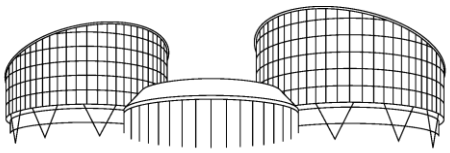

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF RAUDEVS v. LATVIA

(Application no. 24086/03)

JUDGMENT

STRASBOURG

17 December 2013

FINAL

17/03/2014

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

In the case of Raudevs v. Latvia,

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

Päivi Hirvelä, President,
Ineta Ziemele,
George Nicolaou,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Paul Mahoney,
Krzysztof Wojtyczek, judges,

and Françoise Elens-Passos, Section Registrar,

Having deliberated in private on 26 November 2013,

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

PROCEDURE

1. The case originated in an application (no. 24086/03) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Latvian national, Mr Mārtiņš Raudevs ("the applicant"), on 3 July 2003.

2. The applicant, who had been granted legal aid, was represented by Mr A. Zvejsalnieks, a lawyer practising in Riga. The Latvian Government ("the Government") were represented by their Agent, Mrs I. Reine, succeeded by Mrs K. Līce.

3. The applicant alleged that from 30 July until 24 September 2004 he had been unlawfully confined to a psychiatric hospital, that his confinement had not been subjected to a judicial review within a reasonable time, and that he could not obtain compensation for his allegedly unlawful detention. He further complained that he had been deprived of access to court, in particular, that all the court proceedings initiated by him had been stayed pending the outcome of proceedings for his legal incapacitation.

4. On 8 March 2011 the application was declared partly inadmissible and the complaints under Article 5 §§ 1, 4 and 5 and Article 6 § 1 of the Convention were communicated to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1941 and lives in Riga.

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

A. Defamation proceedings

1. Criminal proceedings against the applicant

7. On 4 November 2000 the applicant addressed a letter to the World Bank, the Parliament of the Republic of Latvia and the President of the Supreme Court in which he alleged, somewhat confusedly, that certain judges in Latvia were corrupt and had acted fraudulently. In the letter he called the President of the Civil Cases Division of the Senate of the Supreme Court "a super cheater" and "a fundamental cheater who commits criminal offences". He insisted that the judges should be prosecuted for various crimes. It appears that on other occasions before and after the aforementioned letter, the applicant had accused various other state officials in a similar manner.

8. On 20 December 2000, upon an application received from the President of the Supreme Court, the prosecutor's office instituted criminal proceedings against the applicant for defamation of state officials. At the material time such activities were considered an offence under section 271 of the Criminal Law (see paragraph 48 below).

9. On 11 October 2001 the prosecutor's office brought charges against the applicant. On the same day the applicant was informed thereof.

2. Inpatient medical examination

10. On 14 June 2001 the applicant underwent an outpatient psychiatric examination as part of the criminal investigation. Experts recommended that he undergo an inpatient medical examination in order for a decision to be made about his mental capacity.

11. From 25 October to 7 December 2001 the applicant underwent an inpatient medical examination at a psychiatric hospital (*Psihiatrijas centrs*). On 22 November 2001 the experts issued a report concluding that since 1985 the applicant had been having fantasies and other-worldly ideas which had turned into paranoid delusions. They also concluded that he was suffering from paranoid schizophrenia and at the time of committing the offence had not been fully aware and in control of his actions. It was therefore recommended that he be declared to have been in a state of mental incapacity (*nepieskaitāms*) with respect to the charges brought against him

and that he undergo compulsory medical treatment in a secure psychiatric hospital, owing to the fact that he was in denial about his illness, refused to take medication and had "delusional plans with respect to certain judges and officials". They also noted that the applicant's participation in the pre-trial investigation and his attendance at court would not be useful.

3. Exemption from criminal liability and order for compulsory medical treatment

12. On 6 December 2001 a judge of the Riga City Centre District Court (*Rīgas pilsētas Centra rajona tiesa*) imposed a preventive measure on the applicant of confinement in a psychiatric hospital pending a court order for his compulsory medical treatment. It appears that the order was never executed.

13. On 21 January 2002 the same court, in the presence of the applicant's wife, acting as his legal representative, and his lawyer, absolved the applicant from criminal liability. It ruled that the applicant did not pose a danger to society and decided to release him into the care of his wife and under the supervision of a medical institution, in accordance with section 68(2) of the Criminal Law.

14. Upon an appeal by the prosecutor, on 6 March 2002 the appellate court established that the lower court had failed to provide an assessment of the experts' report and the evidence proving the applicant's guilt. The 21 January 2002 decision was quashed and the criminal case was remitted to the lower court for re-examination.

15. On 16 September 2002 the Riga City Centre District Court found the applicant guilty but exempted him from criminal liability. The court ordered his compulsory medical measure – treatment in a psychiatric hospital under guard.

16. Upon an appeal by the applicant's wife, on 3 December 2002 the Riga Regional Court upheld the lower court's decision. It noted that the applicant's wife could not exercise effective control over her husband's medical treatment or his behaviour, given that he was still sending unsubstantiated applications to various domestic authorities.

