharged from the hospital at all if she continued to complain about the hospital. Another patient complained that the toilet was only accessible according to a schedule and that he had been punished with a barrage of injections when he had tried to complain about the insults and beatings of patients by the hospital nurses. Two other patients complained about the "punitive medicine" practised in the institution, which consisted of administering ten injections of medications for alleged misbehaviour, such as, for example, having more cigarettes than allowed.

109. From 3 until 5 October 2018, a representative of the Ukrainian Helsinki Human Rights Union participated in a 3-5 October 2018 public monitoring visit to the Dnipro hospital. The report published on the Union's website after the visit stated, *inter alia*, that the patients had told the monitors that they had never been brought to a court – neither during the consideration of the application of coercive medical measures against them, nor when the renewal of those measures was considered every six months. Those who had been provided with a lawyer by the State had said they did not even know the name of that lawyer, and had never seen him or communicated with him. According to the patients, psychotropic substances were used in the hospital as punishment for showing "serious disobedience" towards the administration or for breaches of discipline, such as fights between patients.

III. RELEVANT INTERNATIONAL LAW AND MATERIAL

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

1. General Reports

110. The standards of the CPT concerning compulsory placement in psychiatric establishments – as summarised in a 1998 report entitled "The 8th General Report of the CPT's Activities" (CPT/Inf(98)12-part), and in so far as relevant – require that the following safeguards be put in place:

> "**the initial placement decision**
>
> 52. The procedure by which [the need for] compulsory placement is decided should offer guarantees of independence and impartiality, as well as of objective medical expertise. ...

safeguards during placement

53. ... [A]n effective complaints procedure [constitutes] a basic safeguard against ill-treatment in psychiatric establishments. Specific arrangements should exist enabling patients to lodge formal complaints with a clearly-designated body, and to communicate on a confidential basis with an appropriate authority outside the establishment.

...

54. The maintenance of contact with the outside world is essential, not only for the prevention of ill-treatment but also from a therapeutic standpoint.

Patients should be able to send and receive correspondence, to have access to the telephone, and to receive visits from their family and friends. Confidential access to a lawyer should also be guaranteed.

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

discharge

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.

When compulsory placement is for a specified period, renewable in the light of psychiatric evidence, such a review will flow from the very terms of the placement. However, compulsory placement might be for an unspecified period, especially in the case of persons who have been compulsorily admitted to a psychiatric establishment pursuant to criminal proceedings and who are considered to be dangerous. If the period of compulsory placement is unspecified, there should be an automatic review at regular intervals of the need to continue the placement. In addition, the patient himself should be able to request at reasonable intervals that the necessity for placement be considered by a judicial authority. ..."

111. A 2002 CPT report entitled "The CPT standards" (document no. CPT/Inf/E (2002) 1-Rev. 2006, page 40), read – regarding the issue of patients' consent to treatment in a mental health facility –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. ..."

2. Reports in respect of Ukraine

112. Since 1 September 1997, when the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment entered into force in respect of Ukraine, CPT delegations have visited the Dnipro hospital (in 1998, 2009 and 2017).

113. The relevant excerpts from a CPT Report (CPT/Inf (2002) 19) issued following an 8-24 February 1998 visit to Ukraine can be found in *I.N. v. Ukraine*, no. 28472/08, § 48, 23 June 2016.

114. In a report (CPT/Inf (2011) 29) issued following a 9-21 September 2009 visit to Ukraine, the CPT noted as follows (footnotes omitted):

"**c. patients' living conditions**

162. The majority of patients were accommodated in large-capacity dormitories which were seriously overcrowded, there being 2-2.5 m² of floor space per patient in many dormitories, with some patients even sharing beds (e.g. 17 patients sleeping on 15 beds in a room measuring 33 m² in ward 13). The lighting and ventilation in the dormitories, the level of hygiene and the bedding were generally acceptable. However, the dormitories remained austere and completely devoid of individualisation, due to the lack of private space and lockable areas to keep personal belongings.

Further, the dayroom facilities were limited in number and could not accommodate all the patients on a ward. ...

... **d. treatment and activities**

164. Similar to what had been found during the CPT's visit in 1998, the treatment provided to patients was mainly based on pharmacotherapy. An examination of medical records and the information obtained by the delegation from interviews with patients and staff indicated that there was no overmedication. Medication was available in sufficient quantities. Further, the medical records were detailed and well kept.

165. It became clear during the visit that rehabilitative psycho-social activities were still missing and there was no evidence of a multi-disciplinary team approach... As a result of the paucity of structured therapeutic activities, the majority of patients spent most of the time locked up in their dormitories, lying in their beds or wandering idly around (sometimes with the radio on). This monotonous existence was broken by meals, outdoor exercise of one hour a day, and two and a half hours of TV access in the evening. Playing board games, reading books from the hospital's library and attending the chapel concluded the list of recreational activities available to patients. ...

g. safeguards in the context of involuntary hospitalisation

172. ... The delegation was pleased to note that the 6-monthly treatment review by the hospital's medical commission was working well. Further, a room for court sessions had been set up at the hospital in 2001, which made it easier for patients to attend court hearings.

However, the 2009 visit revealed that several of the recommendations made in the report on the visit in 1998 have not been implemented. In particular, there is still no

system of independent review or legal process to confirm a patient's consent to treatment (e.g. administration of medication).

The CPT must emphasise once again that patients should, as a matter of principle, be placed in a position to give their free and informed consent to treatment. The very concept of "compulsory medical measures", as contained in the Ukrainian criminal legislation, appears to be at variance with this principle. In the Committee's opinion, the involuntary hospitalisation of a patient who is competent should not be automatically construed as authorising treatment without his consent.

Every competent patient – whether voluntary or involuntary, should be given the opportunity to refuse treatment or any other medical intervention. This implies, inter alia, that patients should receive full and accurate information about their condition and the treatment which is proposed. If a patient is to be medicated against his informed consent, there should be clear criteria for this and procedures by which this can be authorised (which should allow for a second, independent, medical opinion beyond that of the doctor(s) proposing the treatment). The CPT recommends that the Ukrainian authorities take steps to reflect this principle in both law and practice.

173. A major concern of the CPT is the fact that patients' possibilities to maintain contact with the outside world were unduly limited. The visiting room was too small and there was a blanket prohibition on physical contact between patients and their relatives during visits (reportedly imposed by the security staff). Further, patients did not have access to telephones (unless they were exceptionally allowed to use a phone in a staff office).

... In this context, the delegation learned that the hospital did not have a post for a lawyer who could take up issues for patients. The CPT recommends that the Ukrainian authorities consider creating such a post.

175. It transpired during the visit that patients are still not being provided with an introductory brochure following their admission. The CPT reiterates its recommendation that an introductory brochure setting forth the hospital routine and patients' rights be devised and issued to each patient on admission, as well as to their families/guardians. Any patients unable to understand this brochure should receive appropriate assistance.

Further, in the light of the information obtained during the visit, the Committee recommends that:

- a formal system for lodging complaints be introduced. Patients should be informed of the bodies empowered to receive complaints, and complaints boxes (with restricted staff access) should be set up at the hospital;

- in addition to inspections by supervising prosecutors, a system of regular visits by independent outside bodies empowered to monitor patient care be introduced."

115. In a report (CPT/Inf (2018) 41) prepared following an 8-21 December 2017 visit, the CPT noted as follows (footnotes omitted):

"**3. Patients' living conditions**

... 119. Living conditions were on the whole satisfactory at Dnipro Psychiatric Hospital and the delegation observed several positive developments since the CPT's 2009 visit: patients were now allowed to wear their own clothes, every ward had an area dedicated to psycho-social activities and patients' rooms were somewhat less overcrowded. That said, many patients complained about the lack of diversity of the

food. Further, the delegation was concerned to note that two juvenile patients had been placed in rooms with older patients. The Committee recommends that this practice cease.

