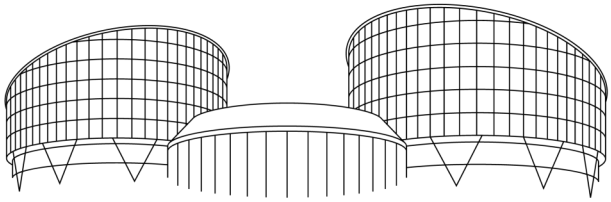

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF SABEVA v. BULGARIA

(Application no. 44290/07)

JUDGMENT

STRASBOURG

10 June 2010

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 Sabeva v. Bulgaria,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 44290/07) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms Evgeniya Ivanova Sabeva ("the applicant"), on 24 September 2007.

2. The applicant was represented by Ms S. Stefanova and Mr M. Ekimdzhiev, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms S. Atanasova, of the Ministry of Justice.

3. The applicant alleged, in particular, that her confinement in a psychiatric hospital was unlawful, that she had no opportunity to seek judicial review of that confinement, that she did not have an enforceable right to compensation in respect of these matters, and that the conditions of her detention were inhuman and degrading.

4. On 20 January 2009 the Court decided to give priority to the application under Rule 41 of its Rules. On the same date it decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Stara Zagora.

6. On 27 December 2005 the Stara Zagora District Court granted the applicant's petition for divorce from her husband, with whom she had two daughters.

A. The proceedings for the applicant's confinement in a psychiatric hospital

7. On 14 July 2006 the applicant's former husband asked the Stara Zagora District Prosecutor's Office to apply for a court order for the applicant to be subjected to compulsory treatment. He asserted that her mental health had deteriorated sharply and that she was not taking care of their children. That Office carried out a inquiry, in the course of which it took statements from the applicant, her former husband, and their two daughters. The applicant said that, if necessary, she would voluntarily submit to a psychiatric examination. Her former husband alleged that she had been delusional and paranoiac for many years, and had been harassing both him and their two children. The two daughters, at that time aged eighteen and eleven, made similar statements. The social services drew up a report which said that the applicant had expressed her fears of persecution by the former communist secret services, which in their view showed that she had psychiatric problems and needed treatment.

8. On 8 September 2006 the Stara Zagora District Prosecutor's Office applied to the Stara Zagora District Court for an order for the applicant's compulsory treatment. It described the allegations of her former husband, and asserted that her mental condition had deteriorated and that there was a risk that she would cause harm to herself, her relatives or third parties, or would seriously endanger her health.

9. The court appointed counsel for the applicant and examined the case at a hearing held on 3 October 2006. It heard the applicant, who denied that she was suffering from any mental disorder, and a psychiatric expert, who was of the opinion that she did have such a disorder, but that the question as to whether it required compulsory treatment could be answered only after a more detailed examination. The court accordingly ordered a psychiatric expert report, asking the expert to determine, *inter alia*, whether the applicant was suffering from a mental disorder, whether she presented a risk for others or herself, and whether she could be effectively treated as an out-patient.

10. The report, drawn up by Dr I.D., head of the in-patient department of the Stara Zagora Regional Psychiatric Clinic, on the basis of the materials in the case file and an examination of the applicant, concluded that she had a "persistent mental disorder" and a "paranoid syndrome with persecution delusions". It further stated that the risk of her committing a violent act or an offence was low, but could not be fully ruled out. It expressed the view that she was unlikely to be able to cope with everyday tasks and especially those relating to parenting. It finally stated that lack of treatment could have a negative impact on her health, and recommended that she be treated in a closed psychiatric establishment for at least two months. If she showed a more critical attitude towards her disorder she could also be treated as an out-patient.

11. At a hearing held on 16 October 2006 the court heard Dr I.D., who maintained his conclusions and expressed the opinion that unless committed to a psychiatric hospital the applicant would not submit to treatment. The applicant replied that she was perfectly healthy and did not need treatment. The court admitted Dr I.D.'s report in evidence and heard the parties' arguments. In her closing statement the applicant mentioned that in 2006 her former husband had been convicted on the basis of information she had supplied to the prosecution authorities. In view of this new information, and noting that Dr I.D.'s report relied heavily on information furnished by the applicant's former husband, the court decided to order a second report, to be drawn up by three different experts.

12. The report was prepared by three psychiatrists of the Stara Zagora Regional Psychiatric Clinic, on the basis of the materials in the case file and an examination of the applicant. It made, almost verbatim, the same findings as the initial report, but in its conclusion also stated that the applicant presented a risk to her relatives, society and her own health.

13. At a hearing held on 1 November 2006 the court heard a witness called by the applicant and the three experts, who maintained their findings and said that the applicant could not be treated as an out-patient. In reply to a question by counsel for the applicant, one of the experts specified that Dr I.D. was not their direct superior. The court admitted the report in evidence and heard the parties' closing arguments.