17. In a letter dated 17 December 2002, a judge of the Riga Regional Court (*Rīgas apgabaltiesa*) explained to the applicant's wife that an appeal on points of law could be submitted only by the applicant's legal representative, guardian or the prosecutor.

18. On 16 January 2003, in a preparatory meeting, the Senate of the Supreme Court dismissed the appeal on points of law submitted by the applicant's wife. It stated that the appellate court could only review the legality of a decision adopted by the lower court. As the appellate court had no right to decide on the necessity of the confinement, there was also no need for them to question the medical practitioner. It also referred to sections 402^1 and 403 of the Code of Criminal Procedure, which set out the

procedure to be applied when grounds for the application of a compulsory medical measure had ceased to exist.

4. Amendments to the Criminal Law

19. Meanwhile, on 3 January 2003 representatives of a national newspaper brought a complaint before the Constitutional Court (*Satversmes tiesa*), seeking a ruling that section 271 of the Criminal Law was not in compliance with the fundamental rights protected under the Constitution (*Satversme*), in particular, the right to freedom of expression and equality before the law.

20. On 24 February 2003 constitutional proceedings were instituted and on 28 February 2003 details were published in the official gazette "*Latvijas Vēstnesis*".

21. On 29 October 2003 the Constitutional Court found that section 271 of the Criminal Law was incompatible with the Constitution and thus void with effect from 1 February 2004, unless the legislature specified before the aforementioned date which groups of officials, owing to their official capacity, required special protection under criminal law.

22. The Criminal Law was amended and the contested provision was repealed. The amendment came into force on 1 February 2004.

5. Execution of the judgment of 16 September 2002

23. On 2 July 2004 the Riga City Centre District Court issued an execution order for the judgment of 16 September 2002.

24. On 30 July 2004 the judgment was executed and the police took the applicant to the psychiatric hospital for compulsory medical treatment.

6. Complaints against admission to the psychiatric hospital

25. On the same day, 30 July 2004, the applicant complained to the Riga City Centre District Court, seeking his release from the psychiatric hospital on the grounds that since 1 February of that year section 271 of the Criminal Law had no longer been in force. The copy of the applicant's complaint in the Court's possession bears a stamp attesting to the fact that it was received at the Centre District Court on 4 August 2004. There is no further information in the case file about any decisions made in respect of this complaint.

26. On 4 August 2004 he made a similar complaint to the prosecutor's office. He also asked for criminal proceedings to be instituted in connection with his forced admission to hospital.

27. On 9 August 2004 a prosecutor confirmed that the execution of the court's decision of 16 September 2002 had been lawful.

28. On 24 August 2004 the Riga City Centre District Court informed the head of the psychiatric hospital that the amendments to the Criminal Law

were applicable in the applicant's case. On 3 September 2004 the administration of the psychiatric hospital submitted an application to the Riga City Ziemeļu District Court (*Rīgas pilsētas Ziemeļu rajona tiesa*) seeking revocation of the compulsory medical measure.

29. On 24 September 2004 that court revoked the decision of 16 September 2002 and the applicant was released the same day. In its reasoning, the court referred to the amendments to the Criminal Law (see paragraph 22 above) and sections 402^1 and 403 of the Code of Criminal Procedure.

B. Proceedings for legal incapacitation

1. Initiation of proceedings

30. On 13 August 2003 the applicant addressed a complaint to the Senate of the Supreme Court claiming 4,000,000 euros (EUR) as compensation for alleged violations of his human rights. The prosecutor's office informed the applicant that the above letter had been added to his file. On 26 August 2003 the applicant, somewhat confusedly, repeatedly asked the Senate to reopen the criminal proceedings.

31. It appears that on numerous occasions the applicant addressed letters to various institutions alleging that judges and prosecutors had acted unlawfully. He submitted that on 18 March 2004 a judge of the Riga City Centre District Court had refused his request for criminal proceedings to be instituted against three prosecutors in connection with their alleged unlawful activities.

32. On 29 September 2004 the Riga Regional Court submitted a request to the prosecutor's office for measures to be taken with respect to the applicant's legal capacity.

33. On 22 February 2005 the Centre District Court ordered that the applicant undergo a psychiatric examination, which was carried out between 24 March and 27 April 2006. The experts observed that he was still making complaints about his alleged enemies, which were becoming more and more elaborate. They concluded that he only had basic social skills and a limited ability to deal with simple everyday situations, and that owing to his heart condition and lack of self-awareness, his submissions in court would be counterproductive.

2. Court proceedings for legal incapacitation

34. On 18 May 2006 the Riga City Vidzeme District Court (*Rīgas pilsētas Vidzemes priekšpilsētas tiesa*) ruled that the applicant was not legally capable (*rīcībnespējīgs*). He was not present at the hearing.

35. On 27 July 2006 the applicant appointed V.B. as his legal representative by issuing a power of attorney certified by a public notary.

36. On 10 August 2006 the Riga Regional Court dismissed the applicant's appeal. The hearing was held in private so V.B. was asked to leave. The applicant was represented by someone from the *Bāriņtiesa*, a guardianship and curatorship institution established by the Riga city council.

37. On 8 March 2007 the Senate of the Supreme Court, in a preparatory meeting, dismissed the appeal on points of law because it was submitted by V. B. who was not authorised to lodge such appeals.