... 121. In the light of the remarks in paragraphs 118 to 120 above, the Committee recommends that the Ukrainian authorities take the necessary measures to improve living conditions in the psychiatric establishments visited, and in particular to :

- reduce occupancy levels in the dormitories (including in the observation rooms) of Dnipro and Poltava Psychiatric Hospitals, as well as in general psychiatry wards at Hlevakha Psychiatric Hospital;...

- improve food provision to patients, both in terms of quantity and diversity;

- provide conditions in the patients' rooms that are conducive to the treatment and welfare of the patients and a more personalised environment and lockable spaces.

4. Staff and treatment

... 126. In all establishments visited, the treatment was mainly based on pharmacotherapy. As a result of the paucity of activities, the majority of patients spent most of the time lying in their beds or walking in the corridors ... .

127. Furthermore, the delegation saw, in some individual medical files at the above-mentioned establishment, doctors' instructions to administer injections of haloperidol and diazepam "in the event of agitation". The CPT must stress that such a practice might place too much responsibility on nurses as regards the assessment of the patient's mental state and the provision of an adequate response, and lead – in the absence of a medical doctor – to potential complications. It may also reduce the nursing team's motivation to attempt de-escalation of the situation by other means and consequently open the door for abuse.

In the Committee's opinion, in the event of a patient presenting a state of agitation which cannot be dealt with by the nursing staff, the patient's psychiatrist (or the duty psychiatrist) should be called immediately and intervene promptly to assess the state of the patient and issue instructions on the action to be taken. ...

128. Some elements of psycho-social rehabilitation programmes were observed, in particular at Dnipro Psychiatric Hospital, but they could not be effective due to the lack of financial and human resources, as well as the absence of proper individual treatment plans and multidisciplinary team work (in particular, the lack of co-operation between psychiatrists and psychologists). Moreover, a better coordination between the different security regimes in the whole forensic psychiatric system would ensure better continuity in the treatment of patients.

129. The Committee reiterates its recommendation to take the necessary measures to draw up and regularly revise/update an individual written treatment plan for each patient (taking into account the special needs of acute, long-term and forensic patients and, with respect to the last-mentioned, the need to reduce any risk they may pose), including the diagnosis, the goals of treatment, the therapeutic means used and the staff members responsible. Patients should be involved in the drafting and revision of their individual treatment plans and be informed of their progress. ...

131. As concerns outdoor exercise, at Dnipro Psychiatric Hospital it was offered twice a day. The only exception concerned newly-admitted patients. Indeed, in the admissions unit, patients did not get the opportunity to take outdoor exercise before they completed their first medical examinations. ...

138. The medical files of some patients seen in the establishments visited did mention the use of medication, such as chlorpromazine (Aminazin), diazepam (Sibazon) or haloperidol, in circumstances suggesting they were used as chemical restraint. The CPT must underline in this context that the injection of rapidly acting tranquillisers (which is a form of chemical restraint) is associated with significant risks to the health of the patient, in particular life-threatening cardiac arrhythmia, low blood pressure and respiratory depression. Their use therefore requires close medical supervision and adherence to strict protocols by all staff involved, as well as the necessary skills, medication and equipment.

The CPT recommends that the Ukrainian authorities take the necessary measures to ensure that the above-mentioned principles are respected when deciding to administer chemical restraint to a patient.

6. Safeguards

141. At Dnipro Psychiatric Hospital, the delegation was concerned about the interpretation of the legal provisions concerning court decisions on the termination/extension/change of compulsory treatment. The Director of the above-mentioned establishment stated that if the hospital's psychiatric commission submitted an opinion which suggested prolonging compulsory treatment but the court refused to do so without explicitly issuing an order terminating the measure, the hospital was under no obligation to release the patient.

In the Committee's view, this is a very questionable interpretation of the legislation in force. It should not be the role of the hospital to decide about the termination/extension/change of compulsory treatment but that of a judicial body....

149. Concerning informed consent to treatment, the Act on Psychiatric Care places great emphasis on both patients' information and their free and informed consent to treatment. ... several patients at Dnipro Psychiatric Hospital complained about the lack of information on the treatment they were receiving.

150. Several patients in the three establishments visited complained about the ineffectiveness of legal assistance when it was provided for free by *ex officio* lawyers. For instance, *ex officio* lawyers would reportedly come to the court for the hearing but they would not take an active part in it. Some legal professionals working within the hospitals also acknowledged that this was a real problem.

The Committee recommends that the Ukrainian authorities take the necessary steps to ensure that indigent patients are in fact offered free legal assistance during involuntary placement proceedings, whether they are of civil or criminal nature."

B. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine – the Oviedo Convention

116. Opened for signature at Oviedo in April 1997, and in force since 1 December 1999, the Oviedo Convention has been ratified by thirty member States of the Council of Europe (signed by Ukraine in 2002 but not yet ratified).

Article 1 of the Convention states its purpose and object in the following terms:

"Parties to this Convention shall protect the dignity and identity of all human beings and guarantee everyone, without discrimination, respect for their integrity and other rights and fundamental freedoms with regard to the application of biology and medicine. Each Party shall take in its internal law the necessary measures to give effect to the provisions of this Convention."

117. Chapter II of the Convention concerns consent. It provides as relevant:

Article 5 - General rule

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

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

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

In relation to this provision the explanatory report states, as relevant:

"34. This article deals with consent and affirms at the international level an already well-established rule, that is that no one may in principle be forced to undergo an intervention without his or her consent. Human beings must therefore be able freely to give or refuse their consent to any intervention involving their person. This rule makes clear patients' autonomy in their relationship with health care professionals and restrains the paternalist approaches which might ignore the wish of the patient. The word 'intervention' is understood in its widest sense, as in Article 4 – that is to say, it covers all medical acts, in particular interventions performed for the purpose of preventive care, diagnosis, treatment, rehabilitation or research.

35. The patient's consent is considered to be free and informed if it is given on the basis of objective information from the responsible health care professional as to the nature and the potential consequences of the planned intervention or of its alternatives, in the absence of any pressure from anyone. Article 5, paragraph 2, mentions the most important aspects of the information which should precede the intervention but it is not an exhaustive list: informed consent may imply, according to the circumstances, additional elements. In order for their consent to be valid the persons in question must have been informed about the relevant facts regarding the intervention being contemplated. This information must include the purpose, nature and consequences of the intervention and the risks involved. Information on the risks involved in the intervention or in alternative courses of action must cover not only the risks inherent in the type of intervention contemplated, but also any risks related to the individual characteristics of each patient, such as age or the existence of other pathologies. Requests for additional information made by patients must be adequately answered.

...

37. Consent may take various forms. It may be express or implied. Express consent may be either verbal or written. Article 5, which is general and covers very different situations, does not require any particular form. The latter will largely depend on the nature of the intervention. It is agreed that express consent would be inappropriate as regards many routine medical acts. The consent is therefore often implicit, as long as the person concerned is sufficiently informed. In some cases, however, for example invasive diagnostic acts or treatments, express consent may be required. ...

38. Freedom of consent implies that consent may be withdrawn at any time and that the decision of the person concerned shall be respected once he or she has been fully

informed of the consequences. However, this principle does not mean, for example, that the withdrawal of a patient's consent during an operation should always be followed. Professional standards and obligations as well as rules of conduct which apply in such cases under Article 4 may oblige the doctor to continue with the operation so as to avoid seriously endangering the health of the patient."

Article 6 – Protection of persons not able to consent

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

...

3. Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided ... by law. The individual concerned shall as far as possible take part in the authorisation procedure.

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

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

Article 7 - Protection of persons who have a mental disorder

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

..."

C. Committee of Ministers of the Council of Europe

118. The relevant parts of 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 disorders, adopted on 22 September 2004, read:

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.

2. The law may provide that exceptionally a person may be subject to involuntary placement, in accordance with the provisions of this chapter, for the minimum period necessary in order to determine whether he or she has a mental disorder that represents a significant risk of serious harm to his or her health or to others if:

i. his or her behaviour is strongly suggestive of such a disorder;

ii. his or her condition appears to represent such a risk;

iii. there is no appropriate, less restrictive means of making this determination; and

iv. 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. ..."

