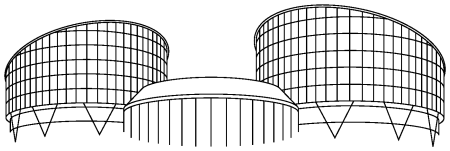

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF O.G. v. LATVIA

(Application no. 66095/09)

JUDGMENT

STRASBOURG

23 September 2014

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 O.G. v. Latvia,

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

George Nicolaou, *President,*
Ineta Ziemele,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 2 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 66095/09) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr O.G. ("the applicant"), on 10 December 2009. The President of the Third Section acceded to the applicant's request not to have his name disclosed (Rule 47 § 3 of the Rules of Court).

2. The Latvian Government ("the Government") were represented by their Agent at the time, Mrs I. Reine, and subsequently by Mrs K. Līce.

3. The applicant alleged, in particular, that he had been illegally confined to a psychiatric hospital.

4. On 17 October 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1965 and lives in Riga.

A. The first set of criminal proceedings

6. On 3 March 2004 criminal proceedings were initiated against the applicant for Internet fraud.

7. In the course of the pre-trial investigation the applicant underwent two inpatient psychiatric examinations. On both occasions the applicant was found to have full mental capacity (*pieskaitāms*).

8. On 3 October 2006 the Riga City Vidzeme District Court found the applicant guilty and gave him a suspended six-month prison sentence. The applicant and his counsel appealed.

9. Taking into account that during the hearing of the appeal court of 9 January 2007 the applicant was said to have "behaved aggressively towards the advocate and the prosecutor [and] in the course of the subsequent hearings [had] made illogical and disjointed statements", on 13 March 2007 the Riga Regional Court decided to request an outpatient psychiatric assessment.

10. On 27 April 2007 a psychiatrist found that the applicant was suffering from chronic paranoid schizophrenia and that his participation in court hearings was therefore "unhelpful" (*nav lietderīga*). The psychiatrist recommended that the applicant undergo outpatient treatment.

11. On 18 June 2007 a single judge of the Riga Regional Court decided to initiate proceedings with a view to applying a compulsory measure of a medical nature. Taking into account that "the nature of [the applicant's] illness [did] not permit him to take part in court proceedings", it was decided that the case would be examined in the applicant's absence, with the participation of a prosecutor, defence counsel, a legal representative for the applicant and an expert psychiatrist. The applicant's mother was named as his legal representative.

12. The applicant's mother did not attend the following hearing on 19 September 2007. She had sent the court a letter stating that she would be unable to attend court hearings due to ill-health. She also expressed her belief that her son had legal capacity and was able to express his own point of view. During the hearing the prosecutor suggested that D.A., a psychiatrist responsible for the applicant's medical treatment, could better serve as his legal representative, a suggestion which was approved by the court with the consent of the applicant's counsel and the expert psychiatrist.

13. The subsequent hearing on 16 October 2007 was attended by D.A., who described the applicant as "chaotic", "contemptuous" and as having "delirious fantasies". She considered that he should be ordered to undergo involuntary outpatient psychiatric treatment. She explained that if the applicant did not take medication he did not become aggressive, but became "a burden on society". At the conclusion of the hearing, the defence counsel, D.A. and the prosecutor all agreed that an additional inpatient psychiatric assessment ought to be carried out, which was ordered by the court.

14. The inpatient assessment was completed on 27 November 2007 and the applicant was diagnosed with episodic paranoid schizophrenia with increasing residual symptoms (*paranoīda epizodiskas norises šizofrēnija ar*

pieaugošām reziduālām parādībām). It was concluded that at the time he had committed the incriminated acts, he had been unable to control his actions. It was therefore recommended that he be relieved of criminal liability.

15. On 18 February 2008 the Riga Regional Court decided to relieve the applicant of criminal liability and imposed a compulsory measure of a medical nature – outpatient treatment in a medical institution. It held that such a measure best corresponded to the non-violent nature of the applicant's actions and to his state of health. It appears that this decision was not appealed against and entered into force on 11 March 2008. The Riga City Vidzeme District Court was named as the court responsible for supervising enforcement of the Regional Court's order.

B. The second set of criminal proceedings

16. On 1 March 2007 criminal proceedings were initiated against the applicant for fraud. On 15 March 2007 the police received information that he was registered (*atrodas uzskaitē*) as an outpatient of a psychiatric hospital.

17. On 8 October 2007 the applicant was informed that he was a suspect. On the same day, referring to the psychiatric assessment of 27 April 2007 (see paragraph 10 above), the police decided to request an additional forensic psychiatric assessment of him.

18. The applicant underwent such an assessment. A report dated 29 October 2007 established that he was suffering from chronic paranoid schizophrenia and was therefore unable to take responsibility for his actions or control them. Because of this he was deemed unable to participate in the pre-trial investigation of the criminal case against him or to give adequate statements during the investigation. The expert report recommended that a compulsory measure of a medical nature be ordered – outpatient psychiatric treatment in a medical institution.

19. The prosecutor in charge of the case against the applicant decided to pursue proceedings with a view to applying a compulsory measure of a medical nature. After receiving information from the psychiatric hospital that in the first set of proceedings the applicant's legal representative was D.A., on 7 February 2008 the prosecutor decided to allow D.A. to again take on that role.

