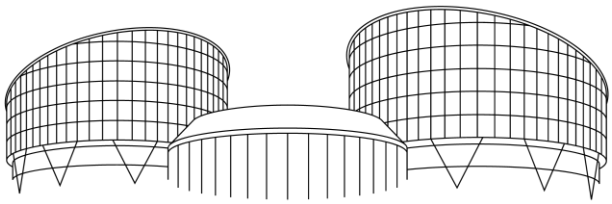

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BEIERE v. LATVIA

(Application no. 30954/05)

JUDGMENT

STRASBOURG

29 November 2011

FINAL

29/02/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Beiere v. Latvia,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Egbert Myjer,
Ineta Ziemele,
Luis López Guerra,
Mihai Poalelungi,
Kristina Pardalos, *judges,*
and Santiago Quesada, *Registrar,*

Having deliberated in private on 8 November 2011,

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

PROCEDURE

1. The case originated in an application (no. 30954/05) 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, Ms Valentīna Beiere ("the applicant"), on 28 July 2005.

2. The applicant was represented by Mr J. Avotiņš, a lawyer practising in Rīga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine.

3. The applicant alleged, in particular, that her confinement in a psychiatric hospital had been unlawful.

4. On 7 January 2009 the President of the Third Section decided to give notice of the complaints concerning Article 5 of the Convention to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1934 and lives in the parish of Saldus in Latvia.

A. Criminal proceedings against the applicant

6. On 6 November 2001 the executive director of the municipality where the applicant resided, V.D., lodged with the Saldus District Court an application for a private prosecution against the applicant and her husband for offences which at the relevant time were proscribed by sections 156 and 157 of the Criminal Law (defamation and bringing into disrepute). The complaint appears to have been based on three letters that the applicant had sent to the council of the local municipality in which it had been alleged that V.D. had given false testimony in courts to the applicant's detriment, that V.D. was a liar who did not deserve to be working in an official position, and that V.D. had hidden the will left by the applicant's sister-in-law.

7. On 9 November 2001, having considered V.D's complaint, a judge of the Saldus District Court decided to initiate criminal proceedings against the applicant for defamation of a representative of public authority (section 271 of the Criminal Law as in force at the relevant time). Offences under section 271 of the Criminal Law were subject to public prosecution.

8. On 8 January 2002 an out-patient psychiatric assessment was carried out on the applicant in a psychiatric hospital located in Jelgava. The assessment was carried out by a commission composed of several medical professionals. The commission was unable to arrive at a definite conclusion concerning the applicant's psychiatric condition.

9. According to the Government, on 4 April 2002 the applicant was officially charged with defamation of V.D. No documents have been provided in that connection by either of the parties. On the same day an authorisation (*orderis*) was issued to sworn attorney M.D. According to the authorisation, M.D. was authorised to "participate in the pre-trial investigation" to assist the applicant. The applicant claims that she never appointed M.D. to represent her interests. Nothing in the copy of the authorisation submitted by the Government indicates that the applicant was made aware of its existence or of M.D.'s role in the proceedings.

10. On 22 April 2002 a prosecutor of the Saldus Distric Public Prosecutor's Office requested the Saldus District Court to order a residential psychiatric-psychological assessment of the applicant to be carried out in a psychiatric hospital in Rīga. The prosecutor indicated that there were grounds to believe that the applicant had not been capable of understanding the consequences of writing the letters in issue. The prosecutor also stated that during the out-patient psychiatric assessment of 8 January 2002 it had been impossible to establish the applicant's psychiatric condition with certainty.

11. On 2 May 2002 a single judge of the Saldus District Court issued a decision authorising the applicant's placement in a psychiatric hospital. The decision noted that the judge had heard statements from the prosecutor and from M.D. The decision also stated that the applicant had refused to report

for a residential examination voluntarily, but no details were given. The Government have not suggested that the applicant was ever requested to report voluntarily for a residential assessment. Lastly, the decision noted that it could be appealed against to the Kurzeme Regional Court but that the lodging of such an appeal did not suspend the execution of the decision. The decision also ordered the Saldus District police to transport the applicant to a psychiatric hospital in Rīga and guard her during the course of the examination.

12. According to the applicant, on 9 May 2002 some ten to twelve police officers arrived at her home and announced to her that she had five minutes to get ready to leave. She was taken to a psychiatric hospital in Rīga and was told only after arriving there of the existence of the Saldus District Court judge's decision of 2 May 2002. She had not received a copy of that decision. The Government did not dispute this account.