14. In a judgment of 1 November 2006 the Stara Zagora District Court ordered that the applicant be subjected to compulsory treatment in a closed psychiatric hospital in Radnevo for a period of two months. It found that she was suffering from the disorder described in the two expert reports, both of which it fully credited, observing that they had been to a decisive extent based on an examination of the applicant by the experts. It further found that she posed a risk to herself and others and that, failing treatment, which could only be administered in a closed psychiatric establishment, her condition would worsen. It noted that the experts were unanimous that the applicant could not be effectively treated as an out-patient.

15. The applicant appealed, arguing that the expert reports were flawed because they had chiefly been based on the assertions of her former husband and their daughter, who was living with him and was under his influence. She requested a fresh psychiatric report, to be drawn up by other experts.

16. On 24 November 2006 the Stara Zagora Regional Court rejected the applicant's request, saying that it was unclear on what grounds she was seeking a fresh expert report.

17. At a hearing held on 17 January 2007 the applicant expressed her misgivings about the second expert report, saying that the three psychiatrists were probably influenced by the conclusions of Dr I.D.

18. On 31 January 2007 the Stara Zagora Regional Court upheld the order for the applicant's detention, fully agreeing with the lower court's reasoning. It found that the expert reports were objective and clear, and had been predominantly based on the examinations of the applicant and not on other materials.

B. The applicant's stay in the hospital in Radnevo

19. On 6 February 2007 the applicant was informed that the order for her confinement had become final. As she feared that she might be forcibly detained, she went to the psychiatric hospital in Radnevo in order to learn when she needed to voluntarily attend and what items she needed to take with her. The doctor on duty insisted that the applicant stay at the hospital. Despite her protestations and her explanations that she needed to go back to her house to arrange for someone to take care of her dog during her absence, she was taken into custody.

20. The applicant alleged that, while in the hospital in Radnevo, she was kept in a ward reserved for the most difficult patients and deprived of any contacts with the outside world. She could leave the ward only during the three daily meals. In her submission, the physical and hygienic conditions in the ward were appalling, with faeces and urine on the floor, stained bedsheets, rendering peeling off the walls, windows which could not be closed properly but at the same time did not let in enough light because of the bars, and no locks on the internal doors. She had to block the door of her room with furniture to avoid being assaulted by aggressive patients. Her room was not lit at night, because there were light bulbs only in the corridors. Despite the cold temperatures outside, the heating was turned on only during the doctors' rounds. The food consisted of soup and bread, which were allegedly being thrown on the floor with the patients fighting for them. The applicant's requests to be transferred to another ward were allegedly turned down. However, towards the end of her stay she was allowed to take walks in the hospital's yard. She was treated with pills, which she took because she feared penalties, which were allegedly customary in the ward.

21. According to information submitted by the Government, on admission to the hospital on 6 February 2007 the applicant was put in a closed ward. On 8 February 2007 her detention regime was changed to "normal", and on 15 March 2007 she was placed under an "open-door" regime. After 8 February 2007 she was involved in a physical rehabilitation programme, after 14 February 2007 in work therapy outside her ward, and after 22 February 2007 in art therapy at an art workshop.

22. The Government did not submit information about the conditions of the applicant's detention. They produced a letter from the Ministry of Health which said that the physical conditions in the ward where the applicant had been kept had been in line with the applicable hygienic and safety requirements, and that she had been treated with haloperidol and chlorprothixene.

23. The applicant submitted that during her stay in the hospital she had repeatedly enquired whether it would be possible for her to be discharged before the expiry of the two-month period ordered by the court, and had received the reply that it would not be.

24. Less than a month after her admission the applicant was visited by a friend and learned that this friend, who had a key to her flat, had gone there and was taking care of her dog.

25. The applicant was discharged from the hospital on 30 March 2007.

II. RELEVANT DOMESTIC LAW

26. The compulsory confinement and treatment of those suffering from mental disorders are governed by sections 155-65 of the 2005 Health Act.

27. Section 155, read in conjunction with section 146(1)(1) and (1)(2), makes such confinement subject to two pre-conditions. First, the persons concerned must suffer from (i) serious malfunction of the psychological functions (psychosis or a serious personality disorder), (ii) enduring psychological damage due to a mental illness, (iii) moderate, serious or profound mental retardation, or (iv) vascular or senile dementia. Second, their condition must create a risk that they might commit a criminal offence which would put their relatives, third parties, society at large, or their own health in danger. Case-law provided by the Government (реш. от 29 март 2006 г. по н. ч. д. № 3235/2006 г., СРС, НК, 103 състав; реш. от 26 април 2006 г. по н. ч. д. № 3863/2006 г., СРС, НК, 7 състав; реш. № 187 от 20 юли 2007 г. по в. ч. н. д. № 317/2007 г., ОС-Велико Търново) shows that in applying section 155 the Bulgarian courts take into account both the risk to others and to the persons concerned themselves.