20. On 19 August 2008 a hearing of the applicant's case was held in the Riga Regional Court. The panel consisted of judge I.Š. and two lay judges. The applicant was represented by a lawyer A.Ā. A prosecutor, an expert psychiatrist and D.A. also attended the hearing, but the applicant was not present. According to the applicant, he had not appointed A.Ā. or anyone else as his defence counsel.

21. D.A. stated to the court that the applicant had:

> "obsessive thoughts concerning various acts of a legal nature. I believe that if he had an opportunity to arrive at any office, if he had an access to a computer, he would be capable of committing repeated criminal acts. ... I consider that [the applicant] could be a danger to society and that he should receive treatment".

22. The court also heard the testimony of the expert psychiatrist G.S. who had produced the expert report of 29 October 2007 (see paragraph 18 above). G.S. explained to the court that at the time the expert report was drawn up she had not been aware that the applicant had previously been involved in other criminal proceedings in which he had been found to be in a state of mental incapacity (*nepieskaitāms*) and that he "was continuing [his] criminal activity". She considered that nobody could control whether the applicant was taking medication and therefore recommended that he undergo involuntary inpatient treatment.

23. The applicant's defence counsel indicated to the court that, given the applicant was continuing to commit crimes while ill and taking into account his mental state, it was necessary to order his inpatient treatment in a psychiatric hospital. The prosecutor agreed.

24. In a decision dated 20 August 2008 the court held that the applicant had to be relieved of criminal liability. It also considered that he posed a danger to society and ordered his inpatient treatment in a psychiatric hospital. A copy of the decision was sent to D.A. on 25 August 2008.

25. The decision was not appealed against in time and became final on 2 September 2008.

26. On 12 September 2008 the decision was sent to a psychiatric hospital in Riga for enforcement.

27. It is not clear when the applicant first received a copy of that decision. The Government provided copies of two not entirely legible handwritten pages, which allegedly came from the applicant's medical records, and which appear to indicate that on 19 August 2008 (the day before the Regional Court's decision was pronounced) the applicant had been informed of the court's decision to order his involuntary inpatient treatment and had expressed his frustration with that decision. The applicant appears to claim that he never received a copy of the decision.

28. On 9 September 2008 the applicant requested the Riga Regional Court to revoke the compulsory measures of a medical nature imposed on him "in full". However, the wording of his letter only referred to the decision of 18 February 2008 (see paragraph 15 above). In a response given on 16 September 2008 judge I.Š. observed that the applicant was not complaining about the decision of 20 August 2008, which had become final on 2 September 2008, and therefore returned his complaint letter to him.

29. On 13 March 2009 the applicant lodged an appeal with the Riga Regional Court against "the decision of 19 August 2008". Since he received no reply, on 26 March 2009 he inquired as to its progress. In a letter of

9 April 2009 judge I.Š. "once again" explained to the applicant that he had been represented in court by D.A., who had not lodged an appeal. The decision had therefore become final. The letter further informed the applicant that he did not have the *locus standi* to lodge an appeal. On 14 April 2009 the applicant received a letter from another judge of the Riga Regional Court, D.T., who explained to him that only D.A. could lodge an appeal in his name.

30. On 9 April 2009 judge I.Š. sent the decision of 20 August 2008 to the police with a request that it be enforced.

31. On 2 October 2009 judge I.Š., acting pursuant to section 607(4) of the Criminal Procedure Law (see paragraph 46 below) requested an assessment of the applicant's mental health in order to decide the question of whether to continue applying the compulsory measure of a medical nature.

32. On 8 October 2009 the director of the psychiatric hospital invited the Regional Court to examine whether it was necessary to continue applying the compulsory measure of a medical nature to the applicant and forwarded to it the report of a medical panel dated 20 August 2009. The panel had found that the applicant had regularly attended the hospital, but had done so "without any inner motivation and without any understanding of his illness or of the necessity to take medication". It was concluded that the applicant suffered from paranoid schizophrenia and that despite treatment with medication, there was no evidence of any stable improvement to his psychiatric health or that he was in remission. It was recommended that the applicant be ordered to continue outpatient treatment.

33. It does not appear that the Regional Court took any decision pursuant to section 607(4) of the Criminal Procedure Law.

34. On the evening of 22 October 2009 several police officers entered the applicant's flat and took him to a psychiatric hospital in Riga. According to the applicant, on 26 October 2009 doctors at the hospital informed him that he had been brought in on the basis of a decision of the Riga Regional Court.

35. On 29 October 2009 judge I.Š. sent a request to the psychiatric hospital for a report on the state of the applicant's mental health, in order to examine the question of whether it was necessary to continue involuntary inpatient psychiatric treatment pursuant to section 607(4) of the Criminal Procedure Law. The letter indicated, *inter alia*, that the applicant had not been admitted to hospital any earlier than on 22 October 2009 "for reasons unknown to the court".

36. On 31 October 2009 the applicant addressed a petition to the Supreme Court. He indicated that he had been undergoing outpatient psychiatric treatment in line with the recommendations of panels of medical specialists that had been adopted in September 2008 and in February and August 2009. He requested the Supreme Court to quash the decision which

had apparently ordered his admission to the psychiatric hospital (the contents of which were unknown to him). Lastly, the applicant pointed out that he had not been present at the court hearing during which the question of the deprivation of his liberty had been decided and that he had had no lawyer representing him there.