38. According to the applicant, on 24 July 2007 the Constitutional Court dismissed a constitutional complaint lodged by him, noting that only his guardian was authorised to lodge a complaint on his behalf.

39. It appears that in 2008, at the applicant's request, the Supreme Court extended the period for lodging an appeal on points of law. On 10 July 2009, in a preparatory meeting, the Senate of the Supreme Court instituted cassation proceedings and on 30 September 2009 it quashed the appellate court's judgment of 10 August 2006 and remitted the case to the Regional Court. The Senate noted that the lower court had not assessed all the evidence and had failed to provide adequate reasoning as to the applicant's legal incapacity; it observed that in reaching the conclusion that the applicant had no legal capacity, the lower court had merely rewritten the experts' report and referred to the various complaints submitted by the applicant.

40. On 16 November 2009 the applicant asked the Supreme Court to inform him of his right to obtain compensation in respect of the quashed decision of the appellate court. He was informed that providing such advice exceeded the competence of the Supreme Court.

41. On 4 June 2010 the Riga Regional Court re-examined the applicant's appeal, quashed the Vidzeme District Court's decision in full and rejected the request to declare the applicant legally incapable. That decision became final at an unspecified date.

3. Attempts to appoint a guardian

42. Between August 2006 and May 2007 representatives of the *Bāriņtiesa* repeatedly tried to contact the applicant's relatives to discuss the possibility of one of them being appointed as his guardian. According to information received by the Government's Agent, in May 2007 the applicant's relatives informed the tribunal that he did not need a guardian and to appoint one would be unnecessary.

4. Proceedings concerning reinstatement of legal capacity

43. On several occasions the *Bāriņtiesa* asked the Riga City Vidzeme District Court to reinstate the applicant's legal capacity. On 12 February 2007 it requested that his legal capacity be reinstated because

since 2006 no guardian had been assigned to him, and throughout that period he had been able to take care of his daily needs himself. It was the tribunal's view that his state of health had improved.

44. On 12 February 2009 the proceedings were stayed pending the outcome of the proceedings for the applicant's legal incapacitation.

5. Attempts to obtain compensation

45. On 11 January 2006 the applicant brought a civil action against the prosecutor's office, but his claim was not allowed because it had been lodged with the wrong court.

46. On 20 June 2006 he lodged a complaint with the Administrative District Court (*Administratīvā rajona tiesa*) concerning damage he had sustained on 24 March 2006 when the police had taken him in for the inpatient medical examination. On 2 February 2007 those proceedings were stayed pending assignment of the applicant's guardian.

47. Several other civil and administrative proceedings initiated by him were stayed on the same grounds.

II. RELEVANT DOMESTIC LAW

A. Criminal Law

48. Section 271 (in force until 1 February 2004) defined defamation and injuring the dignity of representatives of public authority or other State officials as an offence punishable by deprivation of liberty for up to two years, arrest or compulsory labour.

49. By the amendments adopted on 22 January 2004 and in force since 1 February 2004 section 271 was repealed from the Criminal Law. The amendments also provided that convicted persons sentenced before 1 February 2004 for criminal offences under section 271 would be released from imprisonment.

50. Section 68(1) provides that a person who has committed an offence, but who suffers from a mental disorder (*psihiski traucējumi*) and who has been declared to be in a full or partial state of mental incapacity, can be assigned the following compulsory medical measures: (a) outpatient treatment in a medical institution; (b) inpatient treatment in a psychiatric hospital; or (c) inpatient treatment in a psychiatric hospital under guard. If the person does not pose a danger to society, the court can place him or her into the care of his or her relatives and under the supervision of a medical institution (section 68(2)). The person, who has been declared to be in a partial state of mental incapacity, can also be made to undergo medical treatment in an adequate detention facility (section 68(3)).

B. Code of Criminal Procedure (adopted in 1961; as in force at the material time and until 1 October 2005)

51. Under section 402^1 a court, at the proposal of the head of the medical institution or a prosecutor, and relying on medical report, had to decide whether to revoke or amend a compulsory medical measure. Section 403 set out the procedure for revocation of the compulsory measure by defining the court authorised to decide on requests to revoke it and requiring that the prosecutor and the concerned person's guardian attend the hearing. The court could invite the parties, a representative of the medical institution and the persons who had initiated the proceedings to the hearing. If there were any doubts as to the medical report, the court could order a forensic medical examination to be carried out. It had to hear the opinion of the prosecutor and that of the representative of the person concerned. The court's decision was subject to appeal.

C. Law on the Prosecutor's Office (adopted in 1994)

52. Section 16(1) provides that a prosecutor must, in accordance with the procedures prescribed by law, carry out an examination if the information received contains assertions regarding either a crime or a violation of the rights and lawful interests of persons with no or diminished legal capacity (*rīcības nespējīgo un ierobežoti rīcībspējīgo*), disabled persons and minors, detainees or other persons whose rights to protect themselves are limited.