D. Parliamentary Assembly of the Council of Europe

119. On 25 January 2012, the Parliamentary Assembly adopted Resolution 1859 (2012) on protecting human rights and dignity by taking into account previously expressed wishes of patients. The Resolution states in paragraph 1:

"There is a general consensus based on Article 8 of the European Convention on Human Rights (ETS No. 5) on the right to privacy, that there can be no intervention affecting a person without his or her consent. From this human right flow the principles of personal autonomy and the principle of consent. These principles hold that a capable adult patient must not be manipulated and that his or her will, when clearly expressed, must prevail even if it signifies refusal of treatment: no one can be compelled to undergo a medical treatment against his or her will."

E. The United Nations Organisation

1. *Interim report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak (UN Doc. A/63/175), 28 July 2008.*

120. The relevant part of the report reads as follows:

"63. Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture. In Viana Acosta v. Uruguay, the Human Rights Committee concluded that the treatment of the complainant, which included psychiatric experiments and forced injection of tranquillizers against his will, constituted inhuman treatment. The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.

64. Many States, with or without a legal basis, allow for the detention of persons with mental disabilities in institutions without their free and informed consent, on the basis of the existence of a diagnosed mental disability often together with additional criteria such as being a 'danger to oneself and others' or in 'need of treatment'. The Special Rapporteur recalls that article 14 of CRPD prohibits unlawful or arbitrary deprivation of liberty and the existence of a disability as a justification for deprivation of liberty.

65. In certain cases, arbitrary or unlawful deprivation of liberty based on the existence of a disability might also inflict severe pain or suffering on the individual, thus falling under the scope of the Convention against Torture. When assessing the pain inflicted by deprivation of liberty, the length of institutionalization, the conditions of detention and the treatment inflicted must be taken into account."

2. Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, UN Doc. A/HRC/22/53, 1 February 2013

121. The relevant parts of the report read as follows:

"32. The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of "good intentions" by medical professionals.

...

64. The mandate continues to receive reports of the systematic use of forced interventions worldwide. Both this mandate and United Nations treaty bodies have established that involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture and ill-treatment. Forced interventions, often wrongfully justified by theories of incapacity and therapeutic necessity inconsistent with the Convention on the Rights of Persons with Disabilities, are legitimized under national laws, and may enjoy wide public support as being in the alleged 'best interest' of the

person concerned. Nevertheless, to the extent that they inflict severe pain and suffering, they violate the absolute prohibition of torture and cruel, inhuman and degrading treatment (A/63/175, paras. 38, 40, 41). Concern for the autonomy and dignity of persons with disabilities leads the Special Rapporteur to urge revision of domestic legislation allowing for forced interventions.

...

Recommendations

85. The Special Rapporteur calls upon all States to:

...

(c) Conduct prompt, impartial and thorough investigations into all allegations of torture and ill-treatment in health-care settings; where the evidence warrants it, prosecute and take action against perpetrators; and provide victims with effective remedy and redress, including measures of reparation, satisfaction and guarantees of non-repetition as well as restitution, compensation and rehabilitation;

...

89. The Special Rapporteur calls upon all States to:

(a) Review the anti-torture framework in relation to persons with disabilities in line with the Convention on the Rights of Persons with Disabilities as authoritative guidance regarding their rights in the context of health-care;

(b) Impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs such as neuroleptics, the use of restraint and solitary confinement, for both long- and short-term application. The obligation to end forced psychiatric interventions based solely on grounds of disability is of immediate application and scarce financial resources cannot justify postponement of its implementation."

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1, 4 AND 5 OF THE CONVENTION

122. The applicant complained that his continued detention in the Dnipro hospital after 24 October 2014 had been contrary to the relevant domestic law. He also submitted that he had not had at his disposal an effective procedure by which he could challenge the lawfulness of his detention in the hospital before that date, request his release or receive compensation. He relied on Article 5 §§ 1, 4 and 5 of the Convention, which read as follows:

"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 ...;

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Detention after 24 October 2014 (Article 5 § 1)

123. The Government claimed that the applicant was not a victim of the alleged violation of Article 5 § 1 of the Convention, since the domestic authorities had expressly acknowledged that his detention between 24 and 28 October 2014 had not been in accordance with domestic law and had afforded her redress.

124. The applicant disagreed. He submitted that the compensation awarded to him had been humiliatingly low in relation to his suffering.

125. As the Court has held previously, a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for instance, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012; see also, concerning Article 5 of the Convention, *Moskovets v. Russia*, no. 14370/03, § 50, 23 April 2009).

126. The Court notes that the national courts found the applicant's compulsory hospitalisation between 24 and 28 October 2014 to have been unlawful and awarded him about EUR 256 in compensation (see paragraph 63 above).

127. The Court observes that the awarded amount is much lower than the awards the Court generally makes in comparable cases and cannot be considered to have constituted appropriate redress (see in respect of Ukraine, *Karapas and Others v. Ukraine* [Committee], nos. 54575/12 and 4 others, 22 October 2020, where the Court awarded applicants EUR 900 and EUR 1,800 in respect of three and six days of unjustified detention, respectively).

128. In this regard, the Court considers that the applicant can still claim to be a victim of a violation of Article 5 § 1 of the Convention in respect of his confinement between 24 and 28 October 2014. The Court further notes that there is no dispute between the parties that the hospital was a public institution and that the acts and omissions of its staff – who kept the applicant in detention despite the court order to cease his compulsory psychiatric treatment (see paragraphs 17 above) – were capable of engaging the responsibility of the respondent State under the Convention (see *Glass v. the United Kingdom*, no. 61827/00, § 71, ECHR 2004-II).

129. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

130. On the merits, the Court notes the national courts' findings that his detention in hospital during that period was unlawful as it lacked any legal basis (see paragraphs 63 above). It considers that the arbitrary detention in a psychiatric hospital of a patient whose compulsory inpatient psychiatric treatment had been terminated by a court constitutes a serious breach of the right to liberty enshrined in Article 5 of the Convention.

131. There has accordingly been a violation of Article 5 § 1 of the Convention in the applicant's case.

B. Review of the lawfulness of the detention (Article 5 § 4)

132. The Government submitted that the applicant had had an opportunity to challenge before the District Court the lawfulness of his continued compulsory psychiatric detention during each periodic review of his psychiatric confinement, but that he had not availed himself of that opportunity and had therefore failed to exhaust the available domestic remedies. In particular, he had chosen not to attend the hearings before the District Court and had not lodged an appeal, through his lawyer, against the decisions of the District Court ordering his continued psychiatric treatment. The Government therefore considered that Article 5 § 4 had not been violated.

133. The applicant contended that he had been coerced by the staff into waiving his procedural rights and had felt trapped by the doctors, fearing that any defiance could jeopardise his life and health. Feeling powerless, he had eventually only dared to request a hearing before the District Court with the support of a private lawyer and the Ombudsperson. Until the hearing in October 2014, the District Court had considered his case in his absence, blindly approving the Dnipro hospital's requests without a proper assessment of his mental state. In addition, he had had no legal right to challenge earlier – on his own initiative – the need for his compulsory treatment.

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

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

136. The Court reiterates that, under its case law, the person subjected to compulsory medical treatment should have access to a court and the opportunity to be heard either in person or through some form of representation. The Article 5 § 4 review of the lawfulness of the detention is not required to be automatic, but should rather be an opportunity for proceedings to be initiated by the patient himself or herself (see *Gorshkov v. Ukraine*, no. 67531/01, § 39, 8 November 2005, with further references). Article 5 § 4 therefore requires, in the first place, an independent legal device

by which the detainee may appear before a judge who will determine the lawfulness of the continued detention. The detainee's access to the judge should not depend on the goodwill of the detaining authority, activated at the discretion of the medical corps or the hospital administration (ibid., § 44).