37. The applicant received a reply dated 5 November 2009 from judge I.Š., who explained that his treatment as an outpatient between the adoption of the decision on 20 August 2008 and 22 October 2009 had been erroneous (*nepamatota*). As regards the decision of 20 August 2008 the judge explained that the applicant's interests had been represented by D.A. and A.Ā., neither of whom had appealed against the decision. It had therefore become final.

38. In the meantime, on 3 November 2009 a panel of three medical specialists issued a report, finding that the applicant's health had "changed notably, characterised by symptoms of delirium against a background of reduced affection". The report recommended that the applicant be ordered to continue involuntary inpatient treatment in a psychiatric hospital.

39. On 15 November 2009 the applicant sent a complaint to the Supreme Court against the "decision" of judge I.Š. contained in her letter of 5 November 2009. He pointed out that after the decision of 20 August 2008 had been adopted in his absence and without him being represented by a lawyer, he had been complying with the terms of that decision by being treated in a psychiatric hospital from September 2008 onwards. The applicant asked the Supreme Court to quash the decision on the basis of which the police had detained him and taken him to the psychiatric hospital on 22 October 2009. He repeated his allegation that he was not and had never been represented by a lawyer. The response he received to the complaint again came from judge I.Š., which was sent on 23 November 2009, and was worded almost identically to the response she had sent previously.

40. On 28 December 2009 the Riga Regional Court decided to continue the applicant's involuntary inpatient treatment. The decision was amenable to appeal. The applicant received it on 11 January 2010. No appeal was lodged.

41. The applicant was released from the hospital on 7 June 2010 on the basis of a decision of the Riga Regional Court of 27 May 2010 ordering his treatment as an outpatient.

II. RELEVANT DOMESTIC LAW

42. Section 592(1) of the Criminal Procedure Law, as in force at the material time, provided, *inter alia*, that a compulsory measure of a medical nature could be imposed by a court on persons who had committed criminal

offences, if such persons were a danger to society owing to the nature of the offences committed by them or their mental state.

43. Under section 594 of the Criminal Procedure Law the person with respect to whom the proceedings for applying a compulsory measure of a medical nature were being initiated or their representative had to be informed of the proceedings. Both the person in question and their representative had to be informed of their rights and obligations. If, further to an expert assessment, the person in question could not take part in the pre-trial proceedings, a prosecutor had to inform the person's defence counsel and to adopt a decision concerning a legal representative's participation in the criminal proceedings.

44. Pursuant to section 602 of the Criminal Procedure law a judge examining the question of applying a compulsory measure of a medical nature had to order that the person with respect of whom the proceedings were being conducted be brought before the court "if the nature of the person's illness so permit[ted]".

45. Under section 606(1) the person with respect to whom the proceedings for applying a compulsory measure of a medical nature were being carried out could only appeal against a decision taken by the court only if he had participated in the relevant hearing.

46. Section 607 of the Criminal Procedure Law regulated the way matters regarding the revocation or alteration of compulsory measures of a medical nature came before the courts:

> "(1) If the need to apply the compulsory measure of a medical nature ordered by a court has ceased to exist because the person to whom such a measure was applied has been cured or because [their] state of health has otherwise changed, the director of the medical institution where the person is being treated shall, on the basis of a report of a medical panel, request a court to revoke or alter the compulsory measure of a medical nature.
>
> (2) A request to revoke or alter the ... compulsory measure of a medical nature may be lodged by the person to whom such a measure was applied ... In such cases the court shall request from the relevant medical institution a report about the state of health of the person with regard to whom the request has been lodged.
>
> ...
>
> (4) The court which adopted the decision to order a compulsory measure of a medical nature or the first-instance court responsible for the enforcement of [that] decision shall decide, on its own initiative, whether to revoke or alter the [measure] if more than one year has elapsed since the [measure] was ordered or since the most recent examination of the question of altering or revoking the [measure] and within that time no request or suggestion to alter or revoke the [measure] has been lodged."

47. Section 608 set down the procedure for examining matters regarding the revocation or alteration of a compulsory measure of a medical nature. In so far as is relevant, it provided:

> "(1) Matters concerning the revocation or alteration of a compulsory measure of a medical nature shall be decided within fourteen days by the court which took the decision to order [the measure] or by a court with territorial jurisdiction over the medical institution carrying out the compulsory treatment.
>
> ...
>
> (5) The court shall take a decision concerning the revocation or alteration of the compulsory measure of a medical nature, or a refusal to do so. The decision shall be amenable to appeal in cassation only ..."

48. Section 635(1) of the Criminal Procedure Law provided that a decision to order a compulsory measure of a medical nature had to be implemented immediately after becoming final. If, however, that did not happen and more than six months had elapsed since the decision had become final and the decision had not been implemented in the meantime, section 635(3) provided that the person concerned "may be admitted" to hospital, yet the administration of medical treatment had to be postponed "until a fresh report of a medical panel had been received". Section 635(4) clarified that medical treatment could be initiated after a medical panel had found that the person concerned had not recovered, their state of health had not changed significantly and that the compulsory medical treatment that had been ordered was necessary.