D. Law on Compensation for Damages (adopted in 1998)

53. Section 2 of the Law on Compensation for Damages Caused by Unlawful or Unfounded Actions of Investigators, Prosecutors or Judges (*Par izziņas izdarītāja, prokurora vai tiesneša nelikumīgas vai nepamatotas rīcības rezultātā nodarīto zaudējumu atlīdzināšanu*; hereafter – "the Law on Compensation for Damages") lays down the following legal grounds for awarding (pecuniary and non-pecuniary) damages: (a) an acquitting court judgment irrespective of the reasons for acquittal; (b) discontinuation of criminal proceedings on rehabilitating grounds; and (c) unlawful administrative arrest and discontinuation of administrative violation proceedings. Requests for damages must be submitted to the Ministry of Justice or the Office of the Prosecutor General, depending on the stage in which the proceedings have been terminated (section 7(1)). In relation to non-pecuniary damages, a person is entitled to submit a civil claim to a court of general jurisdiction (section 5(3)).

E. Laws concerning *Bāriņtiesas*

54. Pursuant to provisions of the law that was effective from 7 December 1995 to 1 January 2007 (*Likums "Par bāriņtiesām un pagasttiesām"*), it was the role of the *Bāriņtiesa* to appoint a guardian to persons divested of legal capacity, supervise the activities of guardians and, in certain circumstances, authorise guardians to enter into agreements on behalf of persons divested of legal capacity. Under the new law (*Bāriņtiesu likums*, effective since 1 January 2007), the *Bāriņtiesa* has the authority to lodge claims and complaints to court on behalf of persons divested of legal capacity, as well as to provide them with assistance on request. The *Bāriņtiesa* can also decide whether to institute court proceedings aimed at reinstating legal capacity.

THE LAW

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

55. The applicant complained that the decision of 16 September 2002, by which he had been ordered to undergo compulsory medical treatment in a psychiatric hospital under guard, had been unlawful. He cited two grounds: firstly, that he had never suffered from a mental illness, and, secondly, that the decision had lost its force on account of legislative amendments. In this connection he relied on Article 5 of the Convention, the relevant parts of which read 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:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> ...
>
> (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;

A. Admissibility

1. Arguments of the parties

56. The Government presented their objections on admissibility separately, firstly in relation to the alleged unlawfulness of the decision to confine the applicant in a psychiatric hospital and secondly, the execution of that decision.

57. As concerning the lawfulness of the impugned decision of 16 September 2002 (which had been upheld by a final decision of the Senate of the Supreme Court on 16 January 2003; see paragraph 18 above), the Government argued that by lodging his complaint with the Court on 3 July 2003 the applicant had failed to comply with the six-month rule. In their additional observations, the Government emphasised that when calculating the six-month time-limit in relation to the impugned decision the Court should not take into account the date when the applicant was actually admitted to the psychiatric hospital, namely 30 July 2004, because the execution of the order for his confinement formed part of a separate complaint under Article 5 § 1 (e) submitted later.

58. In relation to the complaint that the impugned decision was executed following the legislative amendments, thus rendering the applicant's confinement unlawful, the Government contended that the applicant had failed to bring an action for damages against the State authorities, thereby failing to exhaust domestic remedies. The applicant could have relied on the Law on Compensation for Damages (see paragraph 53 above) to seek compensation for his unlawful confinement in the psychiatric hospital. Under section 4 of the above Law, the applicant could have submitted, within six months of his discharge date, a complaint to the Ministry of Justice. Alternatively, it has been open to him to submit a civil claim to a court of general jurisdiction for compensation in respect of non-pecuniary damage caused by the execution of the court order of 16 September 2002. The Government submitted two examples of situations in which requests for compensation had been upheld. Thus, on 9 February 2005, following a person's acquittal in criminal proceedings the Ministry of Justice decided to pay compensation for the time the person in question had been held in detention while the proceedings had been pending. On 24 August 2005 the Riga City Centre District Court awarded compensation to a person who had been convicted in criminal proceedings by a first-instance court and later acquitted.

59. The applicant's representative contested the Government's objections in relation to the six-month rule. He did not submit any observations in relation to the non-exhaustion argument raised.

2. The Court's assessment

60. The Court reiterates that the applicant's complaint concerns the unlawfulness of his confinement in a psychiatric hospital pursuant to a court order made on 16 September 2002. The order was executed on 30 July 2004 and the applicant was kept in the hospital until 24 September 2004.

61. Concerning the six-month rule the Court observes that the contested decision came into force on 16 January 2003 (see paragraph 18 above). The applicant lodged his complaint about the unlawfulness of his detention with

the Court on 3 July 2003, thereby complying with the six-month rule for the purposes of Article 35 § 1 of the Convention.

62. In relation to the Government's argument that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, the Court reiterates that the purpose of the above rule is to afford the Contracting State the opportunity to prevent or put right the violation alleged against it before those allegations are submitted to the Court; nevertheless the rule must be applied without excessive formalism. Where lawfulness of detention is concerned, an action for damages against the State is not a remedy which has to be used, because the right to have the lawfulness of detention examined by a court and the right to obtain compensation for any deprivation of liberty incompatible with Article 5 are two separate rights (see, inter alia, *Włoch v. Poland*, no. 27785/95, § 90, ECHR 2000-XI, *Schwabe and M.G. v. Germany*, nos. 8080/08 and 8577/08, § 49, ECHR 2011 (extracts)).

