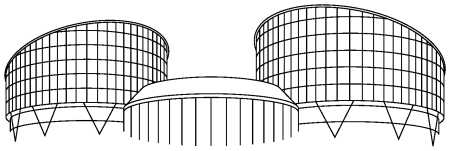

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

DECISION

Application no. 18060/13
Liliya Ivanivna DERGACHENKO
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 18 February 2021 as a Committee composed of:
Arnfinn Bårdsen, *President*,
Ganna Yudkivska,
Mattias Guyomar, *judges*,
and Martina Keller, *Deputy Section Registrar*,
Having regard to:
the above application lodged on 19 February 2013;
the decision of 4 May 2015 to give notice to the Ukrainian Government of the applicant's complaints under Articles 3 and 5 of the Convention, and to declare inadmissible the remainder of the application;
the observations submitted by the respondent Government and the observations in reply submitted by the applicant;
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Liliya Ivanivna Dergachenko, is a Ukrainian national who was born in 1965 and lives in Prymorske. She was represented before the Court by Mr E.V. Markov, a lawyer practising in Budapest.

2. The Ukrainian Government ("the Government") were represented by their Agent, most recently Mr I. Lishchyna of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Events of 24 and 25 April 2012

4. At the material time the applicant was a teacher at a school in Zaporizhzhya, where she had a difficult relationship with some of her colleagues, including the head teacher of the school and Ms N., another teacher. She had no history of mental illness.

5. At 12.21 p.m. on 24 April 2012 the police were called to the school because the applicant had allegedly threatened to commit suicide and had written a suicide note, which said "Forgive me, my daughter, I will not live any longer".

6. Upon arrival at the school, the police took possession of the suicide note and questioned the staff. Ms N., who had found the suicide note on the applicant's desk, reported to the police that that morning the applicant had informed her that she "had taken twenty pills at once". Other teachers and some parents present at the school attested to the fact that the applicant had recently threatened to commit suicide, including by setting fire to herself and the school in front of the children.

7. At the request of the police, an ambulance team headed by Dr R., a psychiatrist, from the Zaporizhzhya Clinical Emergency Hospital was called to the school. The applicant was summoned to the head teacher's office. Police officers, four members of the ambulance team, the head teacher, Ms N. and another teacher were present in the office when the applicant arrived.

8. The parties differed on the circumstances of the subsequent events.

9. According to the applicant, on entering the office of the head teacher on 24 April 2012 she had argued with her and the other teachers, as she had been unhappy about being summoned in the middle of a lesson. Thereafter, unknown men in blue smocks, who had refused to give their names, had said that she had to go with them to a hospital to be examined in view of the available information on her suicidal intentions. She had refused. The men had persisted in trying to approach her and take her by the arms. She had naturally been agitated and angered by their actions, as she had not understood what was going on but had remained calm and had not threatened anybody. She had denied being mentally ill and had called her brother to complain about the situation. He had advised her to record everything on her phone, which she had done, until it had been taken away from her by one of the men. Thereafter, two male nurses had grabbed her under the arms, twisted them, and dragged her into the ambulance. She had attempted to resist but they had kicked and punched her all over in an attempt to subdue her. She had been kept on the floor while being transported to the hospital. The applicant submitted to the Court a CD of an audio-recording which she had allegedly made in the head teacher's office and which is of poor quality. The recording covers a short part of the altercation between, it would appear, the applicant on the one hand, and her colleagues and medical staff on the other: the applicant can be heard

insisting that she is not insane, demanding that no one approach her and asking to be let go; her colleagues argue that she has threatened them; then a man's voice explains to the applicant that she will have to undergo a medical examination in view of the suicide note found and the allegations by her colleagues but the applicant refuses to be examined.