THE LAW

I. ABUSE OF THE RIGHT OF INDIVIDUAL APPLICATION

49. On 15 May 2014 the Agent of the Government informed the Court that an e-mail received the previous day by one of the lawyers of her office and allegedly sent by the applicant had contained "direct threats towards the lawyer". According to the Government, this constituted a clear abuse of the right of individual application. The Government therefore invited the Court to declare the application inadmissible in accordance with Article 35 § 3 (a) of the Convention and to reject it in accordance with Article 35 § 4.

50. The applicant was invited to comment on the Government's submission, but did not do so within the time allotted for that purpose.

51. The Court reiterates that persistent use of insulting or provocative language by an applicant in communication with the Court may be considered an abuse of the right of application within the meaning of Article 35 § 3 of the Convention (see, for example, *Manoussus v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002; *Řehák v. the*

Czech Republic (dec.), no. 67208/11, 18 May 2004; and *Apinis v. Latvia* (dec.), no. 46549/06, 20 September 2011, § 15).

52. The Court considers that the threats contained in the e-mail received by the office of the Agent of the Government constitute a clear example of an unacceptable and uncivilised form of communication. However, irrespective of whether or not the e-mail in question was in fact sent by the applicant, it was sent directly to the Agent of the Government and not formally submitted to the Court. Taking also into account the applicant's officially documented mental state and the symptoms associated with paranoid schizophrenia, the Court comes to the conclusion that the present situation is comparable to a recent case in which it rejected a similar request by the Estonian Government (see *Rosin v. Estonia*, no. 26540/08, §§ 40-44, 19 December 2013).

53. Considering all the circumstances of the case, the Court does not find it appropriate to declare the application inadmissible as abusive within the meaning of Article 35 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

54. The applicant complains that he was not able to challenge the lawfulness of his detention, as required by Article 5 § 4 of the Convention, which provides:

> "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."

A. Admissibility

55. The Government argued that the applicant's Article 5 complaints were inadmissible for non-exhaustion of domestic remedies.

56. The Court considers that the question of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under Article 5 § 4 of the Convention. It should therefore be joined to the merits.

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.

B. Merits

1. Appeal against the initial decision of 20 August 2008

57. The Government submitted that the applicant should have appealed against the Riga Regional Court's decision of 20 August 2008 (with which

he had been "introduced" on 19 August 2008; see paragraph 27 above) with the assistance of his legal representative D.A., a prosecutor or his defence counsel A.Ā. The Government argued that even though the applicant's legal representative at the relevant time had been his doctor, he could have contacted a prosecutor or his mother in order to have the question of the legality of his detention reviewed by the courts.

58. The Government also pointed out that the Criminal Procedure Law had given the applicant a right to complain to a prosecutor about the appointment of a legal representative, yet he had not used it. Lastly, the applicant could have complained to the Bar Association about the services provided by his defence counsel.

59. The Government further indicated that the applicant had failed to appeal against the Riga Regional Court's decision of 28 December 2009 (see paragraph 40 above). No other potentially effective remedies were invoked by the Government.

60. The applicant emphasised that, contrary to the requirements of the Criminal Procedure Law, he had never been issued with a copy of the decision of 20 August 2008 bearing the judge's signature, and had never been explained the procedure for appealing such a decision. Judge I.Š. of the Riga Regional Court had not forwarded his complaints about his detention to the Supreme Court, but instead had rejected them herself.

61. The Court notes that, as clearly derives from section 606(1) of the Criminal Procedure Law (see paragraph 45 above), the applicant, having been absent from the hearing of 19 August 2008, was not entitled to lodge an appeal against the decision of 20 August 2008 himself and had to do so through an intermediary. Even assuming that he had a realistic opportunity to contact his legal representative, who was a doctor at the psychiatric hospital in which he was receiving outpatient treatment and in which he was eventually detained, or his State-appointed defence counsel or a prosecutor, a decision whether or not to appeal against the decision of the Riga Regional Court would have been entirely at their discretion. In other words, the applicant himself was deprived of the opportunity to directly complain about the legality of the order to admit him to a psychiatric hospital.

62. The Court reiterates that the existence of the remedy required by Article 5 § 4 of the Convention must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision (see *Hađi v. Croatia*, no. 42998/08, § 41, 1 July 2010, with further references). In this regard, the Court has previously held that a patient compulsorily detained for psychiatric treatment must have the right to seek judicial review of his or her own motion (see *Gorshkov v. Ukraine*, no. 67531/01, § 44, 8 November 2005, *Rakevich v. Russia*, no. 58973/00, §§43-44, 28 October 2003 and *Raudevs v. Latvia*, no. 24086/03, § 82, 17 December 2013). More generally, the Court has indicated that it would

be inconceivable that Article 5 § 4 of the Convention should afford procedural guarantees to a party whose detention matter is pending before a court without also protecting what makes it in fact possible to benefit from such guarantees – that is, the possibility to access the court by making an application to review the lawfulness of the detention (see *Proshkin v. Russia*, no. 28869/03, § 92, 7 February 2012). It is without doubt that situations can be envisaged where a detainee's mental state or other circumstances would render his personal involvement in detention proceedings impossible. However, the Court has been unwilling to accept the state of mind of a detained person, on its own, as an implied and blanket limitation on his right to institute judicial review proceedings for the purpose of Article 5 § 4 of the Convention, particularly when no assessment of his ability to be personally involved in the proceedings leading to his detention has been performed by the court (*ibid*.).