137. Although it is not always necessary that the procedure under Article 5 § 4 be attended by the same guarantees as those required under Article 6 § 1 of the Convention in respect of criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the kind of deprivation of liberty in question (see *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012). In particular, in the proceedings in which an appeal against a detention order is being examined, "equality of arms" between the parties, the prosecutor and the detained person must be ensured (see *Dimitrios Dimopoulos v. Greece*, no. 49658/09, § 47, 9 October 2012).

138. Turning to the circumstances of the present case, the Court notes that it has previously examined the system of reviewing lawfulness of compulsory psychiatric confinement in Ukraine in *Gorshkov* (cited above, §§ 41-46). In that case the Court arrived at the conclusion that while the legal mechanism contained in the above-mentioned sections of the Act – which ensured that a mental patient shall be brought before a judge at least every six months upon application by the hospital authorities – constituted an important safeguard against arbitrary detention, it was nevertheless deficient in so far as it did not provide the independent right to lodge an individual application with a court by a patient compulsorily detained in a psychiatric hospital. The lack of this basic guarantee under Article 5 § 4 of the Convention in the Psychiatric Assistance Act and the Code of Criminal Procedure led the Court to the conclusion that there had been a violation of the above-noted Convention Article in *Gorshkov* case. The Court observes that a possibility for a person undergoing compulsory medical treatment to lodge an individual application with a court with a view to verifying the existence of the grounds of his or her compulsory psychiatric detention was introduced into domestic law in 2017 (see paragraphs 92 above) – that is, after the events in the present case took place.

139. This situation is aggravated by the fact that in Ukraine the application of compulsory hospitalisation in a mental care facility ordered by criminal court is understood also to include the automatic authorisation to treat the patient in question – even against his or her will (see paragraph 178 below). In this respect too there is no immediate remedy available to the patient (see *X v. Finland*, no. 34806/04, § 170, ECHR 2012 (extracts)).

140. The above-noted considerations alone would be sufficient for the Court to consider that there has been a breach of Article 5 § 4 of the Convention in the present case. However, having regard to the manner in which the applicant has formulated his complaints, the specific context of detention in a psychiatric hospital, as well as the importance of judicial review of the lawfulness of such detention for the effective protection against

arbitrary deprivation of liberty and for securing the dignity and physical integrity of the individuals concerned, the Court must examine the quality of the periodic ex officio judicial review to which the Government have referred as constituting an effective procedure in the applicant's case.

141. The Court notes that the applicant's compulsory hospitalisation, ordered by the criminal court on 9 October 2012, was reviewed by the District Court on four occasions (every six months) at the request of the Dnipro hospital, which stated that the applicant was suffering from an organic personality disorder (a diagnosis made at the hospital in March 2013), which rendered him dangerous to others; the Dnipro hospital had accordingly requested that his compulsory treatment at the hospital be allowed to continue (see paragraphs 11 and 12 above).

142. On the facts of the present case, there is no indication that, until 13 October 2014, the District Court had critically assessed the Dnipro hospital's submissions before granting its requests for permission to continue the compulsory treatment the applicant. The District Court's decisions were almost identical on each occasion, lacked detailed reasoning and essentially repeated the conclusions of the Dnipro hospital's assessments without conducting any independent analysis in order to determine whether the applicant was indeed suffering from a mental disorder of a nature and degree to justify the continuance of his compulsory confinement (see paragraph 12 above).

143. In particular, there is no indication that the District Court attempted to scrutinise the reliability of the arguments on the basis of which the applicant – who had been declared free from any psychiatric illness by forensic experts and the Dniprovskyi District Court of Dniprodzerzhynsk – was later diagnosed with a psychiatric disorder by the Dnipro hospital doctors, who controlled his liberty and treatment. At no point was a second independent medical opinion sought in order to confirm or refute the Dnipro hospital's conclusions about the applicant's mental state. The Court has in the past found such an opportunity to benefit from a second, independent psychiatric opinion to constitute an important safeguard against possible arbitrariness in decision-making where the continuation of confinement in compulsory care is concerned (see *X v. Finland*, cited above, § 169; *M. v. Ukraine*, cited above, § 66; and *Anatoliy Rudenko v. Ukraine*, no. 50264/08, § 117, 17 April 2014). In this connection the Court also refers to the CPT's recommendation that periodic review of an order to treat a patient against his or her will in a psychiatric hospital should involve a psychiatric opinion that is independent of the hospital in which the patient is detained (see paragraph 114 above).

144. Until October 2014, the District Court never assessed the fact that the applicant's twilight state of consciousness – which had occurred only once, a year before the applicant's admission to the Dnipro hospital, – had never recurred. Similarly, there is nothing to suggest that, prior to 14 October

2014, the District Court had ever examined the applicant's medical file with a view to obtaining a proper understanding of the applicant's condition and ascertaining whether he posed a danger to others, as suggested by the Dnipro hospital.

145. Moreover, the District Court made its decisions without seeing the applicant in person, observing his behaviour and hearing his perspective, whereas the domestic rules of procedure, in principle, required the presence of the applicant at the hearings (see paragraph 71 above).

146. In so far as the Government suggested that it was the applicant's own choice not to participate in the hearings, the available material does not seem to support this version of events, but rather the applicant's allegations of coercion. Thus, his requests for hearings to be conducted in his absence appeared to have been pre-typed (with only the applicant's name added, in writing). None of that material provided reasons why the applicant (who, as his medical file shows, persistently denied that he was mentally ill and needed treatment) was unable or unwilling to attend the hearings at which those matters were to be considered. There is no evidence that the District Court investigated this matter: notably, the District Court's decisions did not refer to any reasons for the applicant's absence or any justification for proceeding in his absence.

147. Moreover, in her 2014 and 2015 reports the Ombudsperson explicitly stated that depriving patients of their right to participate in court hearings during the consideration of their cases constituted a systemic problem; moreover, she expressly pointed to the fact (established during her visit) that the Dnipro hospital administration insisted that patients refuse to participate in such hearings (see paragraphs 97 and 100 above). The findings of the foreign experts set out in their report (see paragraph 104 above) – as well as other publicly available material, which relied on the statements made by other patients of the hospital (see paragraphs 105, 107 and 109 above) – further tend to confirm the applicant's allegations that his waiver of the right to participate in the hearings had been coerced. Moreover, the Ombudsperson's factual finding in 2015 report that the District Court had reviewed forty five cases in one day – all in the absence of the patients concerned, and had based its decisions solely on hospital reports – further illustrates the quality of the judicial review and the reluctance of judges to question medical conclusions (see paragraph 100 above). The statement made by the Ombudsperson in her interview with the press in connection with the applicant's case (see paragraph 24 above) provides further evidence in this respect.

148. In view of the foregoing, the Court finds that the examination conducted by the District Court until 13 October 2014 in the applicant's absence was marked by a manifest lack of diligence on the part of the court and was incompatible with basic requirements of justice.

149. In the light of the foregoing considerations, the Court rejects the Government's objection as to the non-exhaustion of the domestic remedies and concludes that the applicant was unable to obtain an adequate judicial response for the purposes of Article 5 § 4 and that his right to bring proceedings by which the lawfulness of his detention would be decided was infringed.

150. There has, accordingly, been a violation of Article 5 § 4 of the Convention in the present case.

C. Right to compensation (Article 5 § 5)

151. Having regard to the facts of the case, the submissions of the parties, and its findings above, the Court considers that it has dealt with the main legal questions raised with respect to the applicant's right to liberty and security and that there is no need to examine the admissibility and merits of his complaint under Article 5 § 5 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

II. ALLEGED VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

152. The applicant complained that he had been kept in the Dnipro hospital and subjected to the forced administration of neuroleptics (without any medical necessity), which – together with the length of his detention, his delayed release and the poor conditions of detention – had amounted to ill-treatment prohibited by the Convention. He relied on Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. Parties' submissions

(a) The Government

153. The Government reiterated their above-noted assertions – namely that the applicant could have raised his arguments concerning (i) his mental health and (ii) the lack of any need for his treatment – during the periodic judicial review of his psychiatric confinement; they also raised the same above-noted non-exhaustion argument (see paragraph 132 above) in relation to that complaint.