28. The assessment of whether or not an individual has a mental disorder cannot be based on family, professional or other conflicts, or on information about such disorders in the past (section 147(2)).

29. The procedure for deciding whether or not to order compulsory confinement is set out in detail in sections 156-63. Matters not specifically covered by these provisions are regulated by the 2005 Code of Criminal Procedure – section 165(1). It takes place before the district court with territorial jurisdiction. The proceedings start at the request of the public prosecutor or, in certain cases, the head of a psychiatric establishment. The request has to be sent to the individual concerned, who can comment on it in writing and adduce evidence. The court then has to hold a public hearing in the presence of the individual; the participation of a psychiatrist and counsel is mandatory. The court must hear the individual and the psychiatrist. If it then proposes to order confinement, it must order a psychiatric expert report. A special regulation (*Наредба № 16 от 13 май 2005 г. за съдебно-психиатричните експертизи за задължително настаняване и лечение на лица с психични разстройства*) sets out in detail the manner in which the report must be drawn up. The individual concerned must then be given an opportunity to comment on the report. The district court's order for his or her confinement can be appealed before the regional court.

30. Compulsory confinement is discontinued either after the expiry of its allowed term, or earlier, by decision of the competent district court (section 164(1)), at the request of the individual concerned, the public prosecutor, or the head of the establishment in which the detainee is being treated (section 164(3)). The court must in addition review the matter of its own motion every three months, and decide, on the basis of a psychiatric report drawn up by the hospital where the individual concerned is being treated, whether or not to extend the confinement (section 164(2)). This procedure must be attended by all the safeguards available in the initial confinement procedure (ibid.).

III. REPORTS BY THE COMMITTEE FOR THE PREVENTION OF TORTURE AND THE BULGARIAN HELSINKI COMMITTEE

31. During its visit to Bulgaria between 10 and 21 September 2006, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") inspected two psychiatric hospitals, in Karlukovo and Byala, and one psychiatric dispensary with in-patient wards, in Ruse. In its ensuing report (CPT/Inf (2008) 11) it noted, *inter alia*, that, with the exception of one ward, the material conditions in both hospitals were respectively "in an advanced state of dilapidation" and "in a poor state of repair" (paragraphs 131 and 134). The blankets and the bed linen in Karlukovo were fraying, and in Byala, while "[a]ll patients had been provided with new bed linen shortly before the visit [but] there was no spare bed linen in stock" (paragraphs 131 and 135). Also, the funding allocated for food was quite limited, amounting to 1.98 Bulgarian levs

(BGN)[1] and BGN 1.39[2] per patient per day, which did not allow patients to be properly fed (paragraphs 132 and 136). It also observed that in both Karlukovo and Byala acute and chronic patients were not duly separated (paragraph 142). Concern was also expressed about the low number of staff present in the wards, especially at night, which increased the risk of inter-patient violence (paragraphs 129 and 145).

32. In a report drawn up in December 2005 ("Inpatient Psychiatric Care and Human Rights in Bulgaria in 2005") the Bulgarian Helsinki Committee described its findings relating to, among other things, various aspects of the conditions in a nineteen psychiatric hospitals, including that in Radnevo, which it visited between May and August 2005.

33. The report contains the following findings in respect of the hospital in Radnevo. There was a serious problem with heating and hot water supply (p. 61 of the Bulgarian version of the report and p. 20 of the English version). In 2004 some of the toilets had been renovated (p. 59 of the Bulgarian version of the report). The hospital had a library which was open for one or two hours a day, and a small foodstuffs shop for the patients (p. 62 of the Bulgarian version of the report and p. 21 of the English version). It also had a sports room, an occupational therapy farm and a workshop (p. 63 of the Bulgarian version of the report and p. 21 of the English version), and ran a program for accompanying therapy and social rehabilitation (p. 82 of the Bulgarian version of the report). The hospital did not have a dedicated space for drying patients' clothes, with the result that patients had to use their beds or the window bars as washing lines, with water flowing directly on the floor (p. 109 of the Bulgarian version of the report). No data was available on the funding allocated for food in 2004-05, but in 1998 and 2001 it had been BGN 1.08[3] (p. 97 of the Bulgarian version of the report). However, the hospital was also using production from its own farm (p. 97 of the Bulgarian version of the report). During the visit, some patients had expressed the view that, although food was insufficient, they were not entitled to complain because they would not have had even that amount of food at their homes (p. 98 of the Bulgarian version of the report).