63. The Court notes that the applicant explicitly brought to the attention of the Riga City Centre District Court (see paragraph 25 above) and the prosecutor (see paragraph 26 above) his complaint that on the day when he was detained and brought to the psychiatric hospital the legal norm on the basis of which he had been convicted was no longer in force. However, the authorities did not react to his complaints. The Government have not brought to the Court's attention any other procedure which could have at the material time served to grant the applicant's release. The Court accordingly dismisses the Government's objection of non-exhaustion (see also *Kakabadze and Others v. Georgia*, no. 1484/07, § 54, 2 October 2012).

64. The Court therefore dismisses the Government's objections as to the admissibility of the complaints under Article 5 § 1, whereas the question about the effectiveness of the compensatory remedy following legislative changes shall be reviewed in the context of the applicant's complaint under Article 5 § 5 of the Convention (see paragraph 96 below).

65. It notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

66. The Government argued that the applicant's confinement in the psychiatric hospital had been ordered in compliance with the domestic law and the principles enshrined under Article 5 of the Convention. They contended that notwithstanding the fact that in February 2003 the Constitutional Court had found the legal provision based on which the applicant had been convicted unconstitutional, this had not influenced the

findings of the forensic experts in November 2001 concerning the applicant's state of mental health, his dangerousness to society, and that he should have a compulsory measure of a medical nature imposed on him. According to the Government, when ordering the compulsory confinement, the national courts had relied on the above findings and had duly evaluated the applicant's individual circumstances, thus fulfilling the necessary conditions set out in the case of *Winterwerp v. the Netherlands* (24 October 1979, Series A no. 33).

67. The applicant's representative argued that the only reason the applicant had been confined to the psychiatric hospital had been the critical remarks he had made about certain state officials. However, those remarks were never made public and did not pose any threat to any public figure.

2. The Court's assessment

68. The Court refers to the recapitulation of the principles applicable to the analysis of whether a deprivation of liberty has been in conformity with Article 5 § 1 of the Convention (see *X v. Finland*, no. 34806/04, §§ 144-151, ECHR 2012 (extracts)) and reiterates that before determining whether the applicant has been reliably shown to have been suffering from a mental illness of a kind or degree warranting compulsory confinement, and whether the validity of his continued confinement depended on the persistence of the mental illness (see, among other authorities, *Winterwerp*, cited above, §§ 37-39, reiterated in *L.M. v. Latvia*, no. 26000/02, § 46, 19 July 2011), it must establish whether the applicant's detention was carried out "in accordance with a procedure prescribed by law" and was "lawful" within the meaning of Article 5 § 1 (e) (see *Storck v. Germany*, no. 61603/00, § 112, ECHR 2005-V). In the latter respect the Convention essentially refers back to national law and lays down the obligation to conform to the substantive and procedural rules thereof. It also refers to the quality of the law, requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention (see, among other authorities, *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008). In this connection the Court has stated that Article 5 § 1, although cumulative with the protection guaranteed under Article 5 § 4, strictly regulates the circumstances in which one's liberty can be taken away *(*see *H.L. v. the United Kingdom*, no. 45508/99, § 114, ECHR 2004-IX).

69. The national authorities have some discretion in deciding whether an individual should be detained on grounds of his state of mental health, since it is in the first place for them to assess the evidence brought before them in a particular case, whereas the Court's task is to review their decision under the Convention (see *Winterwerp*, cited above, § 40). The relevant time at which a person must be established to be of unsound mind, for the purposes of Article 5 § 1 (e), is the date of adoption of the measure depriving that

person of liberty as a result of that condition (see *O.H. v. Germany*, no. 4646/08, § 78, 24 November 2011, with further references).

70. The Court observes at the outset that the applicant's confinement in a psychiatric hospital was ordered in the course of criminal proceedings in which the national court established that he had committed an offence under section 271 of the Criminal Law. Until 1 February 2004, defamation of state officials was a criminal offence, but the applicant was absolved from criminal liability on account of his state of mental health. Instead, he was ordered to undergo compulsory medical treatment under guard. Noting also that the applicant's detention in the psychiatric hospital was ordered in the course of criminal proceedings relating to the assessment of his mental capacity, the complaint falls to be examined under Article 5 § 1 (e) of the Convention.

71. The Court further observes that the last of the medical examinations ordered by the national court was carried out in October and November 2001 (see paragraph 11 above) and, taking note of the experts' report that the applicant had "delusional plans" in relation to unidentified State officials, the applicant was by a final decision in January 2003 ordered to undergo compulsory inpatient medical treatment under guard. The Court points to the vague reasoning provided by the medical experts and national courts in connection with such a radical measure. However, even assuming that by relying on the medical experts' report the first-instance court in 2001 had reliably established that the applicant's mental state warranted confinement in a psychiatric hospital under guard, the Court notes that until adoption of the final decision in January 2003 no other medical examinations had been ordered. Accordingly, for more than a year no assessments were carried out as to the continued necessity of confining the applicant to an inpatient psychiatric hospital under guard, or the possibility of applying any other less restrictive measure. The Court notes in particular that in the absence of any explanation by the national authorities, the execution of the order and the applicant's subsequent detention in a psychiatric hospital was carried out more than a year and six months after the final decision ordering his inpatient treatment came into effect.