154. In addition, they contended that the applicant's claim was manifestly ill-founded because the applicant had failed to support his allegations with evidence and had therefore failed to raise any arguable complaint. They

argued that publicly available material did not contain evidence directly relating to the applicant and could therefore not be accepted as evidence proving that the applicant in particular had been subjected to any form of ill-treatment while in the Dnipro hospital.

155. Referring to the information provided by the Dnipro hospital (see paragraphs 46 and 47 above), the Government submitted that the applicant's treatment with neuroleptics and his diagnosis in March 2013 had been medically justified. They conceded that the applicant might have experienced certain problems relating to the material conditions in the hospital, but argued that those conditions had nevertheless been satisfactory in general. He had failed to show that any suffering he might have experienced as a result had attained the minimum level of severity falling within the scope of Article 3.

156. The Government further implied that if the applicant's allegations were true, he would have made complaints during his stay in the Dnipro hospital reflecting those allegations, which he had had many opportunities to do. He could have complained to the public prosecution authorities, who – pursuant to the law – systematically inspected psychiatric hospitals with a view to ensuring observance of the law governing the provision of psychiatric care. Referring to Ukraine's response to the CPT's 2017 visit, the Government stated that prosecutors had compiled more than 180 documents containing the findings that they had made during visits to psychiatric institutions, and that as a result, 205 public officials and medical staff had been held to account for various failings and disciplined. It had been possible to make complaints to the hospital director ("complaint boxes" had been available in the courtyards), the Ministry of Health, the local council, the Ombudsperson and the courts. Information on patients' rights and contact details for various public authorities had been provided in each cell and in designated areas within the hospital. The applicant could have communicated his grievances through his mother or his lawyer, if he had so wished. The Government further pointed out that the applicant himself had stated at the time of his release that he had no complaints about his medical treatment or the conditions of his detention.

157. Lastly, the Government submitted that the criminal investigation authorities and the civil court had thoroughly examined the applicant's allegations lodged by the applicant after his release, and had found them to be unfounded (with the exception of his complaint regarding his unlawful detention after 24 October 2014, which had been upheld by the appellate court in the civil proceedings initiated by the applicant).

(b) The applicant

158. The applicant insisted that his complaint was admissible and that his allegations were confirmed by his medical file and publicly available material concerning the Dnipro hospital. He argued that the written statement that he

had made upon his release had been made under fear that he would otherwise never be released from hospital.

159. The applicant also submitted that the theoretical possibility of complaining to any outside authority while in detention had not existed in practice. The medical staff had been directly involved in the alleged violations of his rights, and any attempt to make a complaint or gather evidence would have put his health and safety at serious risk, given the total control the hospital had had over him and the methods used by the staff: his complaints to the attending psychiatrist had been met with the administration of anti-psychotic drugs. Moreover, patients' correspondence had been monitored and censored, which the authorities had given "explanatory talks" about what could and could not be written. All meetings with visitors had been held in the presence of staff. In addition, he had been given neuroleptic medication before meetings with his relatives, which had affected his ability to communicate effectively. No possibility to make phone calls had existed. No regular visits had been by an independent external body to which patients would have been able to safely complain about the medical treatment and abuse that they had suffered at the hands of medical staff and which would have effectively resolved such complaints. The local public prosecutor – an independent and effective body – had never visited him.

160. The applicant submitted that he had made his allegations to the domestic authorities in as much detail as possible after his release, when he had no longer feared for his life. However, his complaints had not been properly dealt with.

2. The Court's assessment

161. The Court has already rejected the Government's preliminary objection of non-exhaustion of domestic remedies – on the grounds, *inter alia*, that there is nothing to indicate that the applicant in practice had an opportunity to make effective use of the remedy referred to by the Government (see paragraph 149 above). The Court sees no reason to depart from that conclusion.

162. The Court further notes that the applicant's allegations under Article 3 are based on the consistent and detailed description of his personal experience that he provided to the Court, his medical file, his complaints to the domestic authorities (and their responses thereto), and various independent and credible reports concerning the hospital. Accordingly, the Court finds that the applicant's complaint is arguable.

163. The Court observes that the applicant was involuntarily hospitalised in a psychiatric facility by order of a criminal court and was therefore not free, under domestic law, to discharge himself from the hospital on his own initiative: he could only be discharged pursuant to a decision of the competent court, which at the time could be initiated only by a request lodged by the hospital in question. Accordingly, once the applicant had been compulsorily

admitted on the basis of a court decision, the psychiatric hospital assumed full and effective control over his liberty and treatment for the entire duration of his hospitalisation, which lasted from 6 December 2012 until 28 October 2014. During that period, the hospital, a public institution, whose staff's acts and omissions were capable of engaging the responsibility of the respondent State under the Convention, was obliged to protect the applicant's physical and mental integrity.

164. Given the Dnipro hospital's total control over the applicant and his vulnerability as a person detained in a mental health facility, the burden of proof can be considered to have lain with the authorities in respect of furnishing a satisfactory and convincing response to the applicant's allegations, which were consistent and detailed.

165. In the light of these considerations – and regard being had to the material in its possession – the Court considers that the applicant's complaint under Article 3 of the Convention 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. Parties' submissions

166. The applicant asserted that he was mentally healthy, emphasising that the twilight state that he had experienced in December 2011 had been an exceptional occurrence, as confirmed by forensic experts, and had never recurred. He argued that he had been subjected to compulsory psychiatric treatment with neuroleptics – not from any established medical necessity, but as a form of punishment. He also insisted that a false diagnosis had been made in March 2013 with the intention of detaining him in the hospital, which in essence operated like a prison. He claimed that he had had no practical means of challenging his diagnosis or treatment with neuroleptic medication, to obtaining an independent second opinion, or otherwise protecting his rights. This situation – combined with the inappropriate conditions of his two-year detention – had caused him significant suffering, amounting to ill-treatment.

167. The Government did not submit observations on the merits of the case, having considered the application inadmissible for the reasons set out above.

2. The Court's assessment

(a) General principles

168. According to the Court's well-established case-law, medical intervention to which a person is subjected against his or her will (including for the purposes of psychiatric assistance) may under certain conditions be regarded as constituting treatment prohibited by Article 3 of the Convention.

In particular, the Court has held that a measure that is a therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading. The Court must nevertheless satisfy itself that a medical necessity has been convincingly shown to exist and that procedural guarantees for the decision exist and are complied with (see, for example, *V.I. v. the Republic of Moldova*, no. 38963/18, § 95, 26 March 2024; *Gorobet v. Moldova*, no. 30951/10, §§ 47-53, 11 October 2011; *Akopyan v. Ukraine*, no. 12317/06, § 102, 5 June 2014; and *V.C. v. Slovakia*, no. 18968/07, §§ 100-120, ECHR 2011 (extracts), with further references therein).

169. For the purposes of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum level 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 (see, *Bouyid v. Belgium* [GC], no. 23380/09, § 86, ECHR 2015). In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt". However, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Yerokhina v. Ukraine*, no. 12167/04, § 52, 15 November 2012).

170. The Court has previously noted that the position of inferiority and powerlessness that is typical of patients confined in psychiatric hospitals calls for increased vigilance in reviewing whether the Convention has been complied with. While it is for the medical authorities to decide, on the basis of the recognised rules of medical science, on the therapeutic methods to be used (if necessary by force) to preserve the physical and mental health of patients who are entirely incapable of deciding for themselves and for whom they are therefore responsible, such patients nevertheless remain under the protection of Article 3, whose requirements permit no derogation (see *Herczegfalvy v. Austria*, 24 September 1992, § 82, Series A no. 244).

171. The Court has considered that States have positive obligations under Article 3 of the Convention, which comprise, firstly, an obligation to put in place a legislative and regulatory framework of protection; secondly, in certain well-defined circumstances, an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision; and, thirdly, an obligation to carry out an effective investigation into arguable claims that such treatment has been inflicted. Generally speaking, the first two aspects of these positive obligations are classified as "substantive", while the third aspect corresponds to the State's positive "procedural" obligation (see *X and Others v. Bulgaria* [GC], no. 22457/16, §§ 178-79, 2 February 2021).