34. In its description of the conditions of one of the wards of the hospital in Karlukovo, the report mentioned, at p. 58 of the Bulgarian version and by reference to an earlier CPT report (CPT/Inf (2004) 21), that there was crumbling plaster, peeling paint, and a pervasive smell of urine in several patients' rooms despite the fact that windows and doors were left wide open.

1. Equivalent to 1.01 euros (EUR)
2. Equivalent to EUR 0.71
3. Equivalent to EUR 0.55

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

35. The applicant complained about the conditions of her detention in the hospital in Radnevo. She relied on Article 3 of the Convention, which provides as follows:

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

A. The parties' submissions

36. In their observations the Government stated that they had informed the competent authorities about the applicant's complaint. Those authorities had undertaken to carry out an inquiry into the matter, and the results of that inquiry would be provided to the Court. Later the Government transmitted to the Court a letter from the Ministry of Health, which said that the material conditions in the ward where the applicant had been kept were in line with the applicable hygiene and safety requirements.

37. The applicant reiterated her allegations set out in paragraph 20 above and argued that her detention in such conditions amounted to inhuman and degrading treatment. She additionally relied on several reports, published by the Bulgarian Helsinki Committee and Amnesty International in 2001, 2002, 2005 and 2007, and describing the conditions in various psychiatric hospitals in the country (but not in the one in Radnevo). According to those reports, the material conditions and the standard of care in those hospitals were often unacceptable.

B. Admissibility

38. The Court considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

C. The Court's assessment

39. According to the Court's case-law, allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see, as a recent authority, *Gavazov v. Bulgaria*, no. 54659/00, § 93, 6 March 2008). However, Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who

alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. A failure on their part to submit such information without a satisfactory explanation may therefore give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI; *Taniş and Others v. Turkey*, no. 65899/01, § 163, ECHR 2005-VIII; *Fedotov v. Russia*, no. 5140/02, § 60, 25 October 2005; *Khudoyorov v. Russia*, no. 6847/02, § 113, ECHR 2005-X (extracts); *Yordanov v. Bulgaria*, no. 56856/00, § 83, 10 August 2006; *Staykov v. Bulgaria*, no. 49438/99, § 74, 12 October 2006; *Kostadinov v. Bulgaria*, no. 55712/00, § 48, 7 February 2008; and *Gavazov*, cited above, § 95). Indeed, Rule 44C § 1 of the Rules of Court, inserted on 13 December 2004, expressly provides that "[w]here a party fails to adduce evidence or provide information requested by the Court ... the Court may draw such inferences as it deems appropriate".

40. It should however be added that the specificity of the Court's task – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before it, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. The level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII, with further references).

41. In the instant case, save for her own assertions – which were apparently made for the first time in the proceedings before the Court and were not brought to the attention of any domestic authority –, the applicant did not provide any concrete evidence relating to the conditions of her detention. She did not submit statements by co-detainees (contrast *Khudoyorov*, §§ 71 and 113, and *Gavazov*, §§ 59 and 94, both cited above), or by other persons who might possess relevant information, such as the friend who visited her less than a month after her admission in the hospital (see paragraph 24 above). Nor did she submit any medical evidence showing the impact of the conditions in which she was kept on her physical or psychological well-being (compare *Georgiev v. Bulgaria*, no. 47823/99, § 64, 15 December 2005 and contrast *Staykov*, cited above, § 41). In the

specific circumstances of the case, the Court must treat the applicant's assertions with certain caution, for two reasons. Firstly, it may sometimes be unreasonable to expect mentally disturbed persons to give a detailed or coherent description of what they have experienced during their detention (see *Aerts v. Belgium*, 30 July 1998, § 66, *Reports of Judgments and Decisions* 1998-V). Secondly, the applicant might have a tendency to exaggerate the inadequacy of the conditions in the hospital partly because she had a negative attitude towards an establishment in which she considered she should have never been detained (see *B. v. the United Kingdom*, no. 6870/75, Commission's report of 7 October 1981, Decisions and Reports (DR) 32, p. 29, §§ 174 and 175). The Court is unable to find any definite corroboration of her allegations in the CPT's report, which relates to other establishments and not to the hospital in Radnevo (see paragraph 31 above, and contrast *Iovchev v. Bulgaria*, no. 41211/98, § 130 *in limine*, 2 February 2006, and *Todor Todorov v. Bulgaria*, no. 50765/99, § 47, 5 April 2007), and makes no general observations about the conditions in psychiatric hospitals in Bulgaria (contrast *I.I. v. Bulgaria*, no. 44082/98, §§ 37 and 71, 9 June 2005, as well as *Iovchev*, 130, and *Staykov*, §§ 60 and 79, both cited above). By contrast, the report of the Bulgarian Helsinki Committee, which, while relating to a period which pre-dates the applicant's stay in Radnevo by almost two years, did make specific findings in respect of that hospital (see paragraph 32 above). It identified problems with heating and hot water, with the arrangements made for drying patients' clothes, and, to a certain extent, with the quality and quantity of food (see paragraph 33 above). However, the Court is not persuaded that those matters – which are in stark contrast with the findings that the report makes in respect of one of the wards of the hospital in Karlukovo (see paragraph 34 above) and fall far short of the very serious allegations made by the applicant (see paragraph 20 above) – were sufficient for the conditions of her detention to be described as inhuman and degrading.

