

Mental Illness, Legal Capacity and Human Rights

Shtukaturov v Russia [2008] ECHR 44009/05 (27 March 2008)

In this case, the European Court of Human Rights considered human rights issues arising from involuntary admission and treatment on the ground of mental illness.

Facts

Pavel Shtukaturov (the applicant) is a Russian national with a history of psychiatric illness.

On 3 August 2004, his mother lodged an application with the District Court of St Petersburg to have him declared legally incapable. A court-commissioned psychiatric examination was conducted by Hospital No 6, and a hearing was held which was attended by the district prosecutor, a representative of the hospital, and the judge. It lasted only ten minutes. Mr Shtukaturov was not notified of the hearing and his mother declined to attend. The judge declared Mr Shtukaturov fully legally incapable and appointed his mother as his guardian.

In November 2005, Mr Shtukaturov's mother arranged for him to be admitted to Hospital No 6 (against his will). For the purposes of Russia's civil code, because his guardian consented to the admission, it was classed as 'voluntary'.

Two days before he was admitted to hospital, Mr Shtukaturov engaged a lawyer from the Mental Disability Advocacy Centre.

From December 2005, he was prevented from having any contact with his lawyer, using a telephone or keeping writing equipment. He attempted to escape, but was brought back to the hospital. He alleged that he was tied to his bed for 15 hours after the attempted escape. He further alleged that he was given Haloperidol and Chlorpromazine.

His lawyer brought an application before the European Court of Human Rights alleging that:

- by depriving him of his legal capacity without his participation and knowledge, the domestic courts had breached his rights under arts 6 (right to a fair hearing) and 8 (right to private life) of the *European Convention on Human Rights* and
- his detention in a psychiatric hospital infringed art 3 (freedom from cruel treatment) and 5 (right to liberty and security) of the *Convention*.

Decision

Article 6 – Right to a Fair Trial

The Court held that Mr Shtukaturov's right to a fair trial had been violated. In particular, the Court commented on the following:

- Mr Shtukaturov was not notified of his mother's application, was not informed of the hearing and was not able to participate in the hearing;
- his absence from the hearing meant that the judge was unable to personally assess Mr Shtukaturov's capacity, and had to rely solely on the medical report;
- the hearing was not 'truly adversarial';
- the hearing was extremely short; and
- Mr Shtukaturov's appeal was rejected without examination (because he had no legal capacity).

Article 8 – Right to Private Life

The Court found that the decision to deprive Mr Shtukaturov of legal capacity interfered with his right to respect for his private life, and was disproportionate to the State's legitimate aim of protecting the interests and health of others.

The Court noted that 'as a rule, in such a complex matter as determining somebody's legal capacity, the authorities should enjoy a wide margin of appreciation'. The extent of the margin will depend on 'the nature of the issues and the importance of the interests at stake' and 'the quality of the decision-making process'.

Article 5 – Right to Liberty and Security

The Court held that Mr Shtukaturov's hospitalization was an unlawful violation of his right to liberty and security of person, on the basis that it was not 'reliably shown' that Mr Shtukaturov's mental condition warranted his confinement. The Court rejected the State's argument that Mr Shtukaturov's confinement was voluntary because it had been consented to by his guardian, favouring a broad construction of the term 'lawful' for the purposes art 5(1)(e). The Court also held that, under the circumstances, Mr Shtukaturov's inability to bring judicial proceedings on his own behalf to challenge the validity of his continued detention amounted to a violation of art 5(4) of the *Convention*.

Other complaints rejected, not examined or reserved

The Court held that there was no need to examine the applicant's complaints under art 13 and 14 of the *Convention* (regarding effective remedies and discrimination, respectively). Further, the Court rejected Mr Shtukaturov's argument that his compulsory medical treatment amounted to inhuman and degrading treatment on the basis that that portion of his application was 'manifestly ill-founded'. The Court reserved the question of compensation (Mr Shtukaturov sought 85,000 Euros in non-pecuniary compensation, pursuant to art 41 of the *Convention*).

Relevance to the Victorian *Charter*

The *Convention* rights invoked by Mr Shtukaturov are also protected under the *Charter*, specifically:

- s 24 (right to a fair hearing);
- s13 (right to privacy and reputation);
- s 21 (right to liberty and security of person, including the right to challenge the lawfulness of detention);
- s 10 (protection from torture and cruel, inhuman or degrading treatment); and
- s 8 (recognition and equality before the law).

The Court's approach to interpreting and applying equivalent articles of the *Convention* may provide some guidance as to the likely interpretation of the relevant provisions of the *Charter*, particularly in the context of involuntary admission to medical facilities.

Jessica Moir and Rachel Nicholson are lawyers with the Allens Arthur Robinson Corporate Responsibility Group