

SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE
OF MINISTERS
COMITÉ
DES MINISTRES



Contact: Zoe Bryanston-Cross
Tel: 03.90.21.59.62

Date: 23/11/2020

DH-DD(2020)1066

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1390th meeting (December 2020) (DH)

Item reference: Action Report (18/11/2020)

Communication from Russian Federation concerning the case of RAKEVICH and 8 other cases v. Russian Federation (Application No. 58973/00)

* * * * *

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1390^e réunion (décembre 2020) (DH)

Référence du point : Bilan d'action (18/11/2020)

Communication de la Fédération de Russie concernant l'affaire RAKEVICH et 8 autres affaires c. Fédération de Russie (requête n° 58973/00) (*anglais uniquement*)

DGI

18 NOV. 2020

SERVICE DE L'EXECUTION
DE LA CEDH**ACTION REPORT****on execution of the judgments of the European Court of Human Rights concerning mainly legal incapacitation and psychiatric hospitalisation (*Rakevich* group of cases)**

Application No.	Case	Judgment of	Final on
58973/00	RAKEVICH	28/10/2003	24/03/2004
26321/03	BIK	22/04/2010	04/10/2010
33117/02	LASHIN	22/01/2013	22/04/2013
5525/11	MIFOBOVA	05/02/2015	05/05/2015
28796/07	PETUKHOVA	02/05/2013	02/08/2013
44009/05	SHTUKATUROV	27/03/2008	27/06/2008
34449/03	SHULEPOVA	11/12/2008	11/03/2009
40979/04	TRUTKO	06/12/2016	06/03/2017
11737/06	ZAGIDULINA	02/05/2013	02/08/2013

Group summary

These cases concern violations related to legal incapacitation and psychiatric hospitalisation, mainly stemming from three problems existing in legislation at the material time: first, under the Code of Civil Procedure, a legally incapacitated person was automatically deprived of all procedural rights, including to appeal against the court's decision on legal incapacitation (Article 6) and to claim restoration of legal capacity (Article 8). Second, under the Civil Code, when deciding on legal incapacitation, the courts could either declare the person fully incapacitated or fully reject the incapacitation claim, with no possibility to adopt any other, tailor-made, response (Article 8). Third, under the Psychiatric Care Act, when deciding on psychiatric hospitalisation of legally incapacitated persons, their guardian's opinion was enough for hospitalisation, such hospitalisation thus being considered as voluntary, escaping judicial scrutiny via either initial approval or subsequent appeal (Article 5 § 1(e); Article 5 § 4). These violations occurred in different Russian cities in 1999-2007.

Apart from these three major groups of violations, the Court also found various violations stemming mainly from non-compliance with the domestic procedure, as well as, in some cases, from poorly reasoned decisions, in particular:

- arbitrariness and ambiguity of the reasons for hospitalisation (*Shtukaturov, Lashin*) (Article 5 § 1(e));
- arbitrariness of the proceedings for involuntary hospitalisations, notably on account of absence of proper legal assistance and failure to provide a full copy of the authorisation for involuntary treatment (*Mifobova*) (Article 5 § 1)
- non-compliance with the legislative time-limit within which the psychiatric hospitals' officials should lodge a request for a court's approval for involuntary psychiatric confinement (*Bik, Lashin*) (Article 5 § 1) and which the judges have to consider such request (*Rakevich, Shulepova, Lashin*) (Article 5 § 1);
- absence at the hearing (*Lashin* – under Article 8; *Shtukaturov* – under Article 6; *Zagidulina, Mifobova, Trutko* – under Article 5 § 1);
- issuing of a court order for compulsory psychiatric examination without ascertaining whether the applicant's position, subsequent failure to inform the applicant about this order and ungrounded detention in a police station, allegedly for non-compliance with this order, before it was enforced by the police (*Petukhova*) (Article 5 § 1 (b));
- the courts' refusal to consider a complaint against the involuntary hospitalisation on the sole ground that the applicant has already been discharged from the hospital (*Zagidulina*) (Article 5 § 1 (e));
- unsubstantiated confinement on the basis of a hospital order issued well before it (*Trutko*) (Article 5 § 1(e));
- breach of the principle of equality of arms on account of the appointment as experts of the respondent hospital's employees in the proceedings (*Shulepova*) (violation of Article 6 § 1);
- refusal to grant the applicant's request for a psychiatric examination by experts not belonging to the State forensic institutions, in violation of the domestic law (*Lashin*) (Article 8);
- failure to provide the psychiatrically confined applicant with access to his lawyer notwithstanding the interim measure to this effect indicated by the European Court (*Shtukaturov*) (violation of Article 34).