42. In view of the foregoing, and despite the Government's failure to provide a detailed account of the conditions of the applicant's detention (see paragraphs 22 and 36 above), the Court is not satisfied "beyond reasonable doubt" that she suffered treatment that could be classified as inhuman or degrading.

43. There has therefore been no violation of Article 3 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

44. The applicant alleged that her confinement to a psychiatric hospital was in breach of Article 5 § 1 of the Convention because it did not comply with the requirements of its sub-paragraph (e).

45. She also alleged that she had no opportunity to seek judicial review of her confinement as required by Article 5 § 4 of the Convention.

46. Lastly, she complained under Article 5 § 5 of the Convention that she did not have an enforceable right to compensation in respect of the alleged breaches of Article 5 §§ 1 and 4.

47. Article 5 of the Convention, in so far as relevant, 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 for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> ...
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. The parties' submissions

48. The Government conceded that the applicant had been deprived of her liberty, but asserted that her detention had been fully compliant with the requirements of Article 5 § 1 (e). In particular, she was reliably shown to be suffering from a mental disorder. The national courts ordered two expert reports, which were competently made and unanimous on this point. The courts moreover saw the applicant in person. There was no need for them to require the experts to carry out additional tests because the diagnostic methods of psychiatry were outside their competence. The applicant's misgivings as to the objectivity of the expert reports were groundless. Her disorder was later confirmed upon her admission to hospital. The experts also found that the applicant's disorder was of a degree and kind warranting confinement, because she could not be effectively treated as an out-patient, whereas lack of treatment would lead to a worsening of her condition. Lastly, the applicant's assertion that section 155 of the 2005 Health Act did

not allow the detention of persons who posed a risk only to themselves found no support in the national courts' case-law.

49. The Government further submitted that there had been no breaches of paragraphs 4 and 5 of Article 5. They argued that the risk of improper confinement was minimal, and that in the rare cases where a mistake occurred those concerned could bring a tort claim.

50. The applicant submitted that it had not been reliably shown that she was suffering from a mental disorder. The only information supporting such a conclusion came from the allegations of her former husband. The first expert asked by the court to report on her mental condition did not examine her properly, did not consult with other specialists, and based his findings predominantly on the assertions of her former husband and their children, who harboured an interest in confining her to a psychiatric establishment. Indeed, this prompted the district court to order a second expert report. However, the experts who drew it up were directly subordinate to the expert who had prepared the initial report, and their conclusions unsurprisingly matched his. On appeal counsel for the applicant requested a fresh expert report, but his request was turned down without any reasoning.

51. The applicant further argued that her alleged disorder was not of a kind or degree to justify her detention. The experts concluded that she was unlikely to commit an offence and was a risk solely to her own welfare, without even specifying in what way. The courts found that she was such a risk, but section 155 of the 2005 Health Act did not allow detention on such grounds. It contained an exhaustive enumeration of hypotheses in which individuals could be compulsorily confined, and those concerned solely situations where they would endanger another or commit an offence.

52. The applicant also submitted that she did not have a realistic opportunity of applying to a court to obtain a ruling on the lawfulness of her detention, for three reasons. First, since release was conditional upon the grounds for continued confinement ceasing to exist, she could not herself, without expert assistance, assess whether a request for release would stand any chances of success. Second, while in the hospital she could not consult with a lawyer and did not have pen and paper to draft a request for release. Third, the law did not lay down any procedure or time-limits for transmitting such a request from the hospital to the court. She had asked the doctors whether it would be possible for her to be released and had received a negative answer. There was therefore no assurance that any request submitted by her would be dealt with. Moreover, the correspondence of those confined in psychiatric establishments was being routinely monitored.

53. Lastly, the applicant argued that she could not obtain compensation in respect of her detention. There were no examples of persons receiving compensation in such circumstances. The general rules of tort were not applicable, because the decision to confine her was taken by a court,

whereas court liability could be invoked only under section 2 of the 1988 State Responsibility for Damage Act, which did not cover her case.

B. Admissibility

54. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

C. The Court's assessment

1. Article 5 § 1

55. It was common ground between the parties that the applicant was deprived of her liberty within the meaning of Article 5 § 1 and that her detention falls to be examined under sub-paragraph (e) of that provision. The Court sees no reason to hold otherwise.