172. The general principles concerning inadequate conditions of detention have been summarised in *Muršić v. Croatia* [GC] (no. 7334/13, §§ 96-101, 20 October 2016), and as regards Ukraine, in the leading cases of

Melnik v. Ukraine (no. 72286/01, 28 March 2006), and *Sukachov v. Ukraine* (no. 14057/17, 30 January 2020). The *Muršić* judgment also establishes the standard of proof and methods for assessment of evidence in conditions-of-detention cases (ibid. §§ 127-128).

(b) Application to the facts of the present case

(i) Whether the applicant's involuntary psychiatric treatment in a closed institution was in breach of Article 3

(α) The Court's task in the present case

173. The Court notes that in the present case the administration of neuroleptics in various forms and against the applicant's will was not disputed by the Government and is confirmed by the applicant's medical file. However, the parties disputed the medical necessity of such treatment. They also disputed that the applicant had suffered from mental health problems necessitating his extended confinement in the Dnipro hospital.

174. The Court observes at the outset that one of the fundamental principles in modern medical ethics and international human rights law – as widely emphasised across various international instruments, including those of the Council of Europe (see paragraphs 111, 117, 119, 120 and 121 above) – is that no medical intervention may take place without the patient's free and informed consent (see also *Pindo Mulla v. Spain* [GC], no. 15541/20, §§ 137-139, 17 September 2024). This principle is a cornerstone of personal autonomy, as it ensures that individuals maintain control over decisions regarding their medical treatment, with a full understanding of the associated risks, benefits, and alternatives. This principle holds particular significance in the field of mental healthcare, where patients are often in vulnerable situations and at heightened risk of treatments being administered without their full understanding or agreement.

175. The Court acknowledges that the issue of informed consent becomes more complex in cases involving compulsory medical measures imposed by court order. The very concept of "compulsory medical measures" appears to conflict with the principle of personal autonomy. At the same time, the justification for such measures often lies in the need to protect either the individual's health or public safety – considerations that are seen as outweighing and overriding the usual requirement for free and informed consent.

176. Nonetheless, the Court emphasises that even when compulsory medical measures are considered necessary, they must be subject to rigorous oversight to prevent potential abuse and to ensure that the interference with personal autonomy is proportionate and justified. In particular, it is essential that the treatment provided is appropriate and necessary. Without such safeguards, the automatic authorisation of treatment without consent risks

undermining the individual's rights in a manner that may be incompatible with the rule of law in a democratic society.

177. Having regard to the above considerations and the scope of the applicant's complaints, which concern as a whole the situation in which he found himself, the Court considers it essential to assess separately (i) the legal and regulatory framework governing compulsory medical measures in psychiatric institutions, including regarding investigation of complaints about such measures and (ii) the actual treatment to which the applicant was subjected, including the reaction of the authorities to the issues raised by him.

(β) The obligation to put in place an appropriate legislative and regulatory framework of protection and investigation

178. The Court notes that the Criminal Code defines compulsory treatment as the main objective of the application of coercive medical measures (see paragraph 68 above). While the Psychiatric Assistance Act generally entitles individuals receiving psychiatric care to refuse treatment, it exempts cases where treatment is provided involuntarily in compliance with the law. Regulation no. 397, which at the relevant time laid out the legal and organisational framework for applying compulsory medical measures in high-security psychiatric hospitals, did not require consent from legally competent patients for medical interventions or medication. Notably, the Government did not argue that the applicant in the present case had the option to refuse treatment or to decline the prescribed medications. It is thus the Court's understanding that in Ukraine a criminal court's order that a person be subjected to coercive medical measures (such as hospitalisation in a psychiatric facility) is to be seen as constituting an automatic authorisation to administer treatment without that person's consent.

179. The Psychiatric Assistance Act and the aforementioned Regulations no. 397, when read together, suggest that it was the treating psychiatrist's responsibility to diagnose the patient and decide on treatment. The legislation contained no specific provisions to the extent that diagnoses made by the psychiatrist or the decisions concerning the prescribed treatment were subject to appeal. In theory, the Psychiatric Assistance Act (Article 25) provided patients with the right to request an alternative psychiatric examination. However, that right was provided in general terms, and no precise and foreseeable procedure was provided that could be applied in practice. Moreover, Regulation no. 397 did not list such a right at all. It was only in 2017, following major amendments to the mental health legislation, that this right and the procedure implementing it were specified in newly adopted legislation (see paragraph 93 above). The Court finds that the lack of effective access to an alternative psychiatric examination deprived patients of a crucial safeguard against medical arbitrariness – particularly in cases of allegedly biased or inaccurate diagnoses or treatment. It also significantly undermined their ability to defend their position and advocate for their own health and

freedom in court proceedings regarding the continuation of compulsory treatment. Without such access, already vulnerable patients were left in a more vulnerable position – unable to effectively challenge the assessments of the treating hospital.

180. The same concern applies to the right to involve an external psychiatric specialist in the work of the panel of psychiatrists at the receiving hospital that decides on the need for the continued psychiatric treatment (see paragraph 78 above). In the absence of any procedural framework implementing this right, the safeguard remained entirely theoretical.

181. The Court next notes that, under the legislation in force at the relevant time, judicial reviews of the need for continued psychiatric treatment were held at six-monthly intervals, with no provision for patients to initiate earlier reviews themselves. In the Court's view, leaving a patient without the possibility of a prompt review of the accuracy of his or her diagnosis and the appropriateness of involuntarily administered medication for such a long period could have potentially serious consequences for the patient – including adverse changes in his mental state and behaviour – leaving him vulnerable to unnecessary harm. Therefore, the reviews at six-monthly intervals alone, as available at the relevant time, cannot serve as an effective safeguard against potential abuse in the diagnosis or treatment process.

182. Furthermore, the Court cannot but refer to its findings above under Article 5 § 4 that the judicial review proceedings in the applicant's case were marked by manifest lack of diligence and lacked essential procedural safeguards (see paragraphs 141 to 148 above).

183. The Court also notes that the Government failed to demonstrate the existence of any legal provisions or safeguards governing the use of medications as chemical restraints.

184. As for the Government's argument that, under the Psychiatric Assistance Act, patients held a general right to lodge complaints about any decisions, actions, or inactions on the part of medical personnel to the hospital director, higher authorities, administrative bodies, or courts, the Government failed to show that this mechanism could enable prompt intervention by an independent authority with the power to intervene directly in the diagnostic process or medication administration, and to detect and prevent potential arbitrariness or abuse. The Court cannot overlook the fact that the applicant's medical records indicate that he repeatedly questioned the attending physician about the medical necessity of his continued hospitalisation and his treatment with neuroleptics. He also voiced concerns to the attending physician about biased treatment of patients by staff and other "detention issues". There is no evidence that these complaints were properly recorded or addressed by the chief doctor or hospital director, as required by the Regulation no. 397 (see paragraph 86 above). In the applicant's case, these grievances were largely met with orders either to continue the administration of anti-psychotic drugs or to increase their dosage. The Court believes that

such an environment could have fostered a culture of silence and fear, in which patients felt unsafe to express their grievances openly.

185. In general, regard being had to the strict regime under which the applicant was held (which resembled that of a prison), and given, in the first place, the manner in which neuroleptics were administered to him, the Court is not persuaded that the applicant would have been allowed to send any complaint to an outside authority while detained in the hospital. No evidence has been provided by the Government suggesting that any appropriate mailing service or other means of communication with the outside world – properly protected by specific and practical safeguards ensuring the privacy of communication – existed in the Dnipro hospital at the time. The presence of psychiatrists' notes in the applicant's medical file that described the content of his letters to his mother confirms that his correspondence was closely monitored by hospital staff. The report issued by foreign experts following their joint visit to the hospital with the Ombudsperson's Office in 2015 (see paragraph 104 above) further corroborates the applicant's submissions that correspondence was closely monitored and censored, as well as his allegation that telephone calls were inaccessible to patients.