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

The *Rakevich* case also concerns the violation of Article 5 § 4 because the applicant had no right, under domestic law, to initiate judicial review of psychiatric confinement.

I. Payment of just satisfaction and individual measures

a) Details of just satisfaction

Name and application number	Pecuniary damage	Non-pecuniary damage	Costs and expenses	Total	Paid on
Rakevich (58973/00)	-	EUR 3,000	-	EUR 3,000	31/05/2004
Bik (26321/03)		EUR 1,000		EUR 1,000	Not paid: see below
Lashin (33117/02)	-	EUR 25,000	-	EUR 25,000	19/06/2013
Mifobova (5525/11)	-	-	-	-	-
Petukhova (28796/07)	-	EUR 3,000	EUR 850	EUR 3,850	02/10/2013
Shtukaturrov (44009/05)	-	EUR 25,000	-	EUR 25,000	30/12/2010
Shulepova (34449/03)	-	EUR 4,000	-	EUR 4,000	27/03/2009
Trutko (40979/04)	-	-	-	-	-
Zagidulina (11737/06)	-	EUR 7,500	EUR 2,500	EUR 10,000	09/10/2013

In the *Bik* case, several letters were sent to the applicant inviting him to provide his bank details (on 21 June and 14 December 2010, and on 26 August 2011). When contacted by phone on 26 August 2011, the applicant confirmed the receipt of the letters. However, he indicated that he did not wish to receive the sum awarded. The authorities hereby confirm that should the applicant change his position with regard to the just satisfaction, the relevant sums will be immediately paid to him in accordance with the procedure established by domestic legislation.

Ms Mifobova and Ms Trutko did not claim just satisfaction before the European Court or after it.

b) Other individual measures

Legal capacity of the applicants who had earlier been deprived of it (Mr Shtukaturrov, Mr Lashin) was restored.

All the applicants concerned were released from psychiatric confinement either before or after the adoption of the European Court' judgments.

II. General measures

Three legislative reforms took place to address the problems underlying the main violations found in the present group.

First, the Code of Civil Proceedings (Articles 116, 167, 284.1, 286), since March 2011, provides that a legally incapacitated person enjoys the same procedural rights as any other person, including the right to appeal against the incapacitation decision and to request the restoration of legal capacity.

Second, the Civil Code (Article 30, Section 2) provides, since March 2015, for a third, intermediate, form of legal incapacitation (similar to that of minors between fourteen and eighteen years old).

Third, the Psychiatric Care Act (Article 28 Sections 3 and 4.1), since April 2011, introduced a presumption that psychiatric hospitalisation is involuntary and accordingly requires an authorisation from a court, unless the person clearly stated that he or she agrees for hospitalisation. The authorities thus now always take the incapacitated person's opinion into account. The position of a guardian is accordingly not sufficient for hospitalisation.

The European Court in one of its more recent judgments highlighted these positive developments (*Shakulina and Others*, No. 24688/05, judgment of 5 June 2018, final on the same date, §§ 62, 63, 82).

As to the problem of the hospitals' officials failure to apply for involuntary hospitalisation to a court within 48 hours from the time when a person has been hospitalised, in violation of domestic law (*Bik*), this problem was related to the fact that the courts were closed during weekends at the time of the events. Since then, a duty schedule for weekends and holidays has been introduced in the courts in order to prevent similar violations.

As to the other violations, which stem mainly from non-compliance with domestic law and from poorly reasoned decisions, publication and wide targeted dissemination of the judgments will prevent similar violations. Accordingly, the majority of the judgments were translated and disseminated among the relevant authorities, including among the courts, prosecutors' offices and the public health and social care authorities, on both federal and regional levels.

The problem of the absence of the patient's right to request review of the initial confinement to a psychiatric hospital (Article 5 § 4, *Rakevich*) continues to be supervised within the framework of the *Bataliny* case.

III. Conclusions of the respondent State

The government considers that the measures adopted have fully remedied the consequences of the violations of the Convention found by the European Court in these cases and that these measures will prevent similar violations. The Russian Federation has, therefore, complied with its obligations under Article 46, paragraph 1, of the Convention.