13. The applicant submits that the conditions in the hospital were unbearable: she was placed together with people who were mentally ill, drug addicts and people with sexually transmitted diseases, and the toilets in the hospital were flooded and impossible to use. She also submits that prior to 22 May 2002 – when, according to her, she was first seen by a psychiatrist – she was questioned by another doctor in a "political" manner. She also submits that her brain was scanned and that she was injected with unknown substances against her will.

14. At some later date (probably on 12 May 2002) the applicant submitted an appeal against the decision of the Saldus District Court. The applicant pointed out that she had not been informed that a hearing concerning her placement in a psychiatric hospital would take place, and had not participated in that hearing; she accordingly requested that the decision of the first-instance court be quashed.

15. On 24 May 2002 the Kurzeme Regional Court adopted a decision whereby it dismissed the applicant's appeal. At the hearing the court heard submissions from the lawyer, M.D., and a public prosecutor. M.D. supported the applicant's appeal and alleged that the decision of the first-instance court had been unlawful. The prosecutor considered that the decision had been adopted lawfully and was justified by the applicant's persistent refusal to respond to any summonses sent to her or to sign the statement of charges brought against her. He furthermore informed the court that the applicant's assessment would be completed within one week of the date of the hearing in the appeal court. The appeal court considered that the first-instance court had adopted its decision in full conformity with the requirements of section 191 of the Code of Criminal Procedure (see below, paragraph 26), under which the presence of the suspected or accused person at the court hearing concerning that person's placement in a psychiatric hospital was not mandatory. The court considered that the actual implementation of the decision of the Saldus District Court had not been

sufficiently considerate, since the applicant had been forced to leave her household and domestic animals without any supervision. Nevertheless, the court took into account that the Saldus District Public Prosecutor's Office had taken certain steps to ensure that the applicant's property would be looked after during her stay at the psychiatric hospital, and it therefore considered that it was not "expedient" to terminate the assessment of the applicant's psychiatric health.

16. On 28 May 2002 the applicant sent a request to the Prosecutor General. She asked him to lodge a complaint against the Saldus District Court's decision of 2 May 2002 and the Kurzeme Regional Court's decision of 24 May 2002. On 7 June 2002 a prosecutor from the Office of the Prosecutor General replied to the applicant, indicating that the decision of 24 May 2002 was final and therefore no appeal lay against it.

17. On 31 May 2002 the applicant was released from the hospital upon completion of her psychiatric assessment.

18. On the same day a commission consisting of three certified psychiatrists and one certified psychologist issued a report concerning the applicant's psychiatric health and psychological state. The principal conclusion of the experts was that the applicant suffered from persistent delusions about being persecuted by communists and various other persons, including officials of her local municipality. They also found that the applicant was egocentric and her ability to objectively and adequately assess reality and her own behaviour was impaired. The overall conclusion was that the applicant "was unable to take account of her actions and to control them and [was to be] considered to have been in a state of mental incapacity (*nepieskaitāma*) with regard to the offence she was accused of". It was recommended that the applicant should undergo out-patient psychiatric treatment.

19. On 28 June 2002 a public prosecutor of the Saldus District adopted a decision to discontinue the criminal proceedings against the applicant. The decision indicated that the applicant "had committed" the criminal offence mentioned in section 271 of the Criminal Law and that her guilt had been proved by all the materials obtained during the pre-trial investigation. However, taking into account the applicant's mental incapacity and the fact that there was no need to order her compulsory treatment in a psychiatric hospital, the criminal proceedings were terminated.

20. On 22 January 2004 the applicant submitted a civil-law complaint to the Rīga City Ziemeļu District Court. She complained about being held in the psychiatric hospital and indicated that it was still unclear to her why she had been held there. The complaint was directed against the hospital and contained a request for 2,000 Latvian lati (LVL) in compensation for restriction of the applicant's liberty and for harm done to her honour and reputation.

21. On 25 March 2004 the applicant submitted an additional complaint about, *inter alia*, the conditions in the hospital. She also named as additional defendants the two doctors who had observed her. The applicant further noted that while detained she had "had no possibility to appeal against the decisions of the [judge of the Saldus District Court] or the public prosecutor, which [she] had not received" and that she had not been allocated a lawyer, in contravention of the law. In another complaint dated 5 April 2004 the applicant complained, *inter alia*, that she had not been summoned to the hearing of the Saldus District Court, had had no possibility to defend herself and had not been sent a copy of the decision. The amount of compensation requested was increased to LVL 10,000.