72. In relation to the above observations, the Government have not brought to the Court's attention any mechanisms existing under the domestic law regulating the time-limits for the execution of such orders. Neither has the Court's attention been brought to any procedures enabling further medical assessments to verify the necessity of continued compulsory hospitalisation in cases where an order for confinement has been made but its execution has been delayed. The Court reiterates that matters relating to the execution of detention form part of the broader notion of the lawfulness of detention under Article 5 § 1 (e) of the Convention (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 44, Series A no. 93). The above principle suggests that if the measure is not carried out immediately, in

order to be lawful in the light of Article 5 of the Convention there has to be an opportunity to acquire an assessment to verify the necessity of medical confinement within a reasonable time before its execution (see, *mutatis mutandis*, *Luberti v. Italy*, 23 February 1984, § 28, Series A no. 75). Observing the considerable delays in the execution of the applicant's detention at the material time and the lack of any safeguards under the domestic law permitting a review of the medical necessity of compulsory medical measures before its execution, the applicant's detention was carried out contrary to the principle established under Article 5 § 1 (e) that the existence of a mental illness warranting confinement in a hospital must be established at the time of its implementation. The Court furthermore notes and the Government do not deny (see paragraph 99 below) that at the time when the applicant was detained in the psychiatric hospital, section 271 of the Criminal Law, which had formed the legal basis for the criminal proceedings against him, had already been declared unconstitutional by the Constitutional Court and had furthermore been repealed from the Criminal Law raising serious questions as to the lawfulness as such of the applicant's confinement to the psychiatric hospital.

73. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

74. The applicant further complained that his confinement was not subjected to a judicial review within a reasonable time. He relied on Article 5 § 4 of the Convention, which reads as follows:

> "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

1. Arguments of the parties

75. The Government argued that it was for the applicant to submit a constitutional complaint if he considered his rights under Article 5 § 4 to have been violated by the fact that in accordance with section 402^1 of the Code of Criminal Procedure (as in force at the material time), he had been unable to personally challenge the lawfulness of his confinement in a psychiatric hospital. The Government referred to the Court's conclusions in *Grišankova and Grišankovs v. Latvia* ((dec.) no. 36117/02, 13 February 2003, ECHR 2003-II (extracts)), where it was held that where an individual calls into question a provision of a Latvian legislation or regulation as being contrary to the Convention, and the right relied on is

among those guaranteed by the Latvian Constitution, proceedings should, in principle, be brought before the Constitutional Court prior to being brought before the Court. The Government cited several examples of case-law in which the Constitutional Court had effectively remedied issues in relation to persons of diminished mental capacity, highlighting one such judgment of December 2010 in which the Constitutional Court found that the institute of absolute legal incapacity enshrined in the Civil Law was incompatible with the Constitution. In the light of the above, the Government argued that given the applicant's experience in submitting various complaints, he would have been aware of his entitlement to submit such a complaint to the Constitutional Court. The Government contended that the Court was prevented from considering the applicant's complaint, since the compatibility of section 402^1 of the Code of Criminal Procedure had never been assessed by competent Latvian authorities.

76. The applicant's representative did not comment on the above objection raised by the Government.

2. The Court's assessment

77. The Court considers that the non-exhaustion grounds raised by the Government are closely related to the substance of the complaint under Article 5 § 4 of the Convention, and should be joined to the merits.

78. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds.

B. Merits

1. Arguments of the parties

79. The Government emphasised that soon after the start of the applicant's confinement in the psychiatric hospital its head had submitted an application to the Riga Centre District Court concerning the revocation of the measure imposed on him. Thus, according to the Government, the lawfulness of the applicant's detention had been effectively and speedily decided by a court.

80. The applicant's representative reiterated that the applicant had been admitted to the psychiatric hospital on 30 July 2004. He had immediately informed the hospital administration about the amendments to section 271 of the Criminal Law, on the basis of which he had been admitted. However, despite his repeated complaints no action had been taken until 24 August 2004 when the hospital administration had asked the court to revoke the measure. It was not until 24 September of that year that the national court had decided to order his release. He further noted that the applicant had not been appointed a guardian.

2. The Court's assessment

81. The Court observes at the outset that the applicant's complaint under Article 5 § 4 concerns access to court as well as the speediness of the review process of a confinement order when the legislative provision forming the legal basis for this order is no longer in force. It will therefore proceed with examining both aspects of this complaint.

82. It reiterates the principles under Article 5 § 4, namely that persons subjected to compulsory medical treatment are entitled to institute court proceedings to test the lawfulness of their detention (see, among other authorities, *Winterwerp*, cited above, §§ 60-61), and that the access to such proceedings should not depend on the goodwill of the detaining authority (see *Rakevich v. Russia*, no. 58973/00, § 44, 28 October 2003, and *Gorshkov v. Ukraine*, no. 67531/01, § 44, 8 November 2005). Moreover, the above article guarantees that the judicial decision concerning the lawfulness of detention and, where necessary, ordering the release, is taken speedily (see, among other authorities, *Van Glabeke v. France*, no. 38287/02, § 31, ECHR 2006-III).