56. An individual cannot be considered to be of "unsound mind" and deprived of his liberty under Article 5 § 1 (e) unless the following three conditions are satisfied: he or she must be reliably shown to be of unsound mind, that is to say the existence of a true mental disorder must be established before a competent authority on the basis of objective medical expertise; 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, among other authorities, *X v. the United Kingdom*, 5 November 1981, § 40, Series A no. 46). With regard to the second of those conditions, the Court observes that the persons mentioned in Article 5 § 1 (e) may be deprived of their liberty in order to, *inter alia*, be given medical treatment, that is, not only because they are a danger to the public but also because their own interests may necessitate their detention (see *Guzzardi v. Italy*, 6 November 1980, § 98 *in fine*, Series A no. 39; *Witold Litwa v. Poland*, no. 26629/95, § 60, ECHR 2000-III; *Koniarska v. the United Kingdom* (dec.), no. 33670/96, 12 October 2000; and *Gorshkov v. Ukraine*, no. 67531/01, § 37, 8 November 2005). That said, detention is such a serious measure that it is only justified where other, less severe, measures have been considered and found to be insufficient to safeguard the individual or the public interest (see *Varbanov v. Bulgaria*, no. 31365/96, § 46, ECHR 2000-X). However, while the Court undoubtedly has jurisdiction to verify the fulfilment of those conditions, the logic of the system of safeguard established by the Convention places limits on the scope of this control. Since the national authorities are better placed to evaluate the evidence adduced before them, they are to be recognised as having a certain discretion in the matter and the

Court's task is limited to reviewing under the Convention the decisions they have taken (see *X v. the United Kingdom*, cited above, § 43, and *Wassink v. the Netherlands*, 27 September 1990, § 25, Series A no. 185-A).

57. The Court additionally observes that the expressions "in accordance with a procedure prescribed by law" and "lawful" used in Article 5 § 1 (e) require the impugned measure to have a basis in domestic law and that this law should be accessible to the persons concerned and foreseeable as to its effects (see *Varbanov*, cited above, § 51). However, while the Court is competent to satisfy itself as to compliance with this law, the scope of its task in this connection is also subject to limits inherent in the logic of the European system of protection, because it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see *Bozano v. France*, 18 December 1986, § 58, Series A no. 111).

58. In the instant case, the first question is whether the applicant was reliably shown to be suffering from a mental disorder. On this point, the Court observes that the court examining the proposal for her compulsory confinement first heard from a psychiatric expert, who considered that she was suffering from such a disorder, but that further expert assessment was necessary for a definite conclusion. The court then ordered two medical expert reports, both of which concluded that the applicant was suffering from a mental disorder (see paragraphs 9-13 above). Those reports were criticised by the applicant as predominantly based on the allegations of her former husband and their daughter. However, the Court notes that before drawing up each of the two reports the experts examined the applicant in person (see paragraphs 10 and 12 above). Both levels of court specifically found that these examinations had been the decisive factor in the experts' assessment (see paragraphs 14 and 18 above). It is true that in the light of the fresh information supplied by the applicant on 16 October 2006 the first-instance court felt that it could not unconditionally rely on the initial report and needed to obtain the opinion of other experts (see paragraph 11 above). However, these experts arrived at the same conclusions as the first one, Dr I.D. While the applicant tried to undermine their credibility, alleging that they were his subordinates, the Court observes that in reply to a question from her counsel those experts made it clear that Dr I.D. was not their direct superior (see paragraph 13 above). Moreover, it cannot be overlooked that the court eventually came to rely on both reports (see paragraph 14 above). In any event, the Court sees no reason to doubt that the experts were fully qualified and had grounded their conclusions on their best professional judgment, informed by the entirety of the relevant information. In view of these considerations, and noting that the national courts were in a far better position to assess the probative value of the expert reports and, more generally, to determine the factual issue as to whether or not the applicant was suffering from a mental disorder, the Court finds no grounds to interfere with their assessment on this point, or to impugn the

appellate court's refusal to order a fresh expert report (see paragraph 16 above).

59. The second issue is whether the applicant's disorder was of a kind or degree warranting confinement. Here, the Court observes that while the experts found that she was not aggressive or likely to commit an offence, they considered that, in view of the nature of her disorder, she would not submit to treatment voluntarily, whereas, failing treatment, her situation was likely to worsen (see paragraphs 10 and 12 above). The Court is therefore satisfied that the applicant's disorder was of a degree and kind warranting confinement. In as much as the she expressed doubts about the reliability of the experts' and courts' findings on this point, it refers to its reasoning above.

60. The Court also notes that the experts were specifically asked to consider the possibility of treating the applicant as an out-patient, and eventually ruled it out (see paragraphs 9, 10, 11 and 13 above), prompting the courts to opt for compulsory confinement (see paragraphs 14 and 18 above). It is thus satisfied that, as required under its case-law, less severe measures than detention were considered and found to be insufficient.