10. According to the Government, which referred to the facts as established by the investigation on the basis of eyewitness statements and confirmed by the courts, the applicant had refused to cooperate with Dr R. or answer his questions. She had behaved aggressively, insulting and threatening those who were there, and had tried to escape; she had flung herself on the floor when male nurses had attempted to approach her; she had also called her brother, mother and a hotline. Given the objective factors pointing to a suicide attempt, such as the suicide note, the applicant's inappropriate behaviour, testimony of her colleagues, and the practical impossibility of diagnosing the applicant on the spot, it had been suggested that she go to a psychiatric hospital for an assessment by a panel of psychiatrists. The applicant had refused. It had then been decided to take her to the Zaporizhzhya Regional Psychiatric Hospital ("the Hospital") without her consent given the risk that she could be a danger to herself or to others. In the presence of school staff and police officers, two male nurses had escorted the applicant to the ambulance, holding her firmly under the arms to overcome her resistance and stop her hurting herself, as provided by the relevant regulations, and had transferred her to the Hospital. Ms N. had accompanied the applicant to the Hospital.

11. At 3.35 p.m. on 24 April 2012, according to the ambulance record, the applicant arrived at the Hospital. The applicant's family members, who had been informed of her whereabouts by the police, arrived shortly afterwards. The applicant's mother was told by a doctor that she was to remain at the Hospital until the following morning with a view to assessing whether she was suffering from a psychiatric disorder.

12. According to the available documents, including the applicant's medical file, at the Hospital the applicant behaved aggressively, threatened medical staff and did not deny that she had had suicidal thoughts. She was diagnosed with psychomotor agitation and, tentatively, with paranoid personality disorder, and a panel of psychiatrists, headed by chief psychiatrist Dr. P., ordered her compulsory hospitalisation given the risk that the applicant could be dangerous to herself or to others. No visible injuries were recorded during the applicant's examination. The applicant was then examined by the treating psychiatrist who confirmed that the applicant was still in a state of psychomotor agitation and could be suffering from paranoid personality disorder. A treatment plan was drafted, which included a "mechanical restraint measure" for thirty minutes and strict supervision. Later on that day, the applicant was again visited by a psychiatrist who noted that she was sleeping and cancelled the medication

that had been prescribed earlier. The applicant underwent different medical tests during her stay at the Hospital.

13. According to the applicant, she had been in an agitated state at the Hospital because of her unlawful hospitalisation but she had not expressed suicidal intentions. She had warned medical personnel that she would have them brought to justice. After her arrival at the Hospital, a doctor had come and ordered her hospitalisation without examining her. Her clothes and jewellery had been taken away from her forcibly and she had been made to wear a gown. She had been verbally abused, tied up, and kept in a locked room until the next day without food or access to a toilet.

14. At about 4 p.m. on 25 April 2012 the applicant and her medical file were examined by a panel of psychiatrists in order to review the necessity of her compulsory hospitalisation. The record of the examination shows that the applicant's condition had improved, she had slept well, was calm, cooperative and in a clear frame of mind during the interview. She informed the doctors about the conflictual situation at work and acknowledged that she had expressed suicidal intentions to her colleagues but noted that she had done so because she had been overcome by her emotions at certain points in time and not because she really wished to end her life. She requested to be released home. The panel concluded that the applicant had a hysterical personality disorder and had used emotional blackmail, threatening to commit suicide, in reaction to a particular situation (*ситуаційна реакція з проявами суіцідального шантажу у особистсті з істеричними рисами характеру*). No signs of a psychiatric disorder were established during the examination and the panel ordered the applicant's discharge from the Hospital. The record further states that the applicant had not suffered any side effects from the restraint measures or sedative treatment.

15. On the same day the applicant was discharged from the Hospital. She was given a certificate stating that she had no psychiatric contraindications for working as a teacher. Another certificate issued by the Hospital states that the applicant had two symmetrical bruises under her arms upon her discharge.

16. Following the incident, some parents requested the head teacher to suspend the applicant. They submitted, referring to the children's complaints and their own experience, that the applicant had behaved aggressively during her classes, insulted children and threatened in their presence to commit suicide.