63. In the present case, the domestic court decided that the applicant need not attend the hearing of 19 August 2008 since more than nine months previously, on 29 October 2007, it had been found in the course of an outpatient psychiatric assessment that he was suffering from chronic paranoid schizophrenia and was therefore unable to participate in the pre-trial investigation of the criminal case against him or to give adequate statements during the investigation (see paragraph 18 above). The experts had not assessed his ability to form an opinion about the need to hospitalise him and the Riga Regional Court did not address this particular issue. The applicant was unable to directly and effectively challenge the lawfulness of his detention in court. In the Court's assessment, this situation amounted to a limitation of the applicant's rights guaranteed by Article 5 § 4 of the Convention to have the lawfulness of his detention from 22 October 2009 reviewed speedily by a court.

64. The other avenues suggested by the Government, namely that the applicant could have complained to the Bar Association about the actions of his defence counsel or to a prosecutor about the appointment of a legal representative, have no evident link to the question of the deprivation of his liberty and therefore cannot be considered an effective procedure by which he could have challenged the lawfulness of his detention.

2. Subsequent appeals or requests

65. The Government argued that the applicant had had access to proceedings in which the lawfulness of his detention would have been decided by a court. For instance, he could have appealed against the decision of the Riga Regional Court of 28 December 2009 (see paragraph 40 above), which he had failed to do.

66. The applicant did not submit any comments in this regard, but focused instead on the fact that his complaints of 31 October and

15 November 2009 had not been examined by the Supreme Court (see paragraphs 36, 37 and 39 above), to which they had been addressed.

67. At the outset the Court notes that section 607(2) of the Criminal Procedure Law provided that the person subject to a compulsory measure of a medical nature could request a court to amend or revoke the measure imposed (see paragraph 46 above). Thus, in theory the applicant had a right to apply to court for his release.

68. The Court further notes that on 31 October and 15 November 2009 the applicant sent petitions, addressed to the Supreme Court, in essence challenging the legality of his detention. The requests did not contain an explicit reference to section 607(2) of the Criminal Procedure Law; however, it is clear from both requests that he was dissatisfied with being admitted to a psychiatric hospital, considered the deprivation of his liberty unlawful and wished to be released. Judge I.Š., the same judge who had ordered the deprivation of the applicant's liberty in the first place, regarded the applicant's requests as inadmissible appeals against the decision of 20 August 2008, even though the applicant, having been absent from the hearing, was not entitled to lodge such appeals (see paragraph 61 above). Be that as it may, the outcome for the applicant was that he could not access the court to review the lawfulness of his confinement.

69. Turning to the Government's argument that an appeal against the Riga Regional Court's decision of 28 December 2009 could have served as an avenue to determine the legality of the deprivation of the applicant's liberty, the Court notes that previously the applicant was informed that he did not have the *locus standi* to lodge an appeal against court's decision (see paragraph 29 above). In such circumstances and absent domestic case-law to the contrary, it is not sufficiently certain that indeed a possibility of appeal was available to the applicant in practice. The Court observes that the decision in question was taken by the Regional Court under section 607(4) of the Criminal Procedure Law on its own initiative. In that connection, Article 5 § 4 of the Convention requires that it should be the person deprived of his liberty who "shall be entitled to take proceedings by which the lawfulness of his detention shall be decided" (see *X. V Finland*, no. 34806/04, § 170, 3 July 2012). As observed by the Court above, it emerges that the applicant did not have that possibility in practice. In such circumstances, the Court concludes that the requirements of Article 5 § 4 have not been met.

3. Conclusion

70. The Court finds that, in the circumstances of the present case, the applicant did not have the opportunity to bring proceedings by which the lawfulness of his detention would be decided speedily by a court and his release ordered if the detention was considered unlawful. He had no *locus standi* to independently appeal against the initial decision ordering his

detention because he had been absent from the relevant court hearing. His subsequent requests to be released from detention were essentially left without examination on the merits by the same judge who had ordered his detention. Consequently, the Court dismisses the Government's plea of non-exhaustion of domestic remedies.

71. The Court therefore concludes that there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

72. The applicant complained that his involuntary admission to a psychiatric hospital had violated Article 5 § 1 of the Convention, which in the relevant parts provides:

> "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:
>
> ...
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> ...
>
> (e) the lawful detention ... of persons of unsound mind ..."

A. Admissibility

73. The Government submitted that the applicant's complaint was inadmissible, having been lodged out of time. According to the Government, the six month time-limit provided for in Article 35 § 1 of the Convention had started to run on 20 August 2008 when the applicant's inpatient treatment had been ordered by the Riga Regional Court or, alternatively, at a later date when the applicant had learned of the contents of that decision, but in any case more than six months prior to the complaint being lodged with the Court.

74. The Court recalls that normally the six-month period runs from the final decision in the process of exhaustion of domestic remedies. However, where it is clear from the outset that no effective remedy was available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect or prejudice on the applicant (see, for example, *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 54, 29 June 2012).

75. The Government did not provide any evidence of when the applicant received a copy of the Riga Regional Court's decision of 20 August 2008.