186. While the Psychiatric Assistance Act granted patients the right to meet with visitors in private (see paragraph 78 above), Regulation no. 397 stipulated that such meetings were to occur under the mandatory supervision of medical staff and a security officer (see paragraph 86 above). The 2014 report on the Ombudsperson's visits of that year further confirms that restrictions existed in respect of patients' right to communicate in private (including with lawyers) – supporting the applicant's assertion that his ability to communicate freely had been severely restricted. Moreover, as already noted, apart from the visit by the lawyer engaged by the applicant's mother in 2014, the Government provided no evidence of any other legal visits during the applicant's stay in the hospital.

187. In any event, the Government have not provided any examples of a successful complaint having ever been successfully lodged by an inmate of a psychiatric hospital about his or her psychiatric treatment or any other issue. The statistics cited by the Government concerning disciplinary proceedings opened by the prosecutor's office (see paragraph 156 above) cannot serve as evidence in this regard, as they lack any specific details, and pertain to a period after 2018. No evidence has been provided by the Government to confirm that regular visits were conducted by the prosecutor's office to hospital patients during the period between 2012 and 2014.

188. However, even assuming that the applicant could have managed to submit a complaint to the prosecutor's office, as suggested by the Government, the Court is not persuaded that his complaint would have had realistic chances of success. The Court observes that a public prosecutor was present at all District Court hearings regarding the need for the applicant's continued detention, yet until October 2014, the prosecutor raised no

concerns either about the substance of the case or the conduct of the proceedings. Moreover, the investigating authorities had ample opportunity to thoroughly investigate the applicant's complaint that he had been misdiagnosed and subjected to unnecessary compulsory treatment with neuroleptics after his release. While certain procedural steps appear to have been taken by the investigator to verify these allegations by the applicant (see paragraph 56 above), this did not result in any findings. The criminal proceedings – initiated only in respect of the non-enforcement of a domestic court decision – have not progressed in any meaningful way since their initiation in 2015, having been terminated by the prosecutor's office and reopened multiple times.

189. Having considered the elements above, the Court finds that the Ukrainian legal framework existing at the time fell short of the requirement inherent in the State's positive obligation to establish and apply effectively a system providing protection to patients undergoing compulsory medical treatment in mental care facilities against breaches of their integrity, contrary to Article 3 of the Convention. The absence of proper legal safeguards deprived the applicant of the minimum degree of protection to which he was entitled under the rule of law in a democratic society (see, *mutatis mutandis*, *Herczegfalvy*, cited above, § 91, and *Narinen v. Finland*, no. 45027/98, § 36, 1 June 2004; see also *X v. Finland*, cited above, § 221).

(γ) The treatment to which the applicant was subjected at the Dnipro hospital

190. As to the existence of a therapeutic necessity for the applicant's prolonged stay in the psychiatric hospital and psychiatric treatment with neuroleptics, the Court notes that owing to the absence of the above-mentioned procedural safeguards, and as a consequence of the failure of the criminal authorities to duly investigate the applicant's relevant allegations after his release (see paragraph 188 above), it cannot benefit from any domestic assessment or finding that could have been made in this respect. This lack of any investigation affected the integrity and reliability of the subsequent assessment made by the Court of Appeal in the compensation proceedings, which did not take account of the applicant's limited ability to gather evidence. Additionally, the civil court dismissed the applicant's claims regarding his medical treatment as mere subjective perceptions – overlooking the critical importance of his first-hand accounts and, seemingly, without reviewing his medical file – which further undermines the reliability of their findings. Nor can it rely on the assessment made by the District Court prior to October 2014, given the deficiencies in those proceedings (see paragraphs 141 to 148 above). Accordingly, the Court will proceed on the basis of the positions of the parties and the evidence available to it.

191. The Court notes that the forensic psychiatric report from March 2012 declared the applicant to be healthy and free from any mental illness, concluding that the twilight state of consciousness that he had experienced in

December 2011 had been an isolated and resolved episode triggered by alcohol intoxication on the background of head injuries sustained in the past (see paragraph 6 above). This conclusion was clear and uncontested by the Dniprovskyi District Court of Dniprodzerzhynsk, which seemed to order the applicant's compulsory hospitalisation chiefly by way of a preventive measure, taking the view that despite the absence of any mental illness the applicant remained dangerous to others in the absence of guarantees that his twilight state would never recur (see paragraph 7 above).

192. The admission documents issued by the Dnipro hospital likewise did not indicate that the applicant was suffering from any mental disorder, but referred to a "resolved" episode of a twilight state of consciousness as the "diagnosis". Neither the duty psychiatrist on the day of his admission nor the treating psychiatrists ten days later noted any symptoms of a mental disorder. The twilight state (resolved) remained the only clinical diagnosis until March 2013 when the hospital committee declared the applicant to be mentally ill (see paragraph 10 above).

193. Given the fact that a twilight state – an isolated, resolved incident caused by alcohol intoxication that had occurred over a year prior to the applicant's hospitalisation and never recurred – was the only condition referenced in all the documents, until March 2013 the medical ground for his keeping in the hospital remains unclear. Moreover, eight days after his admission, on 14 December 2012, neuroleptic medication began to be administered to the applicant – a legally capable person – without his consent. This treatment, administered daily in different forms and dosages and without a predetermined course, persisted throughout his hospitalisation – even continuing after the District Court ordered, on 13 October 2014, the cessation of coercive medical measures.

194. It has not been suggested by the Government that the neuroleptic medication was administered as a part of the applicant's treatment programme. Indeed, the treatment plan issued on 7 December 2012 (the day after the applicant's admission) refers to the resolved twilight state as the diagnosis and outlines general measures typically applied to newly admitted patients (see paragraph 29 above). It did not clarify the medical purpose of the applicant's confinement, his prescribed treatment and its expected outcome.

195. It transpires from the medical file and the Dnipro hospital's submission to the Government (see paragraphs 46 and 47 above) that neuroleptics were administered in response to the applicant's behaviour. However, the case file contains no credible evidence – and this has been confirmed by the District Court in its decision of 13 October 2014 (see paragraph 17 above) – indicating manifestations of acute psychotic symptoms during his stay in the hospital, such as hallucinations, delusions, or dangerously aggressive behaviour or recurred twilight state.

196. What is apparent instead is that the administration of neuroleptics – and the changes made to the application form and dosage – coincided with and followed the applicant's refusal to admit his guilt for his crime because he could not remember its details, his consistent assertions that he was mentally healthy, his persistent questioning of the need for his continued hospitalisation and treatment, his complaints about the "detention issues" and his expressed frustration regarding these matters. These reactions were entirely normal for someone in the applicant's position; however, they were presented by the hospital as dangerous manifestations of mental illness that warranted prolonged treatment in a high-security facility, and were met with the uninterrupted administration of neuroleptics. The Court has not been given a satisfactory explanation as to why the applicant's frustration was addressed in this manner.

197. The Court finds that this situation clearly suggests a retaliatory, rather than therapeutic, motive for the applicant's retention in the hospital and for his treatment with neuroleptics.

198. The Court observes that the applicant's medical file contains no records confirming the administration of Aminazin injections in the circumstances alleged by the applicant (see paragraph 44 above). This absence of any documentation may imply either that such injections were not administered as claimed, or that they were given but deliberately omitted from the records by the medical staff. However, the Court considers it unnecessary to engage in speculation regarding this specific point. It finds that the documented use of neuroleptic medication (including injections of Tizercine) – under the circumstances mentioned above – sufficiently indicates that the treatment was aimed at subduing the applicant's will and managing his dissatisfaction with his situation, which aligns with the applicant's claims that the purpose of the treatment had not been therapeutic but rather to exert control over his behaviour.