22. The first-instance court rejected the applicant's claim by a judgment on the merits which was adopted on 1 November 2004. The court pointed out that the applicant's liberty had been restricted in accordance with decisions of a public prosecutor and a court and accordingly the deprivation of liberty had not been unlawful. It was further noted that since the psychiatric hospital where the applicant had been held had received a certificate which attested to its compatibility with the standards set forth in Latvian legislation, the applicant's complaints regarding the conditions in the hospital were ill-founded. The applicant's complaint about the alleged impossibility of appealing against the decisions of the public prosecutor and the Saldus District Court was not addressed in the judgment.

23. On 8 November 2004 the applicant lodged an appeal against the judgment of the first-instance court. On 3 December she supplemented her appeal. She complained, *inter alia*, about having been held in a psychiatric hospital for an excessive length of time despite having been "completely healthy". The applicant also reiterated her complaint that she had been unable to appeal against the decision to place her in a psychiatric hospital because she had not been informed of that decision, and that she had not been summoned to the relevant court hearing.

24. On 27 January 2005 the Rīga Regional Court rejected the applicant's appeal. That court held that the applicant's constitutional right to liberty had not been violated because she had been placed in the psychiatric hospital in accordance with the law. It also held that the applicant's placement in the hospital had been "proportionate" ("*samērīgs*") with the aim to determine whether she had "realised and understood the nature and consequences of her actions". The applicant's complaint about her purported inability to appeal against the court order requiring her placement in the psychiatric hospital was not addressed.

25. On 23 May 2005 the Senate of the Supreme Court, in a preparatory meeting (*rīcības sēde*), rejected the applicant's appeal on points of law. The Senate pointed out that the applicant had failed to indicate any violations of material or procedural norms.

II. RELEVANT DOMESTIC LAW

26. At the relevant time the placing of suspects or accused persons in medical institutions was governed by Article 191 of the Code of Criminal Procedure (in force until 1 October 2005), which provided as follows:

> "If during the performance of a ... forensic psychiatric assessment there arises a necessity to observe and test the suspect or accused person, the public prosecutor can adopt a reasoned decision and place him in an appropriate medical institution. If the suspect or the accused person is not in detention, he may only be placed in a medical institution on the basis of a decision by a judge or by a court. ..."

27. Pursuant to Article 98 of the Code of Criminal Procedure, the participation of defense counsel was compulsory during a trial before the first-instance court, as well as during a pre-trial investigation in cases concerning, *inter alia*, persons "unable to exercise their rights to defence because of mental defects". If the person in question had not chosen a legal representative, the prosecutor or the court had an obligation to ensure the participation of defence counsel.

28. Article 97 obliged defence counsel to use "all legal means and methods" to provide the necessary legal assistance to their clients. To that end counsel had a right to meet with their client alone, to take part in various procedural actions, to lodge complaints and requests, and to submit evidence.

29. Article 222^1 provided as follows:

> "The suspect, the accused person or their representative may appeal against a decision of a judge concerning ... placement in a medical institution ...
>
> Such appeal may be lodged within seven days of the time when the person in question has become aware ... of the placement in a medical institution...
>
> Such appeal ... shall be heard by a higher court, which shall adopt a decision to quash the judge's decision or to leave it unchanged. A decision shall be adopted no later than seven days after a complaint ... has been received at the court, in the presence of the person who has lodged the appeal ... and the prosecutor. The decision of the court shall be final and not subject to appeal."

30. In a judgment of 29 October 2003 the Constitutional Court of Latvia declared section 271 of the Criminal Law, under which the applicant had been indicted, unconstitutional as being inconsistent with freedom of speech. In accordance with that judgment, section 271 became invalid on 1 February 2004.

31. Section 2352 of the Civil Law provides: "If someone unlawfully deprives another person of their personal liberty, they shall restore the liberty and shall, at the discretion of a court, give full compensation thereof, including compensation for non-pecuniary damage".

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

32. The applicant argued that her confinement in the psychiatric hospital had been unlawful and that she had been unable to challenge its lawfulness. These complaints raise issues under Article 5 of the Convention, which, in so far as is relevant, provides 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:
>
> ...
>
> (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;
>
> ...
>
> 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."