2. The subsequent investigation

17. On 25 April 2012, after her discharge from the Hospital, the applicant complained to the local prosecutor's office that her forced placement in a psychiatric hospital had been unlawful and that the male

nurses had twisted her arms, beaten and punched her when dragging her to the ambulance.

18. On 26 April 2012 the applicant requested a forensic medical expert to examine her. She submitted to the expert that the male nurses had twisted her arms and beaten her on her body. According to the expert report, the applicant had a bruise measuring 3 by 5 cm on inner part of her right arm and one measuring 1 by 1.5 cm on the left one, as well as bruises on both shins measuring 2 by 3 cm and 1.5 by 2 cm. The injuries were minor and had been inflicted by a blunt object or objects. The expert noted that the injuries could have been sustained on the date indicated by the applicant.

19. On a number of occasions, the investigating authorities issued decisions refusing to open criminal proceedings following the applicant's complaint, but those decisions were subsequently quashed by a supervising prosecutor or court and additional measures were ordered to verify the applicant's allegations. According to the applicant, she was not informed of any progress in the investigation after the last decision to remit the case to the police was taken on 10 January 2013.

20. In the meantime, on 28 December 2012 the applicant lodged a new criminal complaint with the police under the new Code of Criminal Procedure which had come into force. She requested that "unknown persons" who had inflicted injuries upon her on 24 April 2012 at the school, damaged her jacket and hospitalised her be brought to account. Criminal proceedings were instituted on 29 December 2012 and terminated on 15 May 2013 (see paragraph 24 below).

21. During the examination of the applicant's complaints, the police questioned the applicant and members of her family, eyewitnesses to the events at the school, medical staff, as well as teachers and parents of schoolchildren. The applicant gave her account of the events and submitted that she had been the victim of a conspiracy against her by her colleagues. According to her, the police officers and medical staff should have been able to distinguish between "arguments between women" at the school and a real suicide threat. She further submitted that force had been used against her by both the ambulance team and the Hospital staff, noting, *inter alia*, that at the Hospital she had spent about ten hours strapped to a bed.

The police officers, Dr R., the male nurses and the school staff present in the head teacher's office on 24 April 2012 provided their accounts of the relevant events (see paragraph 10 above) and denied that force had been used against the applicant during her transportation to the Hospital. Parents of children attending the school attested that they had submitted their written complaints about the applicant (see paragraph 16 above) on their own initiative. Dr K., who examined the applicant at the Hospital, submitted that in view of the applicant's inappropriate and aggressive behaviour and the background information regarding her suicidal intentions, her hospitalisation had been deemed necessary. The Hospital staff also

submitted that the application of a mechanical restraint measure to the applicant for a short period of time had been necessary as she had been in an agitated state, had refused to follow the psychiatrist's instructions and had physically resisted medical staff. The audio-recording made by the applicant in the head teacher's office was also joined to the file as evidence of the applicant's inappropriate behaviour.

22. From 25 to 27 June 2012, following an order of the healthcare department of the regional State administration, an *ad hoc* committee composed of experts in psychiatry from different institutions and presided over by Dr P. from the Hospital, conducted an assessment with a view to establishing whether there had been any breach of the law on the part of medical staff who had treated the applicant on 24 April 2012. Having studied the applicant's medical file and Dr R.'s explanations, the experts concluded that there had been no medical malpractice or errors in the way in which the applicant had been treated by Dr R. or at the Hospital: all the actions carried out by medical personnel had been in compliance with the Psychiatric Assistance Act and relevant medical protocols.

23. The relevant report issued on 27 June 2012 provides, *inter alia*, that while being escorted to the ambulance the applicant had physically resisted medical staff and thrown herself on the floor. Therefore, the nurses had had to hold her under the arms, as provided in their description of duties, in order to prevent her hurting herself during her transfer to the Hospital. No restraint devices had been used while escorting her.