199. The Court also cannot overlook the statements of other patients of the Dnipro hospital (referred to in various reports issued following visits to the Dnipro hospital in 2015 and 2018 – see paragraphs 102-109 above), which corroborate the applicant's allegation that neuroleptics, including Aminazin, were commonly used by the medical staff as a means of punishment and control. Furthermore, the Court notes the concerns expressed by experts and the Ombudsperson's Office following their visit to the Dnipro hospital in 2015, according to whom the length of the stay of patients was not determined by their actual mental state or a proper assessment of their dangerousness, but rather by the seriousness of the crimes that they had committed, with the staff having the idea that patients had to remain in hospital for at least as long as they would have been imprisoned for the crime committed (see paragraphs 101, 103, 104 and 107 above). This observation is consistent with the applicant's allegations regarding his own time in the institution.

200. In view of the foregoing considerations and on the basis of the available evidence, the Court is not in a position to find that the medical necessity for the applicant's retention in the hospital and his treatment with neuroleptics has been convincingly shown to exist. Moreover, the District Court decision delivered on 13 October 2014, which ordered the cessation of coercive medical measures and which was ignored by the hospital until the Ombudsperson and prosecutor intervened, tends to support this conclusion. The Court therefore considers that it can draw inferences in support of the applicant's version of events.

201. The Court further observes that neuroleptics are commonly understood to be a class of drugs used to manage psychotic conditions such as schizophrenia, particularly symptoms such as delusions and hallucinations. In light of their significant effects on the central nervous system and the risk of serious side effects – including metabolic disturbances, movement disorders, and sedation – their use raises concerns when there is no confirmed diagnosis of a severe psychotic disorder that may pose a danger to the patient or others. The legal instruments and reports adopted by the United Nations indicate that the administration of neuroleptics without medical necessity may amount to ill-treatment that is prohibited under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (see paragraphs 120 and 121 above).

202. While the applicant has not claimed that the use of neuroleptics had any long-term or irreversible effects on his health, the Court considers that the mere fact of being subjected to psychiatric treatment with neuroleptics against his will, for almost two years and without proven medical necessity – coupled with a lack of effective legal safeguards against arbitrariness and abuse by the medical staff, and given the immediate cognitive effects of the neuroleptic drugs – was such as to arouse in the applicant a sense of fear, anxiety, and inferiority that was capable of humiliating and debasing him (see and compare *Bataliny v. Russia*, no. 10060/07, § 90, 23 July 2015). The treatment in issue constituted a fundamental disregard for the applicant's human dignity, amounting to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

(δ) Conclusion regarding the legal framework and the treatment to which the applicant was subjected

203. For the reasons set out above, the Court finds that there has been a violation of Article 3 of the Convention on account of the failure to put in place the requisite legal and regulatory framework governing compulsory medical measures in psychiatric institutions, including regarding investigation of complaints about such measures, and on account of the actual treatment to which the applicant was subjected, including the lack of adequate reaction of the authorities to the issues raised by him and operative measures to protect him.

(ii) Conditions of detention

204. The Court notes that the Government did not contest the applicant's allegations of overcrowding or the specific figures that he provided, which indicated that, throughout his stay in the Dnipro hospital, he had between 2.09 square metres and 2.2 square metres of personal space in the cells in which he was kept (see paragraph 50 above). The lack of adequate space afforded the applicant in 2012 and 2014 is further corroborated by the findings of the NPM, and in 2017 by the findings of the CPT (see paragraphs 95, 97 and 115 above).

205. The Ombudsperson's 2014 report and the visit of the then acting Minister of Health to the hospital (see paragraphs 99, 105 and 106 above) also confirm the applicant's allegation that patients had had limited access to the toilet. The photographs of the bathing facilities provided by the Government further corroborate the applicant's allegations that the shower rooms had contained no partitions and had had separate hot and cold water pipes without any mixer, which had rendered it impossible to properly regulate the water temperature. Given such conditions, the Court finds the applicant's claim plausible that it was difficult, if not impossible, to take a shower in acceptable conditions. This situation was further exacerbated by the fact that access to shower facilities (as confirmed by the Government) was provided only once a week, with an exception reportedly made – according to the applicant – for patients who performed work in the hospital (see paragraphs 50 and 51 above).

206. The evidence submitted by the Government (see paragraph 51 above) and the available reports concerning the Dnipro hospital also corroborate the applicant's allegations that there had been very limited opportunities for outdoor exercise.

207. In view of the foregoing, the Court finds it established that, throughout his nearly two-year stay in the Dnipro hospital, the applicant was held in overcrowded conditions with limited access to toilet and bathing facilities, as well as restricted opportunities for outdoor walks. The available material suggests that these conditions were not restricted to the individual situation of the applicant but were of a structural nature. The cumulative effect of these conditions must have caused distress and hardship that went beyond the threshold of severity under Article 3. There has been therefore a violation of that provision with regard to the conditions of detention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 3 OF THE CONVENTION

208. Relying on Article 13 of the Convention, the applicant also complained of the lack of an effective remedy in respect of his prolonged psychiatric treatment in the Dnipro hospital in the absence of established medical necessity and in the light of his poor detention conditions.

209. The Government disputed that argument.

210. The Court notes that this complaint is linked to the applicant's complaint under Article 3 of the Convention (which was examined above), and must therefore likewise be declared admissible.

211. For the same reasons as those that led it to reject the Government's objection alleging failure to exhaust the available domestic remedies and find that the respondent State had failed to put in place an adequate legal and regulatory framework and take operative protection measures, including as reactions to complaints (see paragraphs 178 to 187 above), as well as in view of its finding set out in paragraphs 188 and 190 above, the Court considers that the applicant did not have an effective domestic remedy in respect of his grievances under Article 3 of the Convention. Accordingly, it finds that in the present case there has also been a violation of Article 13 in conjunction with Article 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

212. 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

213. The applicant claimed a total amount of 48,000 euros (EUR) in respect of non-pecuniary damage. This amount comprised EUR 35,000 for the psychological harm suffered as a result of the ill-treatment and lack of access to a remedy to obtain the protection of his rights and EUR 13,000 for the suffering caused by the breach of his rights under Article 5 of the Convention.

214. The Government submitted that the applicant's claims were unsubstantiated and, in any event excessive.

215. The Court finds that the applicant has undoubtedly sustained damage of a non-pecuniary nature as a result of his prolonged confinement and compulsory treatment with neuroleptics for a significant period of time, in the absence of a proven medical necessity and in all likelihood for inappropriate motives, combined with the deficient detention conditions, all against the background of lack of adequate legal framework regarding such treatment and complaints and investigation mechanisms. It considers that the applicant's suffering constituted a particularly painful ordeal, which cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court awards the applicant EUR 25,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

216. The applicant also claimed EUR 2,950 for costs and expenses related to his representation before the Court, requesting that this amount be paid directly into the account of his representative, Mr. Zharyy. To support this claim, the applicant submitted a legal-aid agreement dated 10 May 2021 under which he undertook to reimburse the lawyer for costs and expenses at a rate of 2,500 Ukrainian hryvnias (UAH) (approximately EUR 77,50) per hour, but only if the European Court of Human Rights awarded compensation for legal assistance, up to the awarded amount. The applicant also provided a certificate of completed work dated 9 February 2022, detailing that the lawyer spent thirty-eight hours on the case.

217. The Government considered that that claim was unjustified and excessive.

218. 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 were actually and necessarily incurred and are reasonable as to quantum (see, for example, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September).

219. In the present case, regard being had to the documents in its possession and the above-noted criteria, the Court considers it reasonable to award the sum of EUR 2,950 in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be paid into the bank account indicated by his representative.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 5 §§ 1 and 4 of the Convention of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 5 § 5 of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of the treatment of the applicant in the Dnipro High Security Psychiatric Hospital;

5. *Holds* that there has been a violation of Article 3 of the Convention on account of conditions of detention in the Dnipro High Security Psychiatric Hospital;

6. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;

7. *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, the following amounts**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,950 (two thousand nine hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly to the account indicated by Mr. Zharyy;

(b) that from the expiry of the above-mentioned three months until settlement, simple interest shall be payable on the above-specified 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 June 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik Registrar	Mattias Guyomar President