83. The Court observes at the outset that sections 402^1 and 403 of the Code of Criminal Procedure (in force at the material time) set out the procedure for the termination of compulsory medical treatment, namely that the administration of the psychiatric hospital or a prosecutor could initiate court proceedings to review the necessity of continued medical treatment. The above procedure did not specify any time-limits in relation to the frequency of the review and the period within which the court had to decide on a hospital's request for a patient to be discharged, in contrast with the procedure set out in the new Criminal Procedure Law which came into force on 1 October 2005.

84. The above observations are to be assessed against the Government's argument (see paragraph 75 above) that in order to obtain access to a court, the applicant should have contested the constitutionality of section 402^1 of the Code of Criminal Procedure before the Constitutional Court. The Court notes at the outset that it does not question the effectiveness of a constitutional complaint in cases where the constitutionality of the provisions of national legislation is called into question (see *Grišankova and Grišankovs*, cited above). However, it cannot agree that the constitutionality of section 402^1 of the Code of Criminal Procedure was the issue in the present case. Rather, the issue was the absence of safeguards which rendered the framework of compulsory medical measures under the former Code of Criminal Procedure incompatible with the guarantees enshrined in Article 5 of the Convention. The Court reiterates that the Constitutional Court in Latvia is empowered to repeal legal provisions which it finds unconstitutional, but not to adopt new legal procedures or to close a legislative gap (see *Liepājnieks v. Latvia* (dec.), no. 37586/06, §§ 73 and 75, 2 November 2010). In this regard the Court refers to the conclusions

it recently reached in a different but comparable case against Latvia (see *Mihailovs v. Latvia*, no. 35939/10, § 157, 22 January 2013).

85. In the light of the above, the Court dismisses the Government's objection in relation to non-exhaustion of domestic remedies and declares the applicant's complaint admissible.

86. Turning next to the national court's review of the applicant's Article 5 § 4 complaint, the Court reiterates that normally a review by the national courts is inherent in situations where compulsory measures have been ordered by a court (see, among other authorities, *Luberti*, cited above, and also *X v. Finland*, cited above, §§ 169-170). However, owing to the passage of time since the applicant's last medical examination, it could not be said that when he was admitted to the hospital the necessity of the measure had been lawful in the light of Article 5 of the Convention. The Court considers that to be even more so in the light of the Government's argument that the applicant's confinement to a psychiatric hospital had been rendered unlawful by the fact that the provision of the Criminal Law that had formed the legal basis for the criminal proceedings against him had been declared unconstitutional (see paragraph 99 below). The Court highlights the undisputed fact that since November 2001 there had been no judicial review as to the persistence of the conditions requiring the applicant's continued confinement in a psychiatric hospital. These circumstances therefore rendered the speediness of the review even more pertinent. However, even though immediately after his confinement on 30 July 2004 the applicant approached the head of the hospital administration with a request for his release, no action was taken by the authorities until 3 September of that year (see paragraphs 28 - 29 above).

87. The Court also notes that the applicant submitted a complaint to the prosecutor's office which, in accordance with section 402^1 of the Code of Criminal Procedure and section 16 of the Law on the Prosecutor's Office, had to take action if it received information relating to the violation of the rights of detained persons. However, it failed to take any steps before 24 September 2004 when the impugned measure was revoked by a domestic court.

88. In the light of the above, the Court concludes that by failing to review the lawfulness of the applicant's detention during the period from 30 July to 24 September 2004 the authorities infringed the applicant's rights guaranteed under Article 5 § 4 of the Convention.

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

89. The applicant also complained that he could not obtain compensation for his allegedly unlawful detention. In this regard he relied on Article 5 § 5 of the Convention:

"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. Admissibility

1. Arguments of the parties

90. The Government firstly argued that the complaint had been submitted outside the six-month time-limit, which expired on 25 March 2005. In particular, they argued that since the applicant's discharge from hospital on 24 September 2004 he had lodged various claims for damages with the administrative courts but had not claimed compensation for damages in respect of his unlawful confinement from 30 July to 24 September 2004, and that it had not been until 7 October 2010 that he had addressed such a claim to the prosecutor's office and the Senate of the Supreme Court. The Government noted that the applicant had failed to explain this lengthy delay. Secondly, they raised the non-exhaustion ground referred to above in relation to the complaint under Article 5 § 1 (see paragraph 58 above).

91. The applicant did not comment on these objections.

2. The Court's assessment

92. The Court observes that the Government also raised similar arguments concerning the merits of the complaint under Article 5 § 5 of the Convention. It therefore considers that the above objections raised by the Government are closely related to the substance of the complaint under Article 5 § 5, and should be joined to the merits.

93. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds.

B. Merits

1. Arguments of the parties

94. The Government submitted that the applicant had not addressed his compensation claim concerning his time spent in a psychiatric hospital to the prosecutor's office and the Senate until 7 October 2010. He had thereby failed to exhaust the remedies capable of redressing his unlawful confinement to the hospital (see paragraph 58 above).