It further set out that during her examination at the Hospital, the applicant had been in a state of psychomotor agitation, refused to answer questions and expressed suicidal intentions. Her compulsory hospitalisation had therefore been ordered by a panel of psychiatrists in view of the risk that the applicant could commit acts dangerous to herself or to others. She had then been examined by the treating psychiatrist who confirmed she was suffering from a psychomotor agitation with suicidal tendencies and prescribed a treatment. As the applicant had remained agitated, refused to follow the psychiatrists' instructions and had physically resisted medical staff, she had been mechanically restrained for thirty minutes, as provided by the relevant medical protocols, to prevent her hurting herself.

24. On 15 May 2013 the police discontinued the criminal proceedings, having concluded on the basis of the available evidence that no criminal offence had been committed by the staff at the school or medical employees. It was noted, *inter alia*, that the use of a manual restraint measure by the ambulance staff had been lawful in view of the applicant's resistance and that there had been no deliberate intention on their part to inflict bodily injury on the applicant during her forced transfer.

25. The applicant appealed against the decision to discontinue the criminal proceedings, contesting the facts as established by the police and the assessment of the evidence. She argued, *inter alia*, that the Psychiatric

Assistance Act was not applicable to her case as she was not mentally ill and that the injuries recorded by the forensic expert on 26 April 2012 had not been properly assessed by the police.

26. On 11 June 2013 the Komunarskyy District Court of Zaporizhzhya ("the District Court") dismissed the applicant's appeal, finding that the decision to terminate the proceedings was well reasoned and based on comprehensive evidence. It noted, *inter alia*, that neither eyewitness testimony nor the report of the *ad hoc* expert committee of 27 June 2012 or any other evidence in the case file suggested that the medical staff had acted in breach of the law on 24 April 2012. The applicant appealed, maintaining her complaints.

27. On 18 June 2013 the Zaporizhzhya Regional Court of Appeal ("the Court of Appeal") dismissed the applicant's appeal as unsubstantiated, relying on the testimony of eyewitnesses to the events at the school, of Dr R. and Dr K., who examined the applicant at the school and the Hospital respectively, of parents of schoolchildren and also on the report of the *ad hoc* committee of 27 June 2012. It found, in particular, that the available evidence suggested that Dr R. had had legal grounds to admit the applicant to the Hospital for examination given the existence of the suicide note in relation to which he had been called to the school by the police, statements by her colleagues and the applicant's agitated behaviour which had prevented him from establishing on the spot whether she was suffering from a mental disorder.

The applicant's compulsory hospitalisation had been ordered in compliance with section 14 of the Psychiatric Assistance Act, as the panel of psychiatrists had believed that there was a risk that the applicant could commit acts dangerous to herself or to others: she had behaved inappropriately, threatened people and displayed suicidal intentions. For this reason, to ensure the applicant's safety, a mechanical restraint measure had been applied to her for thirty minutes.

The Court of Appeal found no evidence that medical staff had deliberately inflicted bodily injury on the applicant.

B. Relevant domestic law

1. 2012 Code of Criminal Procedure

28. On 19 November 2012 a new Code of Criminal Procedure came into force. The new Code eliminated the pre-investigation inquiry stage and provided that a fully-fledged investigation was to be commenced directly, without any need for prior inquiries, by creating an entry in the Integrated Register of pre-trial investigations.

2. Psychiatric Assistance Act of 22 February 2000

29. The relevant extracts from the Act read as follows:

Section 3 – Presumption of no mental disorders

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

Section 8 – Ensuring the safety of psychiatric assistance and preventing dangerous acts by individuals suffering from mental disorders

"Psychiatric assistance should be provided in the least restrictive conditions which still ensure the safety of a patient and other persons, as well as the observance of the patient's rights and interests.