They provided a copy of an excerpt from the applicant's medical records which appears to attest to the fact that he had been explained the substance of that decision a day earlier, on 19 August 2008. The Court cannot accept that such an action, even assuming that it took place, enabled the applicant to gain "knowledge" of the contents of that decision – which did not yet exist – in the same way as receiving a written copy of such a decision would. Thus, the Government's claim that "already before the [pronouncement] of the Riga Regional Court's decision of 20 August 2008, the applicant was already informed of the applied compulsory measure and was fully aware of the consequences of this decision" is without merit.

76. Alternatively, the Government stated that the applicant could have obtained a copy of the Riga Regional Court's decision from his legal representative D.A.

77. At the outset the Court notes that it is common ground between the parties that the applicant was never officially served with a copy of the decision of 20 August 2008. It therefore remains to be determined whether the period of six months should be counted from the date the applicant's defence counsel or his legal representative were served with a copy of the decision (see, for example, *Çelik v. Turkey* (dec.), no. 52991/99, ECHR 2004-X, with further references). The Court notes that the applicant consistently maintained, both before the national authorities and in his submissions to the Court, that he never had any meaningful contact with the defence counsel or the legal representative. Those persons were appointed by a prosecutor and by the Riga Regional Court to represent his interests in proceedings, from which he himself was absent. The Court therefore comes to the conclusion that neither the defence counsel nor the legal representative could be considered to be "the applicant's lawyer" within the meaning of the above-cited Court's case law.

78. The Court thus concludes that the date the applicant became aware of the effect of the Riga Regional Court's decision on him was the date he was taken to the psychiatric hospital, 22 October 2009. Since the application was lodged with the Court on 10 December 2009, the applicant complied with the six-month rule.

79. Furthermore, as concerns the Government's argument of non-exhaustion (see paragraph 55 above), from the conclusion the Court has reached above regarding Article 5 § 4 it follows that the Court has to reject this Government's argument, since the Government did not identify any such remedies that were available to the applicant in theory and in practice at the relevant time and which the applicant could have directly instituted himself – that is to say, remedies that were accessible, capable of providing redress in respect of his complaints and offering reasonable prospects of success (see, for example, *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

80. The Court further notes that the complaint under Article 5 § 1 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. This complaint must therefore be declared admissible.

B. Merits

81. The Court reiterates at the outset that the physical liberty of a person is in the first rank of the fundamental rights that protect the physical security of an individual (see *McKay v. the United Kingdom* [GC], no. 543/03, § 30, ECHR 2006-X). It follows that the list of exceptions (Article 5 § 1 (a) to (f)) to the right to liberty secured in Article 5 § 1 is an exhaustive one and only a narrow interpretation of those exceptions is consistent with the aim of that provision, namely to ensure that no one is arbitrarily deprived of his liberty (see *Vasileva v. Denmark*, no. 52792/99, § 33, 25 September 2003). Furthermore, detention of an individual is such a serious measure that it is justified only as a last resort where other, less severe measures have been considered and found to be insufficient to safeguard the individual or public interest which might require that the person concerned be detained (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 70, ECHR 2008, and *C.B. v. Romania*, no. 21207/03, § 48, 20 April 2010).

82. In the present case, it is common ground between the parties that the applicant was deprived of his liberty. It therefore remains to be determined whether this was justified by any of the grounds contained in the various subparagraphs of Article 5 § 1. The Court notes that the Government argued that the applicant's detention had been ordered in conformity with Article 5 § 1 (b) and (e) of the Convention. Accordingly, there is no dispute that no other subparagraphs of Article 5 § 1 apply. The Court will analyse both of these suggestions in turn.

1. Article 5 § 1 (b)

83. According to the Government, the applicant had been informed of the decision of the Riga Regional Court ordering his inpatient treatment and had thus been given an opportunity to comply with the terms of that decision voluntarily, which he had failed to do. He had been taken to the hospital only after more than a year of non-compliance with the terms of the decision of 20 August 2008.

84. The Government further submitted that the procedure followed by the Riga Regional Court in adopting the decision of 20 August 2008 had been fair and that the applicant had been properly represented. The deprivation of the applicant's liberty had therefore complied with the requirements of Article 5 § 1 (b).

85. The applicant criticised the conduct of the criminal proceedings in the course of which he had been ordered to undergo involuntary inpatient

treatment. He disputed the accuracy of the charges against him and also underlined certain procedural violations, such as his absence from the court hearings and his representation by people whom he had not appointed. Lastly, he objected to the fact that he had not been issued with a copy of the decision on the basis of which he had been detained.

86. The Court notes that the Government put forth arguments that appear to pertain to both aspects of subparagraph (b) of Article 5 § 1, namely that the applicant's detention had been ordered for "non-compliance with the lawful order of a court" and/or "in order to secure the fulfilment of [an] obligation prescribed by law". The Court will analyse both of those hypotheses.

(a) Obligation prescribed by law

87. In this regard, the Government drew guidance from the Court's judgment in *Nowicka v. Poland* (no. 30218/96, 3 December 2002). The Court observes that in the *Nowicka* case the applicant's obligation to submit to a psychiatric examination had been prescribed by several court orders. That case is therefore to be seen as pertaining more to non-compliance with a court order, considering that the Court has previously held that the phrase "obligation prescribed by law" denotes an obligation of a specific and concrete nature already incumbent on the person concerned (see *Ciulla v. Italy*, 22 February 1989, § 36, Series A no. 148). The Court considers that, given the wording of section 592(1) of the Criminal Procedure Law, which appears to be the source of the "obligation prescribed by law" invoked by the Government, and which directly refers to the requirement for a court to adopt a corresponding decision (see paragraph 42 above), the second aspect of Article 5 § 1 (b) is not at issue in the present case.