95. The applicant's representative did not present explicit observations under Article 5 § 5 of the Convention. He argued, relying on Article 6 of the Convention, that the applicant did not have a guardian, and that the authorities should have taken measures to assist him in bringing court proceedings.

2. The Court's assessment

96. In the Grand Chamber judgment *Stanev v. Bulgaria* ([GC], no. 36760/06, § 182, ECHR 2012), the Court summarised its Article 5 § 5 case-law in relation to the right to compensation where detention has been effected contrary to the guarantees enshrined by Article 5 of the Convention.

97. The Court shall examine both lines of arguments raised by the Government separately. Namely, that the applicant could have submitted a compensation claim in September 2004 immediately after his discharge from hospital or, alternatively, that it was open to him to submit a claim under the special law on compensation.

98. As concerning the Government's argument about the time that passed before the applicant submitted a compensation claim (see paragraph 90 above), the Court observes that between 10 August 2006 and 30 September 2009 he was deprived of his legal capacity and that no guardian was appointed to him. At the same time, on various occasions V.B., the person appointed by the applicant to represent his interests, had not been granted leave to act on his behalf (see paragraphs 36-37 above). Even though it derives from the case file that failure to appoint a guardian is not to be attributable solely to the authorities (see paragraph 42 above), the Court, in assessing the applicant's prospects in submitting a compensation complaint after August 2006, takes note of various domestic proceedings which were stayed pending the appointment of the applicant's guardian (see paragraph 46 above).

99. It is to be assessed next whether the applicant could have obtained compensation had he availed himself of the remedy provided under the special law on compensation immediately after being discharged from the hospital and before he lost legal capacity. The Government alleged that the execution of the decision ordering the applicant's confinement in the psychiatric hospital after the Constitutional Court had declared the applicable provision of the Criminal Law unconstitutional had rendered it unlawful, and that on those grounds the applicant should have relied on the special compensation law.

100. The Court notes that the above remedy requires a strong presumption of unlawfulness in the conduct of the State authorities. This is illustrated by the examples furnished by the Government, in which the national authorities had either recognised faults in previous stages of the proceedings or had discontinued criminal proceedings on rehabilitating grounds (see paragraph 58 above).

101. Turning to the particular case, none of the authorities at any stage found the impugned measure, namely the applicant's detention, unlawful or otherwise in breach of Article 5 of the Convention. There is no evidence to suggest that the criminal proceedings against the applicant were discontinued on rehabilitating grounds which would give way for the

applicant to claim damages (contrast *Dreiblats v. Latvia* (dec.), no. 8283/07, 4 June 2013). The Court observes, however, that the impugned order was issued based on the applicant's state of mental health, the assessment of which was carried out by medical experts. While it cannot be excluded that the validity of the order might depend on posterior legislative changes, it is also clear that it requires further medical assessments. This argument was also advanced by the Government (see paragraph 66 above) and was supported by the Senate's judgment, which referred to the special proceedings applicable to measures of a medical nature (see paragraph 18 above). The Court concludes that it has not been shown by the Government that the legislative changes did not automatically make the order unlawful for the purposes of the Law on Compensation for Damages (see paragraph 53 above), thus failing to provide any certainty as to the prospects of success as required by the relevant case-law (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, §§ 66-68, *Reports of Judgments and Decisions* 1996-IV, and contrast *Dreiblats*, cited above). Moreover, the Government failed to submit any examples of decisions in which an action for damages in comparable circumstances would have been successful.

102. Accordingly, the Court dismisses the Government's preliminary objections, declares the applicant's complaint admissible and finds that there has been a violation of Article 5 § 5 of the Convention in the present case.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

103. The applicant further complained in substance under Article 6 of the Convention that he had been deprived of access to court, in particular, that all the court proceedings initiated by him had been stayed pending the outcome of the proceedings for his legal incapacitation.

104. The Government contested that argument.

105. The arguments submitted by the applicant's representative are stated above (see paragraph 95).

106. The Court notes that this complaint is linked to the complaint examined above and must likewise be declared admissible.

107. Having regard to its findings under Article 5 §§ 4 and 5 of the Convention above, the Court considers it unnecessary to examine whether, in this case, there has been a violation of Article 6. The latter is covered by Article 5 § 4 of the Convention which is *lex specialis* in relation to Article 5 complaints.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

108. 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

109. The applicant claimed 11,000,000 euros (EUR) in respect of non-pecuniary damage.

110. The Government contested the claim.

111. Having regard to the nature of the violation found in the present case and deciding on an equitable basis, the Court awards the applicant EUR 10,000 in compensation for non-pecuniary damage.

B. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins* the Government's objections regarding the non-exhaustion of domestic remedies to the merits of the complaints under Articles 5 §§ 4 and 5 of the Convention;

2. *Declares* the complaints under Articles 5 and 6 of the Convention admissible;

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

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention and *dismisses* the Government's above-mentioned objection;

5. *Holds* that there has been a violation of Article 5 § 5 of the Convention and *dismisses* the Government's above-mentioned objection;

6. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;

7. *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 10,000 (ten thousand euros);

(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;

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

Done in English, and notified in writing on 17 December 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos	Päivi Hirvelä
Registrar	President