When providing psychiatric assistance, measures of physical restraint and isolation may be applied to a person suffering from a mental disorder upon prescription by a psychiatrist (or other medical officer who is in charge of providing psychiatric assistance) and shall be subject to his or her continued supervision. Such measures shall be applied only in cases, forms and periods when no other lawful measures can prevent the person from committing acts which are directly dangerous to that person or to others. The forms and periods of the application of measures of physical restraint and isolation shall be recorded in the medical file. The measures of physical restraint and isolation shall be applied in accordance with the regulations established by the central executive authority responsible for State policy on health protection."

Section 11 – Psychiatric examination

"A psychiatric examination shall be carried out in order to establish: whether a person is suffering from any psychiatric disorder; whether he or she requires psychiatric assistance ...

In urgent cases, when the available evidence gives grounds for a reasonable suspicion that a person may be suffering from a serious mental disorder as a result of which he or she commits or expresses real intent to commit acts dangerous to that person or to those around him or her ... a request for a psychiatric examination [of such a person] may be submitted orally. In such cases, it is the psychiatrist who shall take the decision to examine the person, with or without his or her consent ... and the examination shall take place immediately.

Section 13 – Hospitalisation of a person in a mental-health facility

"A person may be hospitalised in a mental-health facility voluntarily, either at his or her request or with his or her conscious agreement. ... Consent to hospitalisation shall be included in the medical documentation following the signature of the person concerned or his or her legal representative and a psychiatrist."

Section 14 – Grounds for compulsory hospitalisation of a person in a mental-health facility

"A person who is suffering from a mental disorder may be hospitalised in a mental-health facility without his or her conscious agreement or without the agreement of his or her legal representative if the medical examination or treatment of

that person is possible only within the mental-health facility and if, as a result of the serious mental disorder, such a person:

commits or expresses real intent to commit acts which are directly dangerous to that person or to others; or

is unable to meet his or her basic needs."

Section 16 – Assessment of persons subject to compulsory hospitalisation in a mental-health facility

"A person who has been hospitalised in a mental-health facility upon a decision of a psychiatrist on the grounds provided for in section 14 of this Act, shall be assessed, within twenty-four hours, by a panel of psychiatrists of the mental-health facility to determine whether the hospitalisation is necessary. If it is found no longer to be necessary and the person concerned does not wish to stay in the mental-health facility, he or she shall be discharged immediately.

If compulsory hospitalisation of the person is necessary, a representative of the mental-health facility in which the person is being held shall apply, within twenty-four hours, to a court ... for compulsory hospitalisation of the person on the grounds provided for in section 14 of this Act. ..."

Section 17 – Continuation of compulsory hospitalisation

"The compulsory hospitalisation of a person in a mental-health facility shall last only as long as the grounds justifying his or her hospitalisation exist.

Section 18 – Discharge of a person from a mental-health facility

"A person shall be discharged from a mental-health facility when the assessment or expert examination of his or her mental state has been completed, or when he or she has recovered from the illness, or when his or her mental state has changed to the extent that any further inpatient treatment is no longer necessary. ...

A person subjected to compulsory hospitalisation shall be discharged upon a decision of a panel of psychiatrists or a court decision refusing to extend the hospitalisation. ..."

3. Description of duties of a nurse/hospital attendant of specialised psychiatric staff of 10 January 2001

30. Paragraph 2.4 provided that, upon a doctor's order, a nurse had to restrain securely (*надійну фіксацію*) or hold (*утримувати*) a patient who was in a state of psychomotor agitation, without inflicting bodily injuries or causing pain, until he or she was passed into the care of a staff member of a psychiatric hospital.

COMPLAINTS

31. The applicant complained under Article 5 § 1 (e) and Article 3 of the Convention that she had been arbitrarily placed in a psychiatric hospital on 24 April 2012, that she had been tortured by medical staff on that date and

that the authorities responsible for her unlawful detention and ill-treatment had not been prosecuted.