(b) Lawful order of a court

88. As the Court has held previously, the language concerning arrest or detention for "non-compliance" with the "lawful order of a court" in Article 5 § 1 (b) of the Convention means that the person arrested or detained must have had an opportunity to comply with such an order and have failed to do so (see *Beiere v. Latvia*, no. 30954/05, § 49, 29 November 2011). It logically follows that a person cannot be held accountable for "non-compliance" with a court order if he or she has never been informed of it (*ibid*., § 50). The Court has already found that prior to being taken to the psychiatric hospital the applicant had not been officially informed of the contents of the decision of the Riga Regional Court of 20 August 2008 and was therefore not given any chance to comply with it voluntarily.

89. Turning next to the question of whether the order of the Riga Regional Court was "lawful", it is necessary to verify if it was compatible with the essential objective of Article 5 § 1 of the Convention, which is to

prevent individuals being deprived of their liberty in an arbitrary fashion (see *Assanidze v. Georgia* [GC], no. 71503/01, § 170, ECHR 2004-II, and *H.L. v. the United Kingdom*, no. 45508/99, § 115, ECHR 2004-IX). This objective, and the broader condition that detention be "in accordance with a procedure prescribed by law", require the existence in domestic law of adequate legal protection and fair and proper procedures (see *Winterwerp v. the Netherlands*, 24 October 1979, § 45, Series A no. 33). In other words, the Court has to examine the quality of the domestic law, verifying its compliance with the rule of law, a concept inherent in all the Articles of the Convention (see *Amuur v. France*, 25 June 1996, § 50, *Reports of Judgments and Decisions* 1996-III).

90. The Court notes that in the present case the order to detain the applicant was adopted by the Riga Regional Court in his absence and without him being summoned to the hearing. As already established (see paragraph 63 above), the Regional Court failed to examine whether the applicant could participate in the hearing as regards the question of whether he was in need of hospitalisation. Although he was represented by a court-appointed lawyer and a "legal representative" appointed by a prosecutor, neither of them had consulted the applicant about his wishes or the strategy to pursue at the detention hearing. At the hearing itself the actions of both the lawyer and the representative were limited to agreeing to the position taken by the prosecutor.

91. The Court considers that in such circumstances the domestic proceedings did not offer the applicant sufficient protection against a potentially arbitrary deprivation of his liberty (see *Shtukaturov v. Russia*, no. 44009/05, § 113, ECHR 2008). For that reason, the decision of the Riga Regional Court of 20 August 2008 was not a "lawful order of a court" in the sense of Article 5 § 1 (b) of the Convention.

92. The Court therefore considers that the deprivation of the applicant's liberty was not justified by Article 5 § 1 (b) of the Convention.

2. Article 5 § 1 (e)

93. The Government suggested that the 20 August 2008 decision of the Riga Regional Court had been "based on some considerations covered also by Article 5 § 1 (e) of the Convention". Further, after the applicant had been admitted to hospital on 22 October 2009, the Riga Regional Court had requested an additional assessment of his mental health (on 3 November 2009). After receiving a response that his state of health had worsened since the previous assessment of 20 August 2009 (see paragraph 32 above), the Regional Court had "nevertheless...scheduled a hearing within [two] months" of his admission to the hospital.

94. The decision of 20 August 2008 had been adopted and enforced in the interests of society as well as in the applicant's own interests.

95. The Government lastly submitted that the applicant had been held in the hospital for only as long as had been necessary to see an improvement in his mental health.

96. The applicant did not submit any pertinent comments.

97. In its case-law the Court has set out three minimum conditions which have to be satisfied in order for there to be "the lawful detention of a person of unsound mind" within the meaning of Article 5 § 1 (e): except in emergency cases, the individual concerned must be reliably shown to be of unsound mind, that is to say the existence of a true mental disorder must be established by a competent authority on the basis of objective medical opinion; the mental disorder must be of a kind or degree warranting compulsory confinement; and the validity of continued confinement depends upon the persistence of such a disorder (see, for example, *Stanev v. Bulgaria* [GC], no. 36760/06, § 145, ECHR 2012, *Winterwerp v. the Netherlands*, cited above, § 39, and *L.M. v. Latvia*, no. 26000/02, § 46, 19 July 2011). The Court has also established that the medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. A medical opinion cannot be seen as sufficient to justify deprivation of liberty if a significant period of time has elapsed (see *Varbanov v. Bulgaria*, no. 31365/96, § 47, ECHR 2000-X, and *Raudevs v. Latvia*, cited above, § 72).

98. The Court has already found that the proceedings in which the Riga Regional Court adopted the decision of 20 August 2008 did not offer the applicant sufficient protection against a potentially arbitrary deprivation of his liberty (see paragraph 91 above). Likewise, the Court finds that the relevant conditions in the sense of Article 5 § 1 (e) were also not met during the applicant's detention for a period of more than two months as of 22 October 2009.