A. Admissibility

33. The Government argued that the applicant's complaints under Article 5 of the Convention ought to be declared inadmissible for failure to comply with the six-month time-limit within the meaning of Article 35 § 1 of the Convention. In that regard, the Government submitted that the final decision taken at the domestic level with regard to the applicant's complaints had been the one adopted by the Kurzeme Regional Court on 24 May 2002, which was not subject to further appeal. The Government further argued that regardless of whether or not the applicant had been sent a copy of the decision of 24 May 2002, it could be clearly seen from her complaint to the Prosecutor General of 28 May 2002 (see above, paragraph 16) that on that date she had been aware of the decision. In any case, the applicant had been released from the hospital on 31 May 2002, which was the latest possible start date for the six-month period.

34. The applicant did not submit any observations in this regard.

1. Concerning the lawfulness of the deprivation of the applicant's liberty

35. Concerning the applicant's complaint about the alleged unlawfulness of her placement in a psychiatric hospital (which, as in *L.M. v. Latvia*, no. 26000/02, 19 July 2011, *Winterwerp v. the Netherlands*, 24 October 1979, Series A no. 33, and numerous other cases, the Court will analyse from the angle of Article 5 § 1 of the Convention), the Court notes that the Government have not commented on the civil proceedings concerning the applicant's complaint based on, *inter alia*, section 2352 of the Civil Law (see above, paragraph 31), in which the applicant sought to establish that she had been deprived of her liberty unlawfully and thus entitled to compensation, and which ended in a final decision of the Senate of the Supreme Court of 23 May 2005.

36. The Court has previously held on many occasions that normally the six-month period runs from the final decision in the process of exhaustion of domestic remedies (see, among many other authorities, *Paul and Audrey Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001). In that regard it has to be analysed whether in the present case that period started running on 24 May 2002 when the Kurzeme Regional Court adopted a final decision concerning the applicant's complaint about her placement in the psychiatric hospital, or at the latest on 31 May 2002 when she was released from the psychiatric hospital, or rather when the applicant's civil-law claim about the purportedly unlawful character of her placement in the psychiatric hospital was dismissed in the final decision of the Senate of the Supreme Court of 23 May 2005.

37. The Court notes that the applicant's complaint about the purported illegality of her placement in a psychiatric hospital in the context of civil proceedings was examined on the merits by two courts (see above, paragraphs 20-24). The final decision in those proceedings was the one adopted by the Senate of the Supreme Court on 23 May 2005. Both the Commission (*Huber v. Switzerland*, no. 12794/87, Commission decision of 9 July 1988, Decisions and Reports (DR) 57, p. 251 (265)) and the Court (*Voggenreiter v. Germany* (dec.), no. 47169/99, 28 November 2002) have held that if a national authority does in fact examine the merits of a complaint, then it is considered that the domestic remedies have been exhausted within the meaning of Article 35 § 1 of the Convention.

38. The Court is required to decide whether the applicant has complied with the six-month rule contained in Article 35 § 1 of the Convention. The test to be applied in evaluating compliance with the six-month rule is whether an applicant has attempted to lodge "misconceived applications to bodies or institutions which have no power or competence to offer effective redress" for his or her complaints (see, for example, *Fernie v. the United Kingdom* (dec.), no. 14881/04, 5 January 2006, and *Svenska Flygföretagens Riksförbund and Skyways Express AB v. Sweden* (dec.), no. 32535/02,

12 December 2006). The Court will not pronounce *in abstracto* on the effectiveness of the remedy in Latvian civil law in relation to situations of alleged unlawful deprivation of liberty. It would in any case be unable to do so in the absence of any concrete examples of domestic case-law to that effect. Nevertheless, in view of the wording of Article 2352 of the Civil Law and considering the claim that the applicant brought to the civil courts in this particular case, these courts, firstly, had to establish whether the deprivation of her liberty had been unlawful and, secondly, whether by virtue of this the applicant had incurred any damage. The Latvian civil courts chose to decide on the merits of the applicant's claim. For these reasons the Court does not consider that the applicant's civil-law claim was a "misconceived application".

39. Therefore, in the particular circumstances of the case, the Court considers that the process of the exhaustion of domestic remedies with regard to the applicant's complaint concerning the lawfulness of the deprivation of her liberty culminated in the final decision which the Senate of the Supreme Court adopted on 23 May 2005.

40. Taking into account the above considerations, the Court holds that the applicant has complied with the six-month rule. Furthermore, her complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Concerning the review of the lawfulness of the deprivation of the applicant's liberty

41. Turning to the applicant's complaint that she was unable to challenge the legality of her placement in the psychiatric hospital (in accordance with its well-established case-law, for example, *L.M. v. Latvia*, cited above, § 57, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 69, ECHR 1999-II, the Court will examine this complaint under Article 5 § 4 of the Convention), the Court notes that on 24 May 2002 the Kurzeme Regional Court dismissed the applicant's appeal against the decision of the Saldus District Court to place her under observation in the psychiatric hospital. No further appeal was possible in that regard. Unlike with regard to the applicant's complaint under Article 5 § 1, the domestic law did not provide any *prima facie* effective avenues for claiming compensation for damage done by the alleged impossibility of challenging in a court the lawfulness of a decision ordering placement in a psychiatric hospital. Therefore the Court agrees with the Government that the running of the six-month period for the applicant's complaint about the review of the lawfulness of the deprivation of her liberty started on 24 May 2002, which was more than six months before the date on which the application was submitted to the Court. Accordingly, this complaint has been submitted too late and is therefore

declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Merits

1. Submissions of the parties

42. The Government pointed out that the applicant had not been confined to a psychiatric hospital in order to secure treatment for a mental illness or to isolate her from society. Accordingly, her detention had not been ordered in accordance with Article 5 § 1 (e). Instead, the applicant had been placed in the hospital in order to have her mental capacity evaluated to determine whether she could be held criminally responsible for the criminal actions attributed to her. Taking that into account, the Government argued that the applicant's confinement to the psychiatric hospital had been justified in order to secure the fulfilment of an obligation prescribed by law and/or because of non-compliance with the lawful order of a court, as provided for in Article 5 § 1 (b) of the Convention. They referred in this regard to the admissibility decision in the case of *Berliński v. Poland* ((dec.), nos. 27715/95 and 30209/96, 18 January 2001).

43. As concerns securing the fulfilment of an obligation prescribed by law, the Government, with reference to the Court's case law recapitulated in the judgment *Nowicka v. Poland* (no. 30218/96, §§ 58 and 60-61, 3 December 2002), indicated that the decision to place the applicant in the psychiatric hospital had been made in accordance with section 191 of the Code of Criminal Procedure and that the overall length of her stay there had not exceeded the maximum time permitted by the domestic law (thirty days). The Government thus considered it proven that the applicant had been placed in the psychiatric hospital in full compliance with the criteria prescribed by the national substantive and procedural law and without any arbitrariness.

44. Lastly, the Government argued that in the present case a proper balance had been struck "between the importance in a democratic society of securing the immediate fulfilment of the obligation in question" and the "importance of the right to liberty". According to the Government, the considerations to be taken into account in that regard included the essence of the obligation prescribed by law which was to be fulfilled, the information about the person being detained, the particular circumstances necessitating their deprivation of liberty, and the length of the detention (*Vasileva v. Denmark*, no. 52792/99, § 38, 25 September 2003). In the present case the psychiatric assessment had been carried out in the applicant's interest, to ensure the fairness of the criminal proceedings. The in-patient assessment had been carried out only after the out-patient assessment had proved inconclusive. The applicant had been held in the

psychiatric hospital for only as long as was necessary to carry out the assessment and had been released on the day after the assessment had been completed. The foregoing considerations led the Government to conclude that the applicant's detention had been proportionate and that Article 5 § 1 of the Convention had not been violated.

45. The applicant disagreed with the Government's submissions, arguing that the criminal proceedings against her had been started merely because of the hatred towards her of the executive director of the local municipality. She also noted that she had never been informed of the hearing of the Saldus District Court concerning her placement in the psychiatric hospital, or of that court's decision, before the police officers arrived at her home to take her to the hospital. The applicant further complained that she had been unable to take part in the hearing of the Saldus District Court and that she had been represented by a lawyer with whom she had not entered into an agreement about her representation.

2. The Court's assessment

46. 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 (*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*, cited above, § 33). 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).

47. In the present case it is common ground that the applicant was deprived of her liberty. It therefore remains to be determined whether the deprivation of liberty 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) of the Convention. Accordingly, it is not disputed between the parties that no other subparagraphs of Article 5 § 1 apply. In so far as Article 5 § 1 (b) is concerned, the Government has put forth arguments that pertain to both aspects of the subparagraph, namely, that the applicant's detention was 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

48. In this regard the Government drew guidance from the above-cited judgment, *Nowicka v. Poland*. 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. Therefore that case is 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 (*Ciulla v. Italy*, 22 February 1989, § 36, Series A no. 148). The Court considers that, given the wording of section 191 of the Code of Criminal Procedure (see above, paragraph 26), which, according to the Government, is the source of the "obligation prescribed by law", and which directly refers to the requirement for a judge or a court to adopt a corresponding decision, the second aspect of Article 5 § 1 (b) is not at issue in the present case.

(b) Lawful order of a court

49. The Court notes that Article 5 § 1 (b) refers to arrest or detention for "non-compliance" with a "lawful order of a court". Semantically the choice of that sort of language presumes that the person arrested or detained must have had an opportunity to comply with such an order and have failed to do so (see, with regard to securing "the fulfilment of any obligation prescribed by law", *McVeigh, O'Neill and Evans*, nos. 8022/77, 8025/77 and 8027/77, Report of the Commission of 18 March 1981, DR 25, § 175). That conclusion is borne out by the case-law of Convention organs, where a pre-condition for verifying the compliance of an internment for psychiatric observation with Article 5 § 1 (b) has been a prior implied or explicit refusal of the applicants to be subjected to a court-ordered internment for observation (in addition to the above-cited *Berliński* decision see also *X v. FRG*, no.6659/74, Decisions and Reports (DR) no.3; *Nowicka v. Poland*, cited above, § 62; and *Sobek v. Czech Republic* (dec.), no. 48282/99, 20 May 2003). For examples of other pre-existing court orders that have brought detention orders within the ambit of the first limb of Article 5 § 1 (b) see *Gatt v. Malta* (no. 28221/08, § 37, 27 July 2010).

50. The Court considers that a person cannot be held accountable for "non-compliance" with a court order if he or she has never been informed of that order. In the present case the Government have not disputed the applicant's claim that she was informed about the existence of the order of the Saldus District Court only after she had been taken to the psychiatric hospital on 9 May 2002. Therefore the applicant did not know about the contents of the court order and was not given any chance to comply with it voluntarily, at a time convenient for her.

51. Turning next to the question of whether the order of the Saldus District 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 (*Winterwerp v. the Netherlands*, cited above, § 45). 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).

52. The Court notes that in the present case the order to detain the applicant was adopted by the Saldus District Court in her absence and without summoning her to the hearing or informing her that a hearing would take place. From the materials in the case file it cannot be clearly established whether the applicant was aware that criminal charges had been brought against her (see above, paragraph 9). The applicant was represented by a lawyer who, without going into the details of the quality of the representation, had never met with the applicant. What is more, the applicant had never even been informed that M.D. had been authorised to represent her interests. The Court considers that in such circumstances the domestic proceedings did not offer the applicant sufficient protection against a potentially arbitrary deprivation of her liberty (see *Shtukaturov v. Russia*, no. 44009/05, § 113, 27 March 2008). For that reason the decision of the Saldus District Court of 2 May 2002 was not a "lawful order of a court" in the sense of Article 5 § 1 (b) of the Convention. In these circumstances it is not necessary to address the proportionality argument raised by the Government.

53. The Court therefore considers that the deprivation of the applicant's liberty was not ordered in accordance with Article 5 § 1 (b) of the Convention. Taking into account that the Government have not argued 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.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

54. The applicant also raised various other complaints under Articles 3, 4, 6, 7 and 10 of the Convention, as well as Article 2 § 1 of Protocol No. 7. 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 declared inadmissible in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 285,000 euros (EUR) in respect of non-pecuniary damage caused by "the unlawful actions" of the Latvian prosecutors and courts, by the deterioration of her physical state because of medications forcibly administered to her while in the hospital, and by suffering caused by being held in a room which had to be shared with mentally ill patients.

57. The Government remarked that part of the applicant's claim for damages was not related to the alleged violation of Article 5 §§ 1 and 4 of the Convention. In so far as the damage had been caused by the violation, the Government considered the applicant's claim to be "excessive and exorbitant" and suggested that an adequate just satisfaction award would not exceed EUR 3,000.

58. The Court considers that the applicant has suffered some non-pecuniary damage, at the same time agreeing with the Government that part of the applicant's claim is related to alleged violations of the Convention which were not communicated to the Government and have been declared inadmissible. Having regard to the character of the violations found in the present case, and ruling on an equitable basis, the Court awards EUR 9,000 under this head.

B. Costs and expenses

59. The applicant did not formulate a claim in respect of costs.

C. Default interest

60. The Court considers it appropriate that the default interest 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. *Declares* the complaint under Article 5 § 1 of the Convention admissible and the remainder of the application inadmissible;

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

3. *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, EUR 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Latvian lati at the rate applicable on the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 29 November 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada	Josep Casadevall
Section Registrar	President