THE LAW

A. Alleged violation of Article 3 of the Convention

32. The applicant complained that she had been beaten up by the male ambulance nurses during her transfer to the Hospital and subjected to ill-treatment there. The investigation into her complaints had been ineffective and based on false evidence. She 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."

33. The Government denied any ill-treatment and submitted, relying on the statements of eyewitnesses to the events of 24 April 2012, that to carry out the applicant's transfer to the Hospital for examination the male nurses had had to restrain the applicant by holding her under the arms, as provided by the relevant regulations, to overcome her physical resistance. The use of a "mechanical restraint" on the applicant at the Hospital had been a measure of therapeutic necessity applied for thirty minutes only to prevent a risk of imminent harm, as she had remained aggressive, refused to follow the psychiatrists' instructions or to take medicine prescribed to her and physically resisted medical staff.

34. The Government maintained that the investigator's decision of 15 May 2013 had been based on comprehensive evidence. The domestic courts which had examined the applicant's complaint on the outcome of the investigation had noted the comprehensive nature of the investigation and confirmed that there had been no evidence to support the applicant's allegations of ill-treatment.

35. The Court notes that the medical evidence submitted by the parties demonstrates that on the applicant's admission to the Hospital she did not have any visible injuries (see paragraph 12 above) and that on the following day, on her discharge from the Hospital, she had two symmetrical bruises under her arms (see paragraph 15 above). The day after the applicant's release from the Hospital, the forensic expert reported that the applicant had two bruises under her arms and small bruises on her shins (see paragraph 18 above).

36. The factual circumstances of the applicant's admission to the Hospital, including the medical staff's behaviour, were established and examined by different domestic authorities (notably, the investigator, the courts and the healthcare authorities). In particular, it was established that the ambulance employees had had to apply, as provided by their description of duties, a manual restraint measure to the applicant to overcome her

physical resistance and to ensure her transfer to the Hospital and that they had had no intention of inflicting bodily injuries on her. At the Hospital, a thirty-minute "mechanical restraint measure" had been ordered in accordance with the relevant medical protocol given the applicant's state of agitation and in view of her alleged suicidal intentions.

37. On the whole, the Court has no reason to question the facts as established and interpreted by the domestic authorities, which are ultimately better placed to assess the matter (see *E.M. and Others v. Romania* (dec.), no. 20192/07, § 55, 3 June 2014).

38. For its part, the Court also observes that according to the applicant's version of events, her arms were twisted, and she was severely punched and kicked numerous times all over her body. It further observes that the injuries recorded on the applicant shortly after the impugned events were limited to two bruises under her arms and small bruises on her shins. Those bruises can hardly be regarded as matching the applicant's description of her alleged ill-treatment (compare *Vitruk v. Ukraine*, no. 26127/03, § 54, 16 September 2010). The treatment she described would have left more serious marks on her body. In this context, the authorities' explanation that the injuries had resulted from the applicant's physical resistance to medical staff on 24 April 2012 appears the more plausible one, all the more so since none of the eyewitnesses to the applicant's "apprehension" by male nurses confirmed that the applicant had been beaten by the medical employees, but all of them attested that the applicant had behaved inappropriately and resisted her hospitalisation. In fact, the applicant herself acknowledged that she had physically resisted the male nurses (see paragraph 9 above).

39. The Court reiterates that, according to its case-law, Article 3 does not prohibit the use of force for effecting an arrest. However, such force may be used only if unavoidable and must not be excessive (see *Ivan Vasilev v. Bulgaria*, no. 48130/99, § 63, 12 April 2007, and the cases cited therein). The same principles apply to the circumstances of the present case. The Court finds that there is nothing in the case file to show that the application of a manual restraint measure (holding the applicant firmly under the arms) by the ambulance nurses was unnecessary or disproportionate in the circumstances.

40. As regards the alleged ill-treatment of the applicant in the Hospital, the principal element of her complaint being the use of a mechanical restraint measure, the applicant has provided few details in this connection, in particular as regards the type of restraint, the manner in which it was carried out, and so on. The documents provided to the Court by the Government suggest that the measure was ordered by a psychiatrist for a duration of thirty minutes to ensure the applicant's safety. The applicant's statement to the contrary is not supported by any evidence. At the same time, the applicant does not appear to contest that she was agitated at the Hospital and physically resisted its staff.

41. In addition, neither in her initial complaint to the police, which she lodged the day after her release from the Hospital, nor in the new complaint lodged in December 2012 did the applicant raise an allegation in respect of her ill-treatment in the Hospital. Likewise, no complaint about the alleged ill-treatment by the Hospital employees appears to have been raised by the applicant in her appeals against the outcome of the police investigation. She provided no explanation to the Court in this connection.

42. In view of the foregoing and on the basis of the elements at its disposal, the Court considers that the applicant has failed to lay the basis of an arguable complaint that she was ill-treated as alleged on 24 April 2012 and for this reason it is not open to her to contest the effectiveness of the domestic investigation (see *Igars v. Latvia* (dec.), no. 11682/03, § 72, 5 February 2013).

43. Accordingly, the Court rejects the applicant's complaint under both the substantive and procedural limbs of Article 3 of the Convention as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Alleged violation of Article 5 § 1 of the Convention

44. Relying on Article 5 § 1 (e) of the Convention, the applicant complained that she had been unlawfully and arbitrarily committed to a psychiatric hospital on 24 April 2012 and detained there until the following day. The relevant provision reads 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 ..."

1. Submissions of the parties

45. The applicant presented her interpretation of the facts, arguing that there were no health-related reasons justifying her detention under the Psychiatric Assistance Act. In actual fact, she had not been diagnosed with any mental impairment. She submitted that she had been set up by her colleagues, who had wished to prevent her from sitting a test to obtain a promotion, which had been scheduled for 25 April 2012, and who had lied to the police.

46. The applicant admitted that she had been agitated when interacting with the ambulance team and the Hospital staff and had refused to comply with their requests, but denied that her behaviour had been inappropriate given the circumstances in which she had been taken to the Hospital.

47. The Government argued that the applicant's hospitalisation on 24 April 2012 for diagnostic purposes had complied with the substantive aspect of Article 5 § 1 (e) of the Convention since the applicant's behaviour and other evidence had raised strong grounds for suspecting that she could be a danger to herself or others. Within twenty-four hours, as provided by the relevant legislation, the applicant had been examined by a panel of psychiatrists and her release had been ordered, as the tentative diagnosis of a mental disorder had not been confirmed.

48. The domestic courts confirmed that the applicant's placement in the Hospital had been justified by the circumstances and carried out in accordance with law.

2. The Court's assessment

49. In accordance with the Court's well-established case-law, an individual cannot be considered to be of "unsound mind" and deprived of his liberty unless the following three minimum conditions are satisfied: firstly, he must reliably be shown to be of unsound mind; secondly, the mental disorder must be of a kind or degree warranting compulsory confinement; thirdly, the validity of continued confinement depends upon the persistence of such a disorder (the so-called Winterwerp criteria, see *Winterwerp v. the Netherlands*, 24 October 1979, § 39, Series A no. 33; *Varbanov v. Bulgaria*, no. 31365/96, § 45, ECHR 2000-X; and *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, ECHR 2012).

50. In relation to the question whether the applicant had to be detained as a "person of unsound mind", the Court reiterates that the national authorities have a certain discretion regarding the merits of clinical diagnoses since it is in the first place for them to evaluate the evidence in a particular case: the Court's task is to review under the Convention the decisions of those authorities (see *Winterwerp*, cited above, § 40; *Frank v. Germany* (dec.), no. 32705/06, 28 September 2010; and *Biziuk v. Poland (no. 2)*, no. 24580/06, § 42, 17 January 2012).

51. No deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert. Any other approach falls short of the required protection against arbitrariness, inherent in Article 5 of the Convention (see *Varbanov*, cited above, § 47).

52. Turning to the circumstances of the present case, the Court observes that the applicant was first admitted to a psychiatric hospital for diagnostic purposes by Dr R., a psychiatrist from the emergency hospital, after being involved in an altercation in the head teacher's office at the school where she worked on account of her alleged suicidal intentions and her refusal to be examined in that connection. Subsequently, the psychiatrists who examined the applicant in the receiving hospital, which was not connected, either administratively or financially, with the emergency hospital,

expressed the opinion that the applicant's admission to hospital for further examination was necessitated by her behaviour and the evidence of suicidal intentions.

53. The Court has no grounds to doubt that the experts who examined the applicant were fully qualified and that they based their conclusions on their best professional judgment. The summary of the results of the applicant's assessment on that date in the available medical documents and court decisions reflected that there had been genuine concerns about the applicant's mental state (see paragraphs 12 and 27 above).

54. In any event, the domestic courts were in a far better position to assess the value of the expert reports and, more generally, to determine the factual issue of whether or not there had been sufficient indication that the applicant was suffering from a disorder of a kind or degree warranting her compulsory confinement for diagnostic purposes so as to make sure. There is nothing to suggest that the assessment made was flawed by arbitrariness or manifest unreasonableness (see paragraphs 26 and 27 above). Consequently, given the subsidiary nature of its role and the available evidence, the Court has no ground to overrule the conclusion reached by the courts.

55. The applicant denied that her behaviour had been inappropriate or violent and that she had expressed suicidal intentions. However, eyewitnesses to the events in issue, who were not acquainted with each other, attested to the contrary. The audio-recording, allegedly made by the applicant during the events in the head teacher's office and to which she referred to support her complaint, is of poor quality and does not provide the full picture of the impugned events but covers only part of the conversation held in the office (see paragraph 9 above). In these circumstances, the Court is inclined not to accord any weight to the recording (see, *mutatis mutandis*, *Mikhaylova v. Ukraine*, no. 10644/08, § 48, 6 March 2018).

56. The Court also does not find it convincing that the applicant's colleagues would have gone to the lengths of involving the police knowing that their version of events was entirely untrue (compare *S.R. v. the Netherlands* (dec.), no. 13837/07, § 35, 18 September 2012). In addition, it follows from the report of the panel of psychiatrists of 25 April 2012 that during the examination on that day the applicant admitted that she had expressed her intention to commit suicide to her colleagues (see paragraph 14 above).

57. The Court has interpreted Article 5 § 1 (e) so as to allow the detention of persons who have abused alcohol and whose resulting behaviour gives rise to genuine concern for public order and for their own safety (see *Witold Litwa v. Poland*, no. 26629/95, § 62, ECHR 2000-III, and *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, § 42, 8 June 2004). The same applies to persons in respect of whom there is sufficient indication that

they may be of unsound mind (see *S.R. v. the Netherlands*, cited above, § 37).

58. It therefore cannot be decisive that the applicant was discharged from hospital the day after her admission without any psychiatric disorder having been diagnosed. This fact certainly does not satisfy the Court that a problem was not suspected to exist at the time the applicant was admitted to hospital. Moreover, in the Court's view, the fact that, following monitoring of her condition, the applicant was discharged from hospital the day after her admission confirms that her stay in hospital did not exceed what was necessary and that it complied with the terms set out in the Psychiatric Assistance Act (see paragraph 29 above).

59. Consequently, in the circumstances of the present case, the Court considers that the applicant's deprivation of liberty was justified under Article 5 § 1 (e) of the Convention.

60. This part of the application is therefore manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 18 March 2021.

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Martina Keller	Arnfinn Bårdsen
Deputy Registrar	President