99. In addition the Court notes the following. Firstly, on 8 October 2009 the Riga Regional Court received an invitation from the director of the hospital to order that the applicant (continue to) be treated as an outpatient (see paragraph 32 above). Contrary to the requirements of the domestic law (sections 607(1) and 608(1) of the Criminal Procedure Law; see paragraphs 46 and 47 above), the Riga Regional Court did not make any decision in this regard within fourteen days. Secondly, after the applicant was eventually admitted to hospital, taking into account that more than six months had elapsed since the adoption of the original decision, section 635(3) of the Criminal Procedure Law (see paragraph 48 above) permitted the applicant's admission, but prohibited his involuntary medical treatment prior to receiving a fresh report of a medical panel. Judge I.Š. requested such a report on 29 October 2009 and it was prepared on 3 November 2009. Almost two more months elapsed before the Riga Regional Court decided, on 28 December 2009, to extend the order that the applicant receive involuntary inpatient treatment.

100. The Court reiterates that, in order for a deprivation of liberty not to be considered arbitrary, both the order to detain and the execution of the detention must genuinely conform to the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 69, ECHR 2008). In the present case, the deprivation of the applicant's liberty had been ordered in connection with his mental health problems, in his own interests and those of the general public (see paragraphs 24, 93 and 94 above).

101. The only piece of information in the possession of the Riga Regional Court concerning the dynamics of the state of the applicant's mental health during the time that had elapsed since the adoption of the decision of 20 August 2008 was a report of 20 August 2009, according to which the applicant could be treated as an outpatient. Taking into account that, as the Court has already found, the applicant had never been officially served with a copy of the decision of 20 August 2008 and that his subsequent actions appear to suggest that he believed that the said decision had ordered his outpatient treatment, he cannot be blamed for failing to voluntarily admit himself to the hospital. It was thus the responsibility of the domestic authorities to ensure that the decision of the Regional Court was adequately enforced. Since it had not been done for more than fourteen months, the domestic authorities had an obligation to display particular diligence in verifying that the applicant's state of health did indeed still warrant the deprivation of his liberty. The Court has previously found that a certain delay before fresh expert evidence confirming the need to continue confinement is obtained is inevitable (see *Witek v. Poland*, no. 13453/07, § 43, 21 December 2010). However, in the light of the circumstances of the present case, the Court finds that the Riga Regional Court's decision to schedule a hearing almost two months after the receipt of the expert evidence of 3 November 2009 displays a manifest lack of diligence on the part of that court.

102. In view of the above, the Court concludes that it has not been shown that the applicant's mental state necessitated his confinement in a psychiatric hospital between 22 October and 28 December 2009. It was accordingly not justified by Article 5 § 1 (e).

103. As regards the applicant's confinement from 28 December 2009 onwards, the Court sees no reason to question its legality since the decision on which it was founded was the result of fresh expert evidence justifying such confinement.

3. Conclusion

104. The Court has found that the deprivation of the applicant's liberty between 22 October and 28 December 2009 was not justified by subparagraphs (b) and (e) of Article 5 § 1. Taking into account that the Government did not argue that it was justified by any of the remaining

subparagraphs of Article 5 § 1, the Court concludes that there has been a violation of Article 5 § 1.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

105. Lastly, the applicant submitted other complaints under Article 3 of the Convention and Article 4 of Protocol No. 7. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. The applicant claimed 764,446 euros (EUR) in respect of pecuniary damage and EUR 79,000 in respect of non-pecuniary damage.

108. The Government considered that there was no link between the alleged violations of the Convention and the pecuniary damage claimed. With regard to the non-pecuniary damage the Government noted that only EUR 20,000 related to the alleged violation of Article 5 §§ 1 and 4 and the remainder pertained to complaints that had not been communicated to the Government. The Government considered the latter sum to be exorbitant and unfounded.

109. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, ruling on an equitable basis, it awards the applicant EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

110. The applicant also claimed EUR 3,162 for the costs and expenses incurred before the Court. That included EUR 2,440 for legal services provided by a sworn attorney I.R. (the statement issued by the lawyer refers, among other things, to "consultation on filling written pleadings"), his

Internet subscription fee, postal, fax and copying expenses, as well as other miscellaneous items.

111. The Government admitted that the applicant was entitled to reimbursement of the EUR 11 he paid for fax services. With regard to the remainder of the claim, the Government argued that the applicant had failed to prove that the costs for legal services had been "actually incurred" (*Andrejeva v. Latvia* [GC], no. 55707/00, § 115, ECHR 2009), since he had failed to submit a contract for legal services stipulating the obligation to pay such expenses. The Government further noted that the legal services provided had not been described in sufficient detail. With regard to the other expenses, the Government argued that they had either not been necessarily incurred or else had not been properly documented.

112. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The Court agrees with the Government that in the absence of a contract for legal services or copies of invoices or similar documents, it cannot be said that the applicant has proved that the claimed costs for legal services have been "actually incurred". With regard to the remainder of the applicant's claim, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 50 covering costs under all heads.

C. Default interest

113. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's objection as to the exhaustion of domestic remedies concerning the complaint under Article 5 § 4 of the Convention and *rejects* it;

2. *Declares* the complaints concerning Article 5 §§ 1 and 4 admissible and the remainder of the application inadmissible;

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

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

5. *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:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 50 (fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 23 September 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	George Nicolaou
Registrar	President