61. Lastly, the Court observes that the interpretation of section 155 of the 2005 Health Act advanced by the applicant – that it does not allow the compulsory confinement of individuals who present a risk only to themselves – seems to find support neither in the Bulgarian courts' case-law nor in the courts' decisions in the present case (see paragraph 27 above). As already noted, it is primarily for the national courts' task to construe and apply domestic law, and to dispel any interpretational doubts. Finding no arbitrariness in the interpretation adopted by them in the present case, the Court is satisfied that the applicant's deprivation of liberty was lawful within the meaning of Article 5 § 1 of the Convention.

62. There has therefore been no violation of that provision.

2. Article 5 § 4

63. While persons deprived of their liberty by virtue of a decision taken by an administrative body are entitled to have the lawfulness of this decision reviewed by a court, the same does not apply when the decision is made by a court at the close of judicial proceedings. In those cases, the review required by Article 5 § 4 is incorporated in the decision (see, among other authorities, *Luberti v. Italy*, 23 February 1984, § 31, Series A no. 75). However, provision should always be made for subsequent review to be available at reasonable intervals, in as much as the reasons initially warranting confinement may cease to exist (ibid.). Thus, persons of unsound mind detained for an indefinite or lengthy period are entitled, where there is no automatic periodic review of a judicial character, to take proceedings at reasonable intervals before a court to put in issue the lawfulness – within the meaning of the Convention – of their detention, whether it was ordered by a

court or by some other authority (see *X v. the United Kingdom*, cited above, § 52 *in fine*, and, more recently, *Shtukaturov v. Russia*, no. 44009/05, § 121, 27 March 2008).

64. In the instant case, the applicant's committal to a psychiatric hospital was decided by a court at the close of judicial proceedings attended by full procedural safeguards (see paragraphs 8-18 and 29 above). All that was required under Article 5 § 4 in these circumstances was for her to have at her disposal the opportunity of subsequent review of the continued validity of her detention at reasonable intervals. The length of the applicant's confinement is thus of some importance, because, in the context of compulsory confinement of persons of unsound mind, the Convention organs, without specifying exactly what amount of time can be considered a "reasonable interval", have accepted periods of up to six and nine months and even a year (see *Megyeri v. Germany*, 12 May 1992, § 26, Series A no. 237-A; *Herczegfalvy v. Austria*, 24 September 1992, § 77, Series A no. 244; *X v. Belgium*, no. 6692/74, Commission decision of 13 March 1975, DR 2, p. 109; and *Turnbridge v. the United Kingdom*, no. 16397/90, Commission decision of 17 May 1990, unreported). By contrast, the length of the applicant's confinement was only two months. It could not be extended without a further judicial order, and if extended for more than three months it would have periodically been subject to automatic judicial review attended by the full panoply of safeguards required under Article 5 § 4 (see paragraph 30 above and contrast *Gorshkov*, cited above, §§ 42 and 43). The additional opportunity for the applicant herself to bring a challenge to the continued validity of her detention was therefore of limited importance.

65. The Court does not therefore consider that, in the circumstances, the alleged impossibility for the applicant to bring proceedings challenging the continued lawfulness of her confinement raises an issue under Article 5 § 4. However, it additionally observes that there is no indication that she tried to avail herself of that opportunity and was rebuffed (see paragraph 23 above). To this extent her grievances concerning the alleged shortcomings of this procedure appear speculative (see, *mutatis mutandis*, *Belchev v. Bulgaria* (dec.), no. 39270/98, 6 February 2003, and *Pekov v. Bulgaria*, no. 50358/99, § 91, 30 March 2006).

66. There has therefore been no violation of Article 5 § 4 of the Convention.

3. Article 5 § 5

67. Article 5 § 5 guarantees an enforceable right to compensation only to those who have been the victims of arrest or detention in contravention of the preceding provisions of Article 5 (see *Benham v. the United Kingdom*, 10 June 1996, § 50, *Reports* 1996-III). In view of its findings that there was no violation of Article 5 § 1 or Article 5 § 4, the Court concludes that Article 5 § 5 is not applicable.

68. There has therefore been no violation of this provision.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

69. The applicant complained under Article 8 of the Convention that upon her admission to the hospital she had not been allowed to make arrangements for someone to take care of her dog, which represented an important element of her private life.

70. She also complained under Article 13 of the Convention that she did not have at her disposal effective remedies for her complaint under "Article 6 § 1".

71. 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.

72. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaints concerning the conditions of the applicant's detention, the lawfulness of this detention, the availability of judicial review of the detention, and the alleged lack of an enforceable right to compensation admissible and the remainder of the application inadmissible;

2. *Holds* by five votes to two that there has been no violation of Article 3 of the Convention;

3. *Holds* unanimously that there has been no violation of Article 5 § 1 of the Convention;

4. *Holds* unanimously that there has been no violation of Article 5 § 4 of the Convention;

5. *Holds* unanimously that there has been no violation of Article 5 § 5 of the Convention.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Lorenzen and Villiger is annexed to this judgment.

P.L.
C.W.

PARTLY DISSENTING OPINION OF JUDGES LORENZEN AND VILLIGER

1. We regret that we cannot follow the views of the majority in respect of Article 3 of the Convention.

2. In the instant case, the only specific account of the conditions in which the applicant was detained was the account furnished by her (see paragraph 20 of the judgment). However, in view of her vulnerable situation, she cannot be criticised for not providing documentary evidence – such as, for example, photographs – to support it. Similarly, given the nature of her allegations, it could not be expected from her to back them with medical certificates, since the conditions complained of were not such as to necessarily leave physical or mental scars detectable on medical examination. The applicant's allegations do not find direct corroboration in the CPT's report, since it refers to other establishments and does not make any general observations about the conditions in psychiatric hospitals in Bulgaria (see paragraph 31 of the judgment). However, the findings in that report can at least be used to establish, albeit indirectly, that the applicant's allegations cannot be discarded as prima facie untenable.

3. The Government, on the other hand, had ample opportunity to investigate the conditions in which the applicant was detained, by, for instance, conducting an on-site inspection and questioning the hospital staff or other witnesses (see, *mutatis mutandis*, *Fedotov v. Russia*, no. 5140/02, § 61, 25 October 2005). However, despite a specific question by the Court, they only submitted a letter by the Ministry of Health, which contained merely the general statement that the conditions in the ward where the applicant was kept were in line with the applicable hygiene and safety requirements (see paragraphs 22 and 35 of the judgment). Regrettably, they did not offer any explanation for their failure to submit further information in response to the Court's query. We therefore consider that the Court could have legitimately drawn inferences from their conduct (see *Alver v. Estonia*, no. 64812/01, § 52, 8 November 2005), and could have examined the matter solely on the basis of the applicant's submissions (see *Kostadinov v. Bulgaria*, no. 55712/00, § 50, 7 February 2008, and *Gavazov v. Bulgaria*, no. 54659/00, § 97, 6 March 2008).

4. To reach its definitive findings, the Court did not need to rely on the CPT's report, which, as noted in the judgment, relates to other establishments (contrast *Iovchev v. Bulgaria*, no. 41211/98, § 130 *in limine*, 2 February 2006, and *Todor Todorov v. Bulgaria*, no. 50765/99, § 47, 5 April 2007) and makes no general observations about the conditions in psychiatric hospitals in Bulgaria (contrast *I.I. v. Bulgaria*, no. 44082/98, §§ 37 and 71, 9 June 2005; *Iovchev*, cited above, 130; and *Staykov v. Bulgaria*, no. 49438/99, §§ 60 and 79, 12 October 2006). The report of the Bulgarian Helsinki Committee, while containing specific findings in

respect of the hospital in Radnevo, relates to a period which pre-dates the applicant's stay there by almost two years (see paragraph 32 of the judgment) and is thus also of limited evidentiary value. Nonetheless, it seems to confirm at least some of her allegations (see paragraph 33 of the judgment).

5. The relevant principles for assessing conditions of detention under Article 3 have recently been summarised in paragraphs 52 to 57 of the Court's judgment in the case of *Kostadinov* (cited above).

6. In the present case, the applicant was confined in the hospital in Radnevo for a period of fifty-three days (see paragraphs 19 and 25 of the judgment). During the last fifteen days of her stay there she could leave the ward where she was being kept, and even before that she was apparently not kept there all the time, as she was involved in a physical rehabilitation programme, as well as in work and art therapies (see paragraphs 20 and 21 of the judgment).

7. We consider that the sanitary conditions in the ward where the applicant was kept, as described by her, fell foul of basic hygienic norms. We additionally observe that the ward was not properly lit or heated, and that the food provided to the applicant was scarce and of poor quality (see paragraph 20 of the judgment). For us, such failures in respect of vulnerable individuals who are kept in custody primarily for the purpose of receiving appropriate medical treatment are intolerable.

8. We also note the applicant's assertions concerning the inadequate arrangements to prevent inter-patient violence (see paragraph 20 of the judgment). We consider that it is unacceptable for a psychiatric hospital to make it possible, though lack of appropriate arrangements and supervision, for mentally disturbed patients to subject each other, unchecked, to acts of violence.

9. Those elements, taken together, lead us to conclude that the distress and hardship endured by the applicant during her stay in the hospital amounted to degrading treatment, in breach of Article 3 